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THE HONORABLE RICARDO S. MARTINEZ

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

JAMES GINZKEY, RICHARD
FITZGERALD, CHARLES CERF, BARRY
DONNER, and on behalf of the class
members described below,

Plaintiffs,

v.

NATIONAL SECURITIES
CORPORATION, a Washington Corporation

Defendant.

Case No.: 2:18-cv-1773-RSM

**PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND SUPPORTING
BRIEF**

**NOTE ON MOTION CALENDAR:
November 27, 2020**

ORAL ARGUMENT REQUESTED

**PLAINTIFFS' MOTION FOR CLASS CERTIFICATION PURSUANT TO FEDERAL
RULE OF CIVIL PROCEDURE 23**

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1 Pursuant to Federal Rule of Civil Procedure 23, Lead Plaintiffs James Ginzkey,
2 Richard Fitzgerald, Charles Cerf, and Barry Donner (“Plaintiffs”) respectfully move this
3 Court to certify this action as a class action, to appoint them as class representatives, and to
4 appoint Stoltmann Law Offices, P.C. (“Stoltmann”) and Law Offices of Joshua B. Kons,
5 LLC, as class counsel. *See Proposed Order* attached hereto as Exhibit 1. They base this
6 Motion on the following Memorandum of Law and the Declarations of Joshua B. Kons,
7 Joseph Wojciechowski, Alexander Loftus, and Sara Hanley in support of Plaintiffs’ Motion
8 for Class Certification Pursuant to Fed. R. Civ. P. 23, the exhibits thereto, the arguments of
9 counsel, and any other evidence and argument that they may present to the Court prior to its
10 decision on this Motion.
11
12

13 **I. PRELIMINARY STATEMENT**

14 In short, this litigation relates solely to the issue of whether Defendant National
15 Securities Corporation (“Defendant” or “NSC”) breached the applicable standard of care in
16 conducting due diligence and approving for sale to its customers private placement securities
17 issued by Beamreach Solar – a late stage solar company that had raised hundreds of millions
18 of dollars with little to show for it.
19

20 The Plaintiffs, who, along with the putative class members, were all customers of
21 National Securities Corporation, allege that Beamreach failed to conduct proper due diligence
22 as required by rules set forth by the Financial Industry Regulatory Authority (“FINRA”), of
23 which Defendant was a member. By ignoring or otherwise failing to follow up on multiple
24 “red flags” that would have caused a reasonably prudent broker-dealer under the same or
25 similar circumstances to reject the Beamreach securities offerings, Defendant National
26 Securities Corporation approved the Beamreach securities offerings and sold them to the
27

1 Plaintiffs and the Class during the Class Period. Defendant reaped millions of dollars in
 2 placement agent fees – to the detriment of the Plaintiffs and the Class – by turning a blind eye
 3 to these “red flags”.
 4

5 On February 9, 2017, Beamreach declared bankruptcy and was rendered worthless by
 6 virtue of a no-asset Chapter 7 filing. *In re: Beamreach Solar, Inc.* 17-bk-50307, (N.D. Cal.
 7 Feb. 9, 2017). As the Plaintiffs have alleged and the evidence will establish, but-for NSC’s
 8 inadequate due diligence and approval of this offering for sale to NSC customers despite the
 9 existence of numerous “red flags”, the Plaintiffs and the Class would not have purchased
 10 Beamreach through NSC in the first place.
 11

12 Plaintiffs, on behalf of themselves and other similarly situated investors who
 13 purchased Beamreach securities issued by Defendant during the Class Period, seek class
 14 certification – which would permit the efficient and effective prosecution of this action on
 15 behalf of Plaintiffs and more than one hundred other investors. (Dkt. #54. ¶¶ 7-8). Courts
 16 liberally construe the requirements of Federal Rule of Civil Procedure 23 in favor of class
 17 certification of securities cases to protect investors. (“In making a class determination in a
 18 securities case, the requirements of Rule 23 should be liberally construed in recognition of the
 19 rule's policy in favor of class actions.” *Blackie v. Barrack*, 524 F.2d 891, 903 (9th Cir.1975),
 20 cert. denied, 429 U.S. 816, 97 S.Ct. 57, 50 L.Ed.2d 75 (1976); *Schwartz v. Harp*, 108 F.R.D.
 21 279, 281 (C.D. Cal. 1985). For the following reasons, this action satisfies the requirements of
 22 Rule 23. Plaintiffs respectfully request certification of the Class and Sub-Classes as defined
 23 herein:
 24

25 **Beamreach Class**

26 All persons who invested in Beamreach Offerings (as defined above) through
 27 the Defendant, at any time between February 6, 2015 and February 9, 2017
 28 inclusive (the “Class Period”).

1
2
3 **Series D Sub-Class**

4 All persons who invested in Beamreach Series D (as defined above) through
5 the Defendant, at any time between February 6, 2015 and December 31, 2016
6 inclusive (the “Sub-Class D Period”).

7
8 **Series D-1 Sub-Class**

9 All persons who invested in Beamreach Series D-1 (as defined above) through
10 the Defendant, at any time between June 1, 2016 and February 9, 2017
11 inclusive (the “Sub-Class D-1 Period”).

12 **Series D-2 Sub-Class**

13 All persons who invested in Beamreach Series D-1 (as defined above) through
14 the Defendant, at any time between October 1, 2016 and February 9, 2017
15 inclusive (the “Sub-Class D-2 Period”).

16 Plaintiffs seek to have this case certified as a class action pursuant to Fed. R. Civ. P.
17 23(b)(3) so the claims of hundreds of investors nationwide can be resolved in one fair and
18 efficient proceeding. Certification is appropriate because the numerous questions of law and
19 fact common to all proposed class members predominate over any individualized issues.
20 Moreover, Plaintiffs’ claims and the claims of the proposed class members arise out of a
21 common nucleus of operative facts: NSC’s negligent due diligence and its subsequent
22 negligent approval of Beamreach for sale to any of its customers.

23 Plaintiffs respectfully request the certification of the Class and Sub-Classes set forth
24 above. In addition, Plaintiffs respectfully ask the Court execute the Proposed Order attached
25 as Exhibit 1 and designate Plaintiffs Ginzkey, Fitzgerald, Cerf, and Donner as Class
26 representatives; appoint Stoltmann Law Offices, P.C. and Law Offices of Joshua B. Kons,
27 LLC as Class counsel; and order that notice of the action be provided to the Class.

28 **II. STATEMENT OF FACTS.**

National Securities Corporation is a securities broker-dealer with both investment
banking and retail brokerage operations. (Deposition of Carmelo Troccoli on behalf of NSC

1 (“Troc Dep.”) at 42:11-18, Exhibit 2 at 7). NSC understood that Beamreach purported to be a
2 high efficiency solar panel manufacturer based out of California that was looking to raise
3 funds to continue its development of high yield solar panels. (Troc Dep. at 99:5-9, Ex. 2 at
4 25). Prior to Beamreach, NSC had never served as placement agent for another solar
5 company. (Troc Dep. at 135:13-15, Ex. 2 at 39). Beamreach was looking to raise money from
6 anybody and anyone that would invest. (Troc Dep. at 102:8-10, Ex. 2 at 28). Beamreach
7 enlisted NSC as a placement agent to help it raise additional capital.
8

9 When it serves as a placement agent for a securities issuer like Beamreach, NSC
10 assists a company in raising capital by introducing prospective investors to the issuer. (Troc
11 Dep. at 48:1-6, Ex. 2 at 8). In the case of the Beamreach Series D round, NSC earned a fee of
12 10% cash and 10% warrants for its role as placement agent. (Troc Dep. at 48:25-49:1, Ex. 2 at
13 9, 10). The brokers selling Beamreach to NSC clients earned an allocation of the placement
14 agent fee. (Troc Dep. at 49:9-14, Ex. 2 at 11).
15

16 NSC is required to follow FINRA rules. (Troc Dep. at 60:15-17, Ex. 2 at 12). FINRA
17 rules set the standards for which broker-dealers like NSC have to conduct themselves in the
18 securities industry. (Troc Dep. at 61:6-10, Ex. 2 at 13). Under FINRA’s suitability rule, NSC
19 was required to have a reasonable basis to conclude the investment at issue is suitable for at
20 least some investors, and NSC must conduct reasonable due diligence to provide it with an
21 understanding of the risks and rewards associated with recommending a security. (Troc Dep.
22 at 64:9-18, Ex. 2 at 14). NSC has adopted and implemented this FINRA rule into its internal
23 policies and procedures. (Troc Dep. at 64:19-22, Ex. 2 at 15). NSC’s understanding of its due
24 diligence obligations is to follow FINRA’s guidance and its Written Supervisory Procedures.
25
26
27
28

1 (Troc Dep. at 67:15-20, Ex. 2 at 16). NSC expects its employees to follow its Written
2 Supervisory Procedures. (Troc Dep. at 88:21-23, Ex. 2 at 26).

3
4 In conducting due diligence, NSC cannot blindly rely on the issuer for information
5 concerning a company. (Troc Dep. at 71:6-9, Ex. 2 at 17). NSC is required to exercise a high
6 degree of care in investigating a Regulation D offering (like Beamreach). (Troc Dep. at 72:23-
7 24, 73:1, Ex. 2 at 18, 19). NSC is required to follow up with Beamreach on any “red flags” or
8 substantial adverse information about the issuer discovered during due diligence. (Troc Dep.
9 at 74:11-15, Ex. 2 at 23).

10
11 Once due diligence is completed, a memorandum is prepared and delivered to the
12 Commitment Committee at NSC for approval. (Troc Dep. 85:5-18, Ex. 2 at 24). NSC brokers
13 are prohibited from selling an offering unless it is approved by the NSC Commitment
14 Committee. (Troc Dep. at 85:19-22, Ex. 2 at 25). The NSC Commitment Committee turns
15 down offerings if it does not meet the level of scrutiny [required by NSC], or the committee
16 members do not feel that the risk-reward [proposition] is warranted for the offering. (Troc
17 Dep. at 158:1-5, Ex. 2 at 48). Once the Commitment Committee approves, the sales by NSC’s
18 retail brokers starts. (Troc Dep. at 165:11-13, Ex. 2 at 49).

19
20 Consistent with NSC’s admissions, it is unquestioned that as a FINRA broker-dealer,
21 NSC was obligated to follow FINRA rules and regulations in connection with the offer and
22 sale of securities including Beamreach. (Dkt. #1, ¶¶ 17, 55). Pursuant to FINRA Rule
23 2111.05(a), FINRA Regulatory Notice 10-22, NASD Notice to Members 03-71, and NASD
24 Notice to Members 05-26, NSC is required to perform reasonable due diligence on a private
25 placement prior to offering it for sale to its customers. (Dkt. #1, ¶ 58). NSC’s compliance
26 manuals, supervision manuals, and internal practices and procedures also detail the
27

1 requirement to perform due diligence when selling private placements. (Dkt. #1. ¶ 59). This
2 duty established in the various regulations and NSC's internal procedures cannot be
3 challenged by NSC and neither can the uniform application of these regulations and
4 procedures. Importantly, no rule or regulation allows a broker-dealer to abdicate its
5 responsibilities to clients just because they may be wealthy or sign subscription documents. In
6 fact, broker/dealer industry standards hold just the opposite. *See Department of Enforcement*
7 *v. Kernweis*, 2000 WL 33299605 (NASD Disciplinary Proc. No. C02980024, Feb. 16, 2000)
8 (holding that the suitability obligation is in no way abrogated by documents signed by client
9 even if client is willing to bet the ranch).
10

11 The controlling regulations make clear that the duty breached by NSC remains
12 regardless of what is disclaimed. FINRA Rule 2111.02 explicitly states that a broker-dealer
13 cannot disclaim any responsibilities under the suitability rule. Therefore, NSC cannot hide
14 behind risk disclosures because it is accused of failing to discharge its reasonable-basis
15 suitability obligation. In NASD Notice to Members 03-71¹, NSC's regulator stated:

17 [P]erforming appropriate due diligence is crucial to a member's obligation to
18 undertake the required reasonable-basis suitability analysis. A **reasonable-basis**
19 **suitability determination is necessary to ensure that an investment is suitable**
20 **for some investors** (as opposed to a customer-specific suitability determination,
21 discussed below, which is undertaken on a customer-by-customer basis). Thus,
22 the reasonable-basis suitability analysis can only be undertaken when a member
23 understands the investment products it sells. Accordingly, **a member must**
24 **perform appropriate due diligence to ensure that it understands the nature**
25 **of the product**, as well as the potential risks and rewards associated with the
26 product. Moreover, the fact that a member intends to offer an NCI [non-
27 conventional investment] **only to institutional investors** does not relieve the
28 member of its responsibility to conduct due diligence and a reasonable-basis
suitability analysis.

NASD NTM 03-71, November 2003 at 758.

¹ The NASD and NYSE merged into FINRA on July 26, 2007 after approval by the SEC.

1 NSC was mandated to thoroughly investigate the Beamreach offerings and determine,
2 based on this investigation whether to approve the investment for sale to clients rather than
3 blindly rely on whatever the PPMs state or what NSC was told by Beamreach. *See* (Dkt. #1,
4 ¶¶ 60-63). Controlling regulations provide that the broker-dealer in a Regulation D offering
5 must, at a minimum, conduct a reasonable investigation concerning: the issuer and its
6 management; the business prospects of the issuer; the assets held by or to be acquired by the
7 issuer; the claims being made; and the intended use of proceeds of the offering. (Dkt. #1, ¶
8 60). NSC could not just rely on the materials or information provided by Beamreach.
9

10 In order to comply with FINRA Rule 2111.05, NSC was required to make a decision
11 based on its reasonable due diligence of Beamreach: approve it for sale to its clients, or reject
12 the offering and refuse to sell it. This didn't happen here. NSC's conflicts of interest, in acting
13 as both the primary broker-dealer and placement agent for Beamreach, prevented it from
14 adhering to any sense of reasonableness. Beamreach was a company with such disastrous
15 debt service, with no revenue, with no legitimate customers, and with IP that ultimately had
16 little commercial value. Soliciting investors to pour money into the company so that it can pay
17 its creditors was not speculation. Rather, it was deceitful, tantamount to fraud, and at the very
18 least reckless.
19

20
21 FINRA reminded NSC of this obligation multiple times prior to the Beamreach
22 offerings, and provided detailed guidance on what FINRA considered reasonable due
23 diligence in FINRA Regulatory Notice 10-22, NASD Notice to Members 03-71, and NASD
24 Notice to Members 05-26. (Dkt. #1, ¶ 58). NSC ultimately incorporated FINRA Regulatory
25 Notice 10-22 into its Written Supervisory Procedures. (Troc Dep. at 64:19-22, Ex. 2 at 15).
26
27
28

1 Ultimately, under the circumstances NSC had a legal obligation to decline the
2 invitation from Beamreach to sell its securities to NSC customers. NSC's conflict of interest,
3 however, clearly clouded its judgment and NSC looked to the size of the fees it could earn
4 from selling Beamreach to its customers.
5

6 NSC understood that it was required to exercise a high degree of care in investigating
7 Regulation D offerings. (Troc. Dep 72:23-25; 73:1, Ex. 2 at 18-19). NSC understood that it
8 was required to exercise a high degree of care in independently verifying an issuer's
9 representations and claims. (Troc. Dep. 73:2-6, Ex. 2 at 20). NSC understood that, when an
10 issuer seeks to finance a speculative new venture, that broker-dealers must be particularly
11 careful. (Troc. Dep. 73:7-14, Ex. 2 at 21). National also understood, at all times relevant, that
12 the fact that its customers may be sophisticated or knowledgeable does not obviate the duty to
13 investigate. (Troc. Dep. 73:15-19, Ex. 2 at 22). These standards applied the same to all
14 investors in the Class, including the D Sub-Class, D-1 Sub-Class, and D-2 Sub-Class. (Troc.
15 Dep. 16:12-21, Ex. 2 at 4).
16

17 NSC also understood, specific to Beamreach, that at the time it approved the initial
18 offering in February 2015, that:
19

- 20 a) Beamreach had no manufacturing facility in Asia despite the fact that a large
21 influx of Asian solar manufactures drove the pricing below the cost of
22 production causing many producers to shut plants or cease production; (Troc.
23 Dep. 125:12-17, Ex. 2 at 30). In fact, Mr. Troccoli did not even consider this to
24 be a red flag requiring further inquiry, despite the fact that Beamreach's
25 success or failure was linked to a high-volume manufacturing facility
26
27
28

1 somewhere away from the U.S. where cost of production is much lower (Troc.
2 Dep. 125:18-24; 135:3-12, Ex. 2 at 33 and 40);

3
4 b) No one at NSC had independently verified the 340 megawatts memorialized by
5 memoranda of understanding (MOUs) by contacting the purported clients to
6 determine the viability of the non-binding MOUs; (Troc. Dep. 112:3-7, Ex. 2
7 at 31);

8 c) NSC understood that many novel solar technologies failed to secure required
9 funding and were forced to wind down, and that more than one-hundred solar
10 companies were sold or liquidated, and specifically, that NSC fully understood
11 that Beamreach was operating in a very challenging time for the solar industry.
12 (Troc. Dep. 125:25; 126: 1-12, Ex. 2 at 34-35);

13
14 d) No one at NSC investigated the liquidation value of any of the other solar
15 companies that were forced to wind down prior to Beamreach (Troc. Dep.
16 126:21-24, Ex. 2 at 36);

17 e) Beamreach had a “pilot” plant only in Milpitas, California which was
18 incapable of any large-scale production. (Troc. Dep. 108:21-25, 109:1-3, Ex. 2
19 at 29-30);

20
21 f) NSC performed no liquidation valuation of Beamreach even though it was
22 subject to a going concern disclosure in its financial reports. (Troc. Dep. 130:7-
23 14, Ex. 2 at 37);

24 g) NSC did not even speak to Opus Bank about its secured credit facility it
25 extended to loan, which was backed by all of the assets of the company,
26 including its IP portfolio. (Troc. Dep 133:24-25; 134:1-4, Ex. 2 at 38-39);
27

- 1 h) Beamreach’s product was not commercially tested. (Troc. Dep. 137:18-20, Ex.
2 2 at 42);
3
4 i) There was no valuation report on Beamreach’s IP portfolio, which was at the
5 time the company’s core asset securing the loan from Opus Bank. (Troc. Dep.
6 142:19-24, Ex. 2 at 43); and
7
8 j) Beamreach was not meeting budget projections and generally when compared
9 to the previous year’s budget, had not done well. (Troc. Dep. 151:1-20, Ex. 2
10 at 44). NSC made no further inquiry and demanded no stricter internal controls
11 at Beamreach despite this being a “red flag”. (Troc. Dep. 151:24-25; 152:1-2;
12 17-20, Ex. 2 at 45-47).

13 NSC knew these facts, amongst many others, and still approved of the Series D round.
14 It is Plaintiffs’ contention that this approval to sell the Series D round to the Class was
15 negligent because it was not up to the standards required of National as a securities broker-
16 dealer (by both FINRA rules and its own internal policies and procedures), and that this
17 negligence affected the Plaintiffs and the putative class on a uniform basis.

18 With respect to the later Beamreach offerings, the red flags were many and were
19 recognized by NSC, and still, the investment was approved for sale to NSC’s clients. For
20 example, by the time the Series D-1 equity offering was issued in September 2016, NSC
21 believed investing in additional equity in Beamreach was not a good idea. (Troc. Dep. 197:19-
22 25; 198:1-3, Ex. 2 at 56, 57). Despite this, and despite not doing any due diligence on the
23 Series D-1 equity offering, NSC brokers still facilitated the sale of these equity interests to
24 NSC customers, including Plaintiff Donner. (Dkt. #1. ¶ 123). Likewise the Series D-2
25 offering, as defined by Plaintiffs, was in reality a conversion of the D-1 Equity offering into a
26
27

1 debt offering of promissory notes. The D-2 offering was mired with an almost enumerable
2 number of red flags, including:

- 3
- 4 a) That Beamreach was running out of cash; (Troc. Dep. 190:5, Ex. 2 at 50);
 - 5 b) That Beamreach was looking into selling equipment and IP (Troc. Dep. 192:2-
6 12, Ex. 2 at 51);
 - 7 c) That Beamreach was a distressed company; (Troc. Dep. 192:11-14, Ex. 2 at
8 52);
 - 9 d) That Fortress, a private equity firm, had declined to loan money to Beamreach
10 secured by any portion of the company’s IP; (Troc. Dep. 197:5-12, Ex. 2 at
11 55);
 - 12 e) Beamreach board members began to drop out; (Troc. Dep, 203:15-17, Ex. 2 at
13 61);
 - 14 f) That there were big red flashing lights on Beamreach as a viable entity in the
15 near future; (Troc. Dep. 205:13-17, Ex. 2 at 63);
 - 16 g) That the D-2 offering was essentially, in gambling terms, doubling down;
17 (Troc. Dep. 217:25; 218:1, Ex. 2 at 64, 65);
 - 18 h) That the D-2 offering was essentially a Hail Mary with minimal chance of
19 getting [investor] money back; (Troc. Dep. 220:10-15, Ex. 2 at 66);
 - 20 i) That NSC was aware that Beamreach was in discussions with Bankruptcy
21 counsel; (Troc. Dep 227:7-14, Ex. 2 at 68);

22 Despite these adverse facts and “red flags”, which clearly cast doubt on the business
23 prospects of the company, NSC still never contacted any of Beamreach’s purported customers
24 (Troc. Dep 202:25; 203:1-3, Ex. 2 at 59, 60);
25
26
27

- 1 a) Did not verify any manufacturing capability in Malaysia, Taiwan, or anywhere
2 else (Troc. Dep. 196:3-6, 15-18, Ex. 2 at 53, 54);
3
4 b) NSC did not get a valuation of the vaunted Beamreach IP portfolio; (Troc.
5 Dep. 203:21-23, Ex. 2 at 62);
6
7 c) That NSC was unaware whether the price point for Beamreach’s product was a
8 concern for customers, and generally was unaware of customer concerns about
9 the product. (Troc. Dep. 201:1-8, Ex. 2 at 58);
10
11 d) That during the D-2 timeframe, NSC had no idea what the Beamreach IP might
12 be worth, and that whatever it was worth, was encumbered by the Opus loan;
13 (Troc. Dep. 226:9-14, Ex. 2 at 67);
14
15 e) That NSC was aware that Beamreach was in discussions with Bankruptcy
16 counsel; (Troc. Dep 227:7-14, Ex. 2 at 68);
17
18 f) That NSC was, in connection with D-2 offering, concerned about “getting sued
19 for this”: (Troc. Dep 230:14-23, Ex. 2 at 69).

20 In connection with evaluating the foregoing red flags for Beamreach investors, a
21 reasonably prudent broker-dealer firm under the same or similar circumstances would not
22 have approved the Beamreach Offerings for sale to any investor when considering these risks
23 because the risk of a complete loss in the short term far outweighed any potential long term
24 rewards, even for those investors that sought to speculate with their funds. (Dkt. #1. ¶ 81). By
25 approving the Beamreach Offerings for sale to the Plaintiffs and the Class notwithstanding
26 these red flags, NSC acted in a manner which a reasonably prudent broker-dealer firm under
27 the same or similar circumstances would not have. (Dkt. #1. ¶ 82). These failures apply
28 uniformly amongst the Plaintiffs and all members of the Class.

1 To whatever degree NSC's affirmative defenses merit consideration, which Plaintiffs
2 do not concede, those affirmative defenses also apply uniformly across the class. NSC posits
3 an "assumption of risk" affirmative defense in its Answer. (Dkt. #31 at 19). NSC's argument
4 is that even if NSC was negligent and did not perform industry standard due diligence on the
5 offerings at issue or was negligent in its approval of Beamreach, that the Class members were
6 apprised of the risks through the PPMs and accepted them as evidenced by boxes checked on
7 subscription agreements. As previously stated, the receipt of a private placement offering
8 document disclosing risks or the execution of subscription documents in no way obviates
9 NSC's duties in connection with FINRA rules or NSC's own internal policies and procedures
10 (*supra* at 6). Furthermore, even if this assumption of risk defense has merit, it applies
11 uniformly to the Plaintiffs and to the putative class.
12

13 **III. ARGUMENT**

14 **A. Class Certification is Appropriate under Rule 23**

15 The Complaint details negligence and the unjust enrichment by NSC that harmed over
16 100 similarly situated investors nationwide. The negligence at issue is the due diligence
17 conducted by NSC of the Beamreach offerings, and its subsequent approval of the Beamreach
18 offerings for sale to the Plaintiffs and putative class members. The common questions of law
19 and fact surrounding NSC's due diligence into Beamreach, and its subsequent approval of the
20 Beamreach offerings are uniform among the Plaintiffs and the Class, and predominate over
21 individualized ones. "The inquiry is not whether the class will prevail on the merits of their
22 claims but whether common questions capable of class-wide resolution exist and whether
23 those common questions predominate over individualized ones." *Fosbre v. Las Vegas Sands*
24
25
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1 Corp., No. 2:10-CV-00765-APG, 2015 U.S. Dist. LEXIS 77774 at *7 (D. Nev. June 15,
2 2015), citing *Amgen Inc. v. Conn. Ret. Plans & Trust Funds*, 133 S. Ct. 1184, 1196 (2013).

3
4 **B. The proposed class meets the requirements of Rule 23(a)**

5 For a class to be certified, Plaintiffs must satisfy the prerequisites of Rule 23(a) and
6 one requirement of Rule 23(b). Under Rule 23(a) a plaintiff must establish: “(1) the class is so
7 numerous that joinder of all members is impracticable; (2) there are questions of law or fact
8 common to the class; (3) the claims or defenses of the representative parties are typical of the
9 claims or defenses of the class; and (4) the representative parties will fairly and adequately
10 protect the interests of the class.” *Peoples v. United Servs. Auto. Ass’n*, 18-1173RSL, 2019
11 U.S. Dist. LEXIS 71439*3 (W.D. Wash. April 26, 2019). “Any doubts regarding the propriety
12 of class certification generally should be resolved in favor of certification.” *Taylor v.*
13 *Universal Auto Group I, Inc.*, No. 3:13-cv-05245-KLS, 2014 U.S. Dist. LEXIS 164312 (W.D.
14 Wash. November 24, 2014) (citations omitted). “Although certification inquiries such as
15 commonality, typicality, and predominance might properly call for some substantive inquiry,
16 [t]he court may not go so far ... as to judge the validity of [the plaintiffs’] claims.” *United*
17 *Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Intern. Union*
18 *AFL-CIO, CLC v. Conoco Phillips Co.*, 593 F.3d 802, 808–09 (9th Cir. 2010) (internal marks
19 omitted; quoting *Staton v. Boeing Co.*, 327 F.3d 938, 954 (9th Cir. 2003)). Ultimately, the
20 district court has broad discretion to certify a class. *See Bateman v. Am. Multi-Cinema, Inc.*,
21 623 F.3d 708, 712 (9th Cir. 2010).

22
23
24 **1. Numerosity**

25 The Court will find numerosity “where the class is so numerous that joinder of all
26 members is ‘impracticable.’” Fed. R. Civ. P. 23(a)(1). See also, *In re Cooper Cos. Sec. Litig.*,

1 254 F.R.D. 628, 633 (C.D. Cal. 2009). Impracticable does not mean impossible, only that it
2 would be difficult or inconvenient to join all members of the class. *Harris v. Palm Springs*
3 *Alpine Estates, Inc.*, 329 F.2d 909, 913–14 (9th Cir. 1964). “No exact numerical cut-off is
4 required, rather, the specific facts of each case must be considered.” *Cooper*, at 633.
5

6 “Often, the number of class members by itself is sufficient to establish the
7 impracticability of joining them as plaintiffs.” *Kirkpatrick v. Ironwood Communications, Inc.*,
8 Case No. C05-1428JLR, 2006 U.S. Dist. LEXIS 57713 at *9, 10 (W.D. Wash. Aug. 16, 2006)
9 (citing *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir.1982), vacated on
10 other grounds by 459 U.S. 810 (1982)). Numerosity has been held presumptively satisfied
11 when a proposed class comprises forty or more members. *See McCluskey v. Trs. of Red Dot*
12 *Corp. Emp. Stock Ownership Plan & Trust*, 268 F.R.D. 670, 673–74 (W.D. Wash. 2010); *see*
13 *also Amone v. Aveiro*, 226 F.R.D. 677, 684 (D. Haw. 2005) (“[I]n light of prevailing
14 precedent, the difficulty inherent in joining as few as 40 class members should raise a
15 presumption that joinder is impracticable, and the plaintiff whose class is that large or larger
16 should meet the test of Rule 23(a)(1) on that fact alone.”). “In addition to the number of
17 potential class members, the Court may consider ‘the geographic diversity of class members,
18 [and] the ability of individual claimants to institute separate suits....’” *Gonzalez v. U.S. Dept.*
19 *of Homeland Sec.*, 239 F.R.D. 620, 628 (W.D. Wash. 2006), vacated on other grounds, 508
20 F.3d 1227 (9th Cir. 2007).
21
22

23 NSC has admitted that there were more than 100 investors that purchased Beamreach
24 through NSC. (Troc. Dep. at 14:20-22, Ex. 2 at 3). Plaintiffs’ counsel has identified over 170
25 investors in connection with its review of NSC’s books and records, who reside in at least 23
26
27
28

1 different states. (Dkt. #54, ¶¶ 7-9). It would be highly impracticable and cost prohibitive to
2 join all of these investors into a single action.

3
4 In *Cooper*, 254 F.R.D. at 634, the court held that that while no “exact numerical cut-
5 off is necessary,” “numerosity is presumed where the plaintiff class contains forty or more
6 members,” and inferred that since 36 million shares were outstanding, “more than 40
7 individuals purchased stock over the course of [the Class Period].” This Court should,
8 therefore, find that the Class is sufficiently numerous that joinder is impracticable.

9 2. Commonality

10 Rule 23(a)(2) requires that common question of law or fact exist among class
11 members. Not all questions of fact and law need to be common to satisfy Rule 23(a)(2). To
12 satisfy this element, the “[p]laintiff must allege a ‘common contention of such a nature that it
13 is capable of class-wide resolution—which means that determination of its truth or falsity will
14 resolve an issue that is central to the validity of each one of the claims in one stroke.’” *In re*
15 *Wash. Mut. Mortgage-Backed Secs. Litig.*, 276 F.R.D. 658, 665 (W.D. Wash. 2011) (quoting
16 *Dukes*, 131 S. Ct. at 2551). In other words, “[w]hat matters to class certification is not the
17 raising of common ‘questions’ but, rather the capacity of a classwide proceeding to generate
18 common answers apt to drive the resolution of the litigation.” *Id.* (internal marks and citation
19 omitted). It is not necessary that members of the proposed class “share every fact in common
20 or completely identical legal issues.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th Cir.
21 2009). Moreover, the “existence of shared legal issues with divergent factual predicates is
22 sufficient, as is a common core of salient facts coupled with disparate legal remedies within
23 the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1988). The Ninth Circuit
24 construes commonality liberally. *Id.*

1 Courts construe this factor “permissively”, and both “shared legal issues with
2 divergent factual predicates” and “a common core of salient facts coupled with disparate legal
3 remedies” suffice. *Id.* at 1019; *cf. Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011)
4 (commonality where claims depend on common contention that is capable of class-wide
5 resolution). The Class satisfies the commonality requirement.

7 NSC does not dispute the uniform nature of its due diligence and approval amongst
8 the Class. In fact, it admitted it. NSC admitted that in terms of its approval of Beamreach for
9 sale by its retail brokers, the same issues would apply to all investors in each Beamreach
10 securities offering. (Troc. Dep. at 16:12-21, Ex. 2 at 4). NSC also admitted that the same
11 evaluation is done at the NSC level for every member of the Class that invested in any
12 Beamreach offering through NSC. (Troc. Dep. at 21:13-15, Ex. 2 at 5). If a private placement
13 securities offering is not approved for sale at the NSC level, then NSC brokers cannot sell the
14 offering to NSC customers. (Troc. Dep. at 24:11-17, Ex. 2 at 6).

16 Here, common questions of fact and law include: (1) whether NSC breached its duty
17 to conduct reasonable due diligence on Beamreach; (2) whether NSC failed to understand the
18 risks and rewards of offering securities in Beamreach in considering whether to approve
19 Beamreach for sale to NSC customers; (3) whether NSC was negligent in approving each of
20 the Beamreach Offerings for sale to its customers; (4) whether NSC failed to act as a
21 reasonably prudent broker-dealer would have under the same or similar circumstances in
22 connection with its due diligence and approval of the Beamreach offerings; and (5) whether
23 NSC was unjustly enriched thereby.

25 The crux of the case is whether NSC failed in its gatekeeping function prior to any
26 individualized inquiry by investors. The truth or falsity of any of the foregoing questions of
27

1 fact and law would resolve an issue that is central to the validity of each one of these claims in
2 a single stroke. Due to the numerous common questions of law and fact among the Class, the
3 commonality requirement is satisfied.
4

5 **3. Typicality**

6 Typicality is satisfied if “the claims or defenses of the representative parties are typical
7 of the claims or defenses of the class.” Fed. R. Civ. P. 23(a)(3). “Typicality refers to the
8 nature of the claim or defense of the Class Representative, and not to the specific facts from
9 which it arose or the relief sought.” *Connecticut Retirement Plans and Trust Funds*, 2009 U.S.
10 Dist. LEXIS 71653, at *14 (C.D. Cal., August 12, 2009). Typicality exists when class
11 “members have the same or similar injury, the action is based on conduct that is not unique to
12 the named plaintiff, and when the wrongdoing injured class member similarly.” *Hanon v.*
13 *Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Rule 23(a)’s typicality requirement
14 ensures that the interests of the representative plaintiff align with those of the Class.
15

16 Plaintiffs’ claims are substantially similar to those of the Class, satisfying the
17 typicality requirement. Just as with the Class members, each of the Plaintiffs invested in
18 Beamreach through NSC after NSC conducted due diligence on Beamreach and approved it
19 for sale. And just like the Class members, the Plaintiffs each suffered a complete loss of the
20 Beamreach investments they made as a result of Beamreach’s bankruptcy. The same
21 negligence regarding NSC’s due diligence and approval of Beamreach, as well as NSC’s and
22 unjust enrichment, affected the Plaintiffs in the same way as each Class member. No evidence
23 exists that render their claims in any way whatsoever atypical of those of the Class and no hint
24 of a unique defense exists that would otherwise defeat the typicality of his claims
25
26
27
28

1 Defendant cannot defeat typicality based on an individual Plaintiff's reliance on a
2 broker. *In re Wash. Mut., Inc.*, 2010 U.S. Dist. LEXIS 142992, *41-42 (W.D. Wash. 2010)
3 (Reliance on investment advisor does not defeat typicality in investment case "Reviewing the
4 materials submitted, the Court finds [Named Plaintiff] typical."). As such, the Class satisfies
5 the typicality requirement.

7 **4. Adequacy**

8 A class representative who "will fairly and adequately protect the interests of the
9 class" is adequate. *Cooper*, 254 F.R.D. at 636. The inquiry focuses on the "ab[ility] to
10 prosecute the action vigorously through qualified counsel" and the absence of "antagonistic or
11 conflicting interests with the unnamed members of the class." *Hansen v. Ticket Track, Inc.*,
12 213 F.R.D. 415 (W.D. Wash. 2003); *see also, Campbell v. Vitran Express Inc*, No. CV 11-
13 5029 RGK (SHx), 2015 U.S. Dist. LEXIS 155512, at *15 (C.D. Cal. Nov. 12, 2015) *citing*
14 *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Plaintiffs meet
15 these requirements.

17 First, Plaintiffs have engaged qualified, experienced and capable attorneys. Proposed
18 Class Counsel are highly experienced in broker-dealer arbitration and litigation, and have
19 developed expertise in the application of FINRA rules to broker-dealers. Each has the ability
20 and willingness to prosecute this action vigorously, and have experience in complex litigation
21 and class action matters. *See* (Dkt. #54, ¶ 2); (Dkt. #55, ¶¶ 2 – 8); (Dkt. #56, ¶¶ 3 – 7); (Dkt.
22 #57, ¶¶ 4-12). Plaintiffs' counsel are dedicated to prosecuting the claims of the Class, and also
23 have the resources to do so. *Id.* Accordingly, the adequacy requirement is satisfied.

25 Second, Plaintiffs are well suited to represent the Class. Plaintiffs' interests are the
26 same as those of the absent Class members, and there are no conflicts between them and the
27

1 Class. Each Plaintiff has been actively involved in this litigation and each is willing to serve
2 as a representative party on behalf of the Class and understands their responsibility as Class
3 representative to protect and advance the interests of absent Class members in the litigation.
4 Not only are Plaintiffs willing and able to prosecute this action on behalf of the Class to a
5 successful conclusion, but their interests and those of the Class are aligned.
6

7 All Class members have suffered losses due to their investment in Beamreach
8 securities. It is in each Plaintiff's interests, individually and together, to prosecute this action
9 on behalf of the Class vigorously. Accordingly, Plaintiffs "will fairly and adequately protect
10 the interests of the class" and they are adequate class representatives. *See* Fed. R. Civ. P.
11 23(a)(4).
12

13 **C. The Proposed Class Satisfies Rule 23(b)(3)**

14 Where issues common to the Class predominate over other issues, a class satisfies the
15 predominance requirement. *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 988
16 (9th Cir. 2015).

17 **1. Common Questions of Law and Fact Predominate over Individual Questions**

18 The predominance inquiry concerns whether a proposed class is sufficiently cohesive
19 to warrant adjudication by representation. *Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 623,
20 117 S.Ct. 2231, 138 L. Ed. 2d 689 (1997). "To meet the predominance requirement, common
21 questions of law and fact must be a significant aspect of the case...[t]hat can be resolved for
22 all members of the class in a single adjudication." *Durant v. State Farm Mut. Auto Ins. Co.*,
23 2017 U.S. Dist. LEXIS 34157 *14 (W.D. Wash. Mar. 9, 2017). "Predominance is met by
24 showing that the common questions can be proven by evidence common to the class." *Wilcox*
25 *v. Swapp*, 330 F.R.D. 584, 593 (W.D. Wash. 2019), citing *Amgen Inc. v. Conn. Ret. Plans &*
26
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1 *Trust Funds*, 568 U.S. 455, 467 (2013). *See also Hanlon*, 150 F.3d at 1022 (“When common
2 questions present a significant aspect of the case and they can be resolved for all members of
3 the class in a single adjudication, there is clear justification for handling the dispute on a
4 representative rather than on an individual basis.”). As to damages, plaintiffs need only show
5 that “damages could feasibly and efficiently be calculated once the common liability
6 questions are adjudicated.” *Hatamian v. Advanced Micro Devices, Inc.*, No. 14- CV-00226
7 YGR, 2016 U.S. Dist. LEXIS 34150, at *25 (N.D. Cal. Mar. 16, 2016) (*interpreting Comcast*
8 *Corp. v. Behrend*, 133 S. Ct. 1426 (2013)).

9
10 As discussed above, common questions predominate because NSC’s negligence in the
11 due diligence and approval of the Beamreach Securities affected all class members in the
12 same manner. “The predominant questions of law or fact at issue in this case are the alleged
13 [omissions of material fact] Defendants made during the Class Period and are common to the
14 class.” *In re Emulex Corp.*, 210 F.R.D. 717, 721 (C.D. Cal. 2002). Once these questions are
15 resolved, all that remains is the mechanical computation of damages suffered by each class
16 member. *Id.*

17
18 In this case, the common questions surrounding NSC’s due diligence on Beamreach
19 and its subsequent approval of the Beamreach securities for sale to NSC customers
20 predominates the Class, and can be handled in a single adjudication. Once this common
21 liability question is adjudicated, the damages can easily and efficiently be calculated based on
22 NSC’s books and records which indicate investor name, address, date of investment, and
23 investment amount. (Dkt. # 54, ¶ 10). Those issues cannot defeat predominance. *Id.*

24
25 Furthermore, NSC’s due diligence was a necessary step prior to approving Beamreach
26 for sale. Without NSC’s due diligence of Beamreach and NSC’s subsequent approval
27

1 (clearance for sale) of the Beamreach securities to NSC customers, NSC’s brokers would not
2 have been authorized to sell Beamreach and the Class would not have been able to invest in
3 Beamreach through NSC. As a result, the issue of NSC’s negligence in connection with its
4 due diligence (step 1) of Beamreach, and approval of Beamreach for sale (step 2),
5 predominates the Class. Because the central focus of this litigation is NSC’s due diligence of
6 Beamreach, and subsequent approval of Beamreach for sale to its customers, common issues
7 predominate over any individualized issues, the predominance requirement is satisfied.
8

9 **2. A Class Action is Superior to Other Methods for Resolving this Controversy**

10 Rule 23(b)(3) also requires the Court to determine that “a class action is superior to
11 other available methods for the fair and efficient adjudication of the controversy.” Fed. R.
12 Civ. P. 23(b)(3). “A class action may be superior if class litigation of common issues will
13 reduce litigation costs and promote greater efficiency, or if no realistic alternative exists.”
14 *Connor v. Automated Accounts, Inc.*, 202 F.R.D. 271 (E.D. Wash. 2001). A court must, in
15 terms of fairness and efficiency, balance the merits of a class action against those of available
16 alternative methods of adjudication. *Id.* For instance, a class action is appropriate if
17 duplicative lawsuits with potentially inconsistent results would be avoided. *Mortimore v. Fed.*
18 *Deposit Ins. Corp.*, 197 F.R.D. 432, 438 (W.D. Wash. 2000).
19
20

21 In determining the issue of superiority, Rule 23(b)(3) enumerates the following factors
22 that this court should consider: the interests of class members controlling and maintaining
23 their own cases, already filed litigation, the benefits on concentrating common litigation in
24 one forum, and “the likely difficulties in managing a class action.” *See* Fed. R. Civ. P.
25 23(b)(3).
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1 Each factor is satisfied here. Given the large number of class members, the geographic
2 dispersion of the class members, and the multitude of common issues present, the use of the
3 class device is the most efficient and fair means of adjudicating the claims that arise out of
4 NSC's negligence and unjust enrichment with regard to the Beamreach offerings. Absent
5 class treatment, each investor would be forced to bring an individual arbitration claim through
6 FINRA's arbitration forum. (Dkt. # 55, ¶ 8). Class treatment is superior to multiple individual
7 suits or piecemeal arbitration proceedings because it conserves judicial resources (individual
8 FINRA arbitration proceedings are extremely expensive for both investors and NSC),
9 promotes consistency as each FINRA arbitration panel is of different composition, and
10 efficiency of adjudication as various FINRA arbitration panels may rule differently on the
11 common issues presented in this case.
12

13
14 Finally, Plaintiffs foresee no management difficulties that would preclude this action
15 from being maintained as a class action and are confident that any potential management
16 problems can be addressed and resolved by the parties or by this Court. For those reasons, a
17 class action is superior for the fair and efficient adjudication of the claims of Plaintiffs and the
18 Class.

19 **3. The Class is Ascertainable based on Defendant's Books and Records**

20
21 In addition to meeting the requirements of Rule 23, a class must be ascertainable
22 before it can be certified. *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 939-40 (9th
23 Cir. 2009). A class is adequately defined and ascertainable if it is administratively feasible for
24 the court to determine whether a particular individual is a member. *Id.*

25 As discussed herein, Defendant's books and records reveal the name and address of
26 each Class member, as well as information such as their investment amount, and date of
27

1 investment. (Dkt. #54, ¶ 10). The creditor matrix also reveals the name and address of each
2 Beamreach creditor to cross reference with NSC’s books and records. The members of the
3 proposed Class and Sub-Classes are reasonably ascertainable here.
4

5 **IV. CONCLUSION**

6 For the foregoing reasons, Plaintiffs respectfully request that this Court (1) certify this
7 action as a class action on behalf of the class; (2) appoint Lead Plaintiffs as Class and Sub-
8 Class representatives; (3) appoint Stoltmann Law Offices, P.C. and Law Offices of Joshua B.
9 Kons, LLC as Class counsel; (4) direct the parties to meet and confer on the form of providing
10 notice and require the parties to file their proposal for providing notice for Court approval
11 within sixty days from entry of the Order granting class certification; and (5) grant such other
12 and further relief as is warranted.
13

14 Dated: November 3, 2020

15 Respectfully submitted,
16 **JAMES GINZKEY, RICHARD**
17 **FITZGERALD, CHARLES CERF, BARRY**
18 **DONNER,**
19 Plaintiffs

20 By: /s/ David Neuman
21 One of Their Attorneys

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CERTIFICATE OF SERVICE

I, David Neuman, hereby certify that on this 3rd day of November, 2020, the foregoing was electronically filed with the Clerk of the United States District Court for the Western District of Washington, Seattle, using the CM/ECF system, which will send notification of such filing to the below counsel:

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/s/ David Neuman
David Neuman

Exhibit 1

Proposed Order Granting Class
Certification

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES GINZKEY, RICHARD
FITZGERALD, CHARLES CERF, BARRY
DONNER, and on behalf of the class
members described below,

Plaintiffs,

v.

NATIONAL SECURITIES
CORPORATION, a Washington Corporation

Defendant.

Case No.: 2:18-cv-1773-RSM

**[PROPOSED] ORDER GRANTING
CLASS
CERTIFICATION**

WHEREAS, THIS MATTER came before the Court on Plaintiffs’ Motion for Class Certification;

WHEREAS, THE COURT considered the parties’ briefs, declarations and arguments and is duly informed;

NOW, THEREFORE, THE COURT ORDERS THAT the motion is GRANTED; and FURTHER ORDERS THAT:

1. That the Class and Subclasses described in Plaintiffs’ brief each be certified as a class under Fed. R. Civ. P. 23(b)(3);

Exhibit 2

Plaintiffs' Motion for Class Certification and Supporting Brief

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Case No.: 2:18-cv-1773

JAMES GINZKEY, RICHARD FITZGERALD,
CHARLES CERF, BARRY DONNER, and on behalf
of the class members described below,

Plaintiffs,

v.

NATIONAL SECURITIES CORPORATION,
a Washington Corporation,

Defendant.

_____ /

Palm Beach County, Florida
Wednesday, 9:44 a.m. - 5:59 p.m.
September 16, 2020

VIDEO CONFERENCE DEPOSITION OF NATIONAL SECURITIES
CORPORATION 30(b)(6) CARMELLO TROCCOLI

Taken on behalf of the Plaintiffs before SANDRA
GOLDMAN, Florida Professional Reporter, Notary Public in
and for the State of Florida at Large, pursuant to
Notice of Taking 30(b)(6) Deposition of National
Securities Corporation in the above cause.

1 A. I answered that earlier. Yes.

2 Q. Okay, and are those risks that people -- that
3 investors are assuming, is that all detailed in the PPM?

4 A. Well, again, the D, the Series D, not all
5 investors in the series in that it -- that were holders
6 of the Series D securities of the Solexel, later known
7 Beamreach, were part of the National offering.

8 Q. Uh-huh.

9 A. So, therefore, I could not tell you what
10 disclosures were given to those outside of the National
11 introduced parties, if you will.

12 Q. Correct.

13 I should have asked a better question.

14 So within National's offering, were all the risks
15 that were assumed by Plaintiffs detailed in the PPM sent
16 out by National?

17 A. They would be.

18 Q. Okay. Is that -- just to understand the timeline,
19 so -- oh, I'll get back to that.

20 Were there more than 100 investors in the NSC
21 offering?

22 A. It is my understanding, yes, I believe so.

23 Q. Do you know about how many?

24 A. I couldn't tell you. Again, that would have
25 been in our tracking. You would have access to that

1 Again, National, the investment banking department
2 does their primary diligence.

3 The individual brokers themselves also, as part of
4 their -- well, I'm going to say mandate, probably do
5 some diligence, and I couldn't speak to what they are
6 doing under the National umbrella, but obviously the
7 diligence that is done by the investment banking
8 department in relation to the PPM disclosures is --
9 would be part -- it would be -- all investors would be
10 privy to that, I guess I would say, but I can't speak
11 for the individual brokers.

12 Q. Okay. So as for the investment banking
13 department, in their initial approval, is it the same
14 issues as to all investors in the D class?

15 A. Again, all of the investors in the D class
16 introduced by National.

17 Q. Confirmed, okay, and the same is true for the D-2
18 class?

19 A. Correct, --

20 Q. Okay.

21 A. -- again, introduced by National.

22 I just want to make that distinction; that in both
23 D and D-2, as we define it, there are investors in those
24 securities that were not introduced by National.

25 Q. So if National were able to prove that it

1 A. They could do anything they wanted to do and they
2 felt necessary in order for them to get comfortable with
3 the offering.

4 Q. So does NSC itself have any duties to evaluate the
5 investment if they're just giving it all to brokers to
6 do?

7 MR. KNOPF: Objection.

8 THE WITNESS: We do. We do.

9 BY MR. LOFTUS:

10 Q. And does that have to be done pursuant to any
11 standards?

12 A. Yes.

13 Q. And is that the same evaluation done at the NSC
14 level for everyone that invested in the Series D?

15 A. Yes.

16 Q. Okay. So after NSC does the same level evaluation
17 for everyone in the D-1 and D-2, then they pass this
18 down to their brokers, and then your testimony is then
19 the brokers are supposed to do their own individual due
20 diligence on the investment?

21 A. So correction. It's a D and D-2, all right, I
22 believe is what we've decided to call it now, and again,
23 if your question is that the broker would have -- would
24 do their own -- some -- you know, could do their own.

25 I mean there's no -- I don't know if there's a

1 then that's done at the branch level as well to make
2 sure that the individual investor is suitable.

3 Q. Okay. So it's fair to say that, you know, top
4 level, NSC determines this is okay to sell to some
5 people, then the broker determines whether it's okay to
6 sell to this particular investor, and then that
7 particular investor determines whether it's okay for him
8 to buy.

9 Is that fair?

10 A. Yes, in general terms.

11 Q. Okay, and so that first determination of whether
12 it's okay for anyone to sell, if NSC says no, then it
13 doesn't get to the broker to determine whether or not
14 it's okay for that investor, and then it doesn't get to
15 the investor to determine whether or not it's okay for
16 him; is that correct?

17 A. That's essentially how it was assessed, correct.

18 Q. Okay, and using the same, you know, three steps as
19 I was discussing, that you get from the NSC approves it
20 to sell to anyone in the whole world, then the broker
21 assesses the individual investor's ability to it, then
22 between when the broker assesses it and when the
23 investor determines it's okay for him, that's when the
24 assumption of risk occurs?

25 MR. KNOPF: Objection.

1 Q. Okay, and who would that be?

2 A. Same people I listed before; so head of investment
3 banking and appropriate compliance and supervision
4 personnel.

5 Q. Okay. Mr. Troccoli, can you generally describe
6 the ownership structure of National Securities?

7 A. I could not.

8 Q. Okay. Can you generally describe the retail
9 brokerage arm structure that National Securities has?

10 A. I could not.

11 Q. Okay. Do you know approximately how many retail
12 brokers National Securities has?

13 A. I believe the number is somewhere in the
14 neighborhood of 850.

15 Q. Okay. Now, let's talk about the structure of the
16 investment banking department at National Securities
17 during the relevant time frame.

18 In 2014, who was the head of the investment
19 banking department?

20 A. Jonathan Rich.

21 Q. How about in 2016?

22 A. 2016, you said.

23 Q. Yes.

24 A. Jonathan Rich.

25 Q. I'm sorry. I skipped over 2015. How about 2015?

1 Can you very briefly describe what National
2 Securities does for issuers when it serves as a
3 placement agent?

4 A. Again, so our role as placement agent is to
5 assist the company in raising capital by introducing
6 prospective investors to the company.

7 Q. And how does National introduce prospective
8 investors to an issuer?

9 A. Myriad of different ways.

10 Again, it could be our captive retail investors.
11 It could be non-captive institutional investors as well,
12 which obviously we have some captive ones as well
13 and there's many ways, many ways for us to introduce
14 prospective investors.

15 Q. General speaking, what's the fee structure when
16 National serves as a placement agent?

17 A. There's usually a placement agent fee.

18 Q. And approximately -- strike that.

19 What do placement agents' fees generally range
20 from?

21 A. Again, I couldn't speak to all of them, but
22 whatever FINRA rules would allow, I assume, is the best
23 I could give of a range.

24 Q. Do you recall what the placement agent fee was for
25 the Series D round of Beamreach?

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22 whatever FINRA rules would allow, I assume, is the best
23 I could give of a range.

24 Q. Do you recall what the placement agent fee was for
25 the Series D round of Beamreach?

1 A. If memory serves, around 10% cash, 10% warrants.

2 Q. Okay, and for the record, Mr. Troccoli, what's a
3 warrant?

4 A. A warrant is -- the best way I can describe it
5 would be an option to purchase a security at a
6 predetermined price.

7 Q. Okay. So is a warrant a type of investment?

8 A. It could be construed as that.

9 Q. Okay. With respect to National's captive retail
10 brokerage arm, what sort of compensation do they receive
11 when selling an investment syndicated by National as a
12 placement agent?

13 A. The retail broker would receive an allocation of
14 the affirmation placement agent fee.

15 Q. Would retail brokers receive warrants as well?

16 A. Yes.

17 Q. Okay, and with respect to Beamreach, what did the
18 retail brokers do when trying to place the D round and
19 D-2 round?

20 A. I could not speak to an individual retail broker's
21 actions.

22 MR. KONS: Okay. Can we go off the record for
23 one minute?

24 (Discussion off the record.)

25 MR. KONS: All right, Sandi. Back on the

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19 D-2 round?

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21 actions.

22 MR. KONS: Okay. Can we go off the record for
23 one minute?

24 (Discussion off the record.)

25 MR. KONS: All right, Sandi. Back on the

1 particular -- it's our RSO, right. RSO, I believe is
2 the official name, our regulatory -- yeah, I couldn't
3 speak to that. I'm sorry. I just don't know what the
4 official title is or the role.

5 Q. All right, but you were designated as the person
6 to speak on National's behalf; correct?

7 A. I was.

8 MR. KNOPF: Yeah, but you also didn't list that
9 particular topic. So objection.

10 MR. KONS: All right. Okay. Fair enough.

11 BY MR. KONS:

12 Q. Mr. Troccoli, how does National Securities view
13 FINRA rules?

14 A. I can't speak to that.

15 Q. Is National Securities required to follow FINRA
16 rules?

17 A. Yes.

18 Q. Okay, and what happens if they violate FINRA
19 rules?

20 A. Again, I don't know what the ramifications are.

21 Q. All right. Does National Securities know if FINRA
22 issues guidance to help broker dealers comply with their
23 rules?

24 A. It's my understanding they do.

25 Q. Okay, and are notices to members part of those

1 guidance publications?

2 A. I believe so.

3 Q. Okay, and FINRA regulatory notices would be part
4 of that as well; correct?

5 A. Yes.

6 Q. Okay. So do FINRA rules set the standards for
7 which broker dealers have to have to conduct themselves
8 in the securities industry?

9 A. Just provide guidance. I guess standards would be
10 another way of saying it, sure.

11 Q. Okay. All right. Has National Securities been
12 sanctioned by FINRA for failing to adhere to rules about
13 private placement transactions in the past?

14 A. I couldn't speak to that.

15 Q. Okay. All right, Mr. Troccoli, I'm going to
16 share -- one second.

17 Okay. Can you see this?

18 A. I can.

19 Q. Okay. I'm going to mark this document -- strike
20 that.

21 MR. KONS: Off the record for a second.

22 (Discussion off the record.)

23 MR. KONS: Okay. Back on the record.

24 BY MR. KONS:

25 Q. Mr. Troccoli, are you familiar with the FINRA

1 necessary to make a determination of said suitability.

2 Q. Okay. So if you take a look at -- let's see.

3 Can you see this, Mr. Troccoli?

4 A. I can.

5 Q. Okay. So do you see section .05, subpart (a)?

6 A. Uh-huh.

7 Q. Okay. Take a moment to read that.

8 A. Okay.

9 Q. Okay. So National Securities would be required
10 under FINRA rule to have a reasonable basis to believe
11 the recommendation is suitable for at least some
12 investors; correct?

13 A. Yes.

14 Q. Okay, and then National Securities also must
15 conduct reasonable diligence to provide it with an
16 understanding of the potential risks and rewards
17 associated with recommending the security; correct?

18 A. That's correct.

19 Q. Okay, and do you know if National Securities has
20 adopted and implemented the FINRA rule into its Written
21 Supervisory Procedures?

22 A. It's my understanding we have.

23 Q. And does National Securities understand that it
24 needs to adhere to both components of this reasonable
25 basis suitability rule to avoid violating it?

1 necessary to make a determination of said suitability.

2 Q. Okay. So if you take a look at -- let's see.

3 Can you see this, Mr. Troccoli?

4 A. I can.

5 Q. Okay. So do you see section .05, subpart (a)?

6 A. Uh-huh.

7 Q. Okay. Take a moment to read that.

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10 under FINRA rule to have a reasonable basis to believe
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21 Supervisory Procedures?

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23 Q. And does National Securities understand that it
24 needs to adhere to both components of this reasonable
25 basis suitability rule to avoid violating it?

1 BY MR. KONS:

2 Q. Now, Mr. Troccoli, did you review this document
3 prior to your testimony today?

4 A. Not this document, no.

5 Q. Okay. Real briefly, for the record, Mr. Troccoli,
6 what's National Securities' understanding of a
7 Regulation D offering?

8 A. A Reg D offering is one that is understood to be
9 placed with -- again, exempt from registration and,
10 therefore, certain rules with regards to whom may invest
11 in said Reg D offerings and the process by which they
12 are to be introduced to said offerings in comparison to
13 other types of whether it be registered or even
14 unregistered offerings.

15 Q. Okay. Now, what's National Securities'
16 understanding of its due diligence obligations in a
17 Reg D offering under FINRA rules?

18 A. Again, the best way I would answer that is to
19 follow the guidance that's provided by FINRA and adopted
20 through our WSPs.

21 Q. Okay. So, for example -- and Mr. Troccoli, for
22 the record, what are WSPs?

23 A. Written Supervisory Procedures, --

24 Q. Okay.

25 A. -- protocols.

1 Q. Okay. All right. So if we scroll down, I've
2 highlighted this next one, and tell me if this is
3 National's understanding.

4 Let's read this portion I'm highlighting. I'll
5 just read it. We can talk about it.

6 National Securities agrees that it can't blindly
7 rely on the issuer for information concerning a company;
8 correct?

9 A. Correct.

10 Q. Okay, and National agrees that it can't rely on
11 information provided by the issuer and its attorneys in
12 lieu of conducting its own investigation; correct?

13 A. I'm sorry. Repeat that again.

14 Q. And National understands that it can't rely on
15 information provided by the issuer or its attorneys in
16 lieu of conducting its own investigation; correct?

17 A. Exclusively, yes, correct.

18 Q. Yeah, and National understands and agrees that
19 FINRA expects and requires (inaudible) --

20 MR. KNOFF: Josh, you're -- it sounds like
21 there's a phone dialing in the background while
22 you're talking. I'm sorry.

23 MR. KONS: Hold on. Let me -- is that better?

24 THE WITNESS: Yes.

25 MR. KONS: Okay. Can you hear better?

1 THE WITNESS: No.

2 MR. KNOPF: It's about the same.

3 It sounds like you're gurgling when you talk.
4 I'm sorry.

5 MR. KONS: We're off the record. Hopefully --
6 let's go off the record.

7 (Discussion off the record.)

8 MR. KONS: Just give me one minute. Let's go
9 off the record and I'll try and plug into my
10 computer. Hold on.

11 Let's take about a three-minute break.

12 (Thereupon, a recess was taken at 11:46 a.m.,
13 after which time the deposition resumed at
14 11:53 a.m.)

15 MR. KONS: Okay. Sandi, back on the record,
16 please.

17 THE COURT REPORTER: Okay.

18 BY MR. KONS:

19 Q. So Mr. Troccoli, I'm going to focus on this
20 section of the notice to members 10-22.

21 Do you see that?

22 A. I do.

23 Q. Okay. So National Securities would agree that
24 it's required to exercise a high degree of care in
25 investigating a Reg D offering; correct?

1 A. Yes.

2 Q. Okay, and then National Securities would agree
3 that it's required to exercise a high degree of care in
4 independently verifying an issuer's representation and
5 claims as well; correct?

6 A. Correct.

7 Q. Okay, and again, when an issuer seeks to finance a
8 speculative new venture, BDs must be particularly
9 careful; correct?

10 Do you see that?

11 A. I do.

12 Q. And National would agree with that as well;
13 correct?

14 A. We do.

15 Q. Okay, and then one paragraph down, National would
16 agree that a fact that its customers may be
17 sophisticated and knowledgeable does not obviate the
18 duty to investigate; correct?

19 A. Correct.

20 Q. Okay. So we were talking a little bit about red
21 flags before.

22 Strike that. One second.

23 All right, Mr. Troccoli, I'm going to jump around
24 for a second.

25 So National -- do you see this first paragraph

1 A. Yes.

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21 flags before.

22 Strike that. One second.

23 All right, Mr. Troccoli, I'm going to jump around
24 for a second.

25 So National -- do you see this first paragraph

1 here that I'm highlighting, correct; do you see that?

2 A. I do, I do.

3 Q. Okay. So National would agree that a red flag is
4 anything that would alert a prudent person to conduct
5 further inquiry; correct?

6 A. Correct.

7 Q. Okay, and National agrees that red flags might
8 arise from information publicly available or gleaned
9 during the course of an investigation; right?

10 A. Correct.

11 Q. Okay, and National's investigation would obligate
12 it to follow up on any red flags or investigate any
13 substantial adverse information about the issuer;
14 correct?

15 A. Correct.

16 Q. Okay, and you'd agree that -- strike that.

17 And Mr. Troccoli, National would agree that if an
18 issuer refused to provide it with information to meet
19 its duty, that'd be a red flag; right?

20 A. Yes.

21 Q. Okay. All right. So in order to fulfill its
22 suitability obligations, at a minimum, what does
23 National Securities investigate in connection with an
24 issuer of that Reg D offering?

25 A. Again, so we have a prepared checklist. We cover

1 offering might be pending; correct?

2 A. Correct.

3 Q. Okay. Now, I want to talk a little bit about the
4 approval process.

5 Can you briefly describe in a non verbose way
6 because I'll ask more specific questions, but briefly
7 describe the approval process for a Reg D offering at
8 National Securities.

9 A. Well, so as you alluded to, after diligence has
10 been essentially completed, a memorandum is prepared
11 and delivered to a select group of what we call the
12 commitment committee, which is National employees and
13 individuals that are presented the opportunity and have
14 the opportunity to ask the presenting banker and team
15 any questions relating to the company, the offering
16 again related to this opportunity, and then posts that
17 are able to vote as to whether or not to clear said
18 opportunity for sale.

19 Q. Okay, and it's fair to say that any retail broker
20 would be prohibited from selling an offering until it's
21 approved; correct?

22 A. In general, yes.

23 Q. Okay, and you'd agree that per the WSP's, the head
24 of investment banking is in charge of due diligence;
25 right?

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20 would be prohibited from selling an offering until it's
21 approved; correct?

22 A. In general, yes.

23 Q. Okay, and you'd agree that per the WSP's, the head
24 of investment banking is in charge of due diligence;
25 right?

1 different deals in different years?

2 A. That I could not speak to.

3 Q. All right.

4 A. I don't believe it's static, but I couldn't tell
5 you exactly what the rotation, if any, exists.

6 Q. Okay, and if there's a split vote, the deal can't
7 go forward; correct?

8 A. Well, again, a majority -- if a majority approves,
9 then the deal goes forward.

10 Q. And if it's split, it does not?

11 If it's split, it does not; correct?

12 A. Again, you have to define for me what split is.

13 If a majority of the commitment --

14 Q. 4 to 4.

15 A. 4 to 4, I would assume that, again, I don't know,
16 I don't believe so. Yeah, I don't believe it would go
17 forward, but --

18 Q. Okay. Mr. Troccoli, so do you see this
19 highlighted portion here, Mr. Troccoli?

20 A. Uh-huh.

21 Q. Okay. So National expects its employees to follow
22 the WSPs; correct?

23 A. Yes.

24 Q. Okay. All right. Before sort of diving into
25 that, WSPs, Mr. Troccoli, what sort of documents aside

1 A. Again, sometime around this time of October,
2 November.

3 Q. Okay. Now, at around this time, what was National
4 Securities' understanding of Beamreach?

5 A. It was a solar panel -- high efficiency solar
6 panel manufacturer based out of California looking to
7 raise funds, having already raised a significant amount
8 of funds, to continue in the development of its high
9 yield solar panels.

10 Q. Okay, and what was your understanding -- strike
11 that.

12 At this time, what was National Securities'
13 understanding of its business model?

14 MR. KNOPF: Objection to the form.

15 THE WITNESS: At this time --

16 MR. KNOPF: You mean Beamreach's business
17 model?

18 MR. KONS: Yes.

19 Strike that, Fred. Let me rephrase.

20 BY MR. KONS:

21 Q. In late 2014, what was National Securities'
22 understanding of Beamreach's business model?

23 A. Again, to my -- to the best of my knowledge, as I
24 alluded to, the company was a development stage company
25 looking to bring high yield high efficiency solar panels

1 require additional funds be raised.

2 It was always anticipated to raise the D another
3 subsequent private round and eventually even raise money
4 through an IPO eventually.

5 Q. Okay. Why did Beamreach want to raise money from
6 retail investors instead of institutional investors
7 during this time period?

8 A. Again, the company was looking to raise money from
9 anybody and anyone who would invest, but again, it was
10 not exclusively retail.

11 Remind -- I'm sure you have the documentation
12 stating that, you know, both corporations and
13 institutions invested in the Series D alongside
14 individual retail investors.

15 Q. During this time period, what was National
16 Securities' understanding of the institutional investor
17 interest in putting more money into Beamreach?

18 A. Well, I can only speak anecdotally, but we had an
19 institution invest \$5 million in our introduction, under
20 our introduction.

21 Q. Which one?

22 A. CN Funds.

23 Q. Who are CN Funds?

24 A. Again, they're a family office, I believe, based
25 out of California and that's all I know

1 A. I would say one.

2 Q. How about 2015?

3 A. I believe twice possibly.

4 Q. How about 2016?

5 A. I do not believe I made any trips to Milpitas in
6 2016.

7 Q. How about 2017?

8 A. Also, no, I don't believe so.

9 Q. Okay. Did National Securities participate in any
10 way in the winding down of Beamreach after the
11 bankruptcy?

12 A. You have to explain what that means to you.

13 Q. Did anyone from National Securities fly out to
14 Milpitas and help wind down the operations of Beamreach
15 after the bankruptcy?

16 A. No.

17 Q. Okay. In 2014, what was in Milpitas?

18 Strike that.

19 What sort of facilities did Beamreach have in
20 Milpitas in 2014 when you visited?

21 A. The company had what was characterized as a pilot
22 plant, if you will.

23 The intent was to create the process and
24 procedures to create the high efficiency panels but then
25 replicate said procedures in a larger facility somewhere

1 not in the U.S. where, you know, manufacturing might be
2 more cost effective, but they were perfecting the
3 processes and procedures in Milpitas.

4 Q. Okay, and did you take notes during that trip?

5 A. Most likely.

6 Q. Okay, and did you send e-mails back to
7 headquarters about that trip while you were out there?

8 A. I don't know if I did while I was out there, but
9 I'm sure e-mails were circulated regarding my visit.

10 Q. Okay, and it's customary for you to keep receipts
11 when you travel for business; correct?

12 A. That's correct, yes.

13 Q. You would have submitted those receipts to
14 National Securities for reimbursement; correct?

15 A. Most likely.

16 Q. Okay. What sort of notes did you take in your
17 2014 trip to Milpitas?

18 A. And again, I couldn't tell you.

19 They were just normal course of site visit notes,
20 what I saw, what -- you know, we would take -- pictures,
21 I'm sure, were taken.

22 I couldn't be specific.

23 Q. Okay, and the notes and pictures ultimately go to
24 the due diligence file; correct?

25 A. Most likely, yes.

1 MOUs to be guarantee of revenue?

2 A. No.

3 Q. Okay. All right. Did anyone at National
4 Securities call Beamreach customers to talk about the
5 MOUs or Beamreach's prospects in the industry?

6 A. No, we did not. That was a discussion had with
7 the company.

8 Alternatively, we had a discussion with the
9 representative at Opus Bank, who had made those calls,
10 and we had a direct conversation with them about said
11 conversations and their comfort and their general
12 consensus regarding those MOUs to our satisfaction.

13 Q. Okay. Who at National Securities reviewed the GAF
14 investment documents?

15 A. Again, I could not be specific on that.

16 Q. Okay. Was it a red flag that Beamreach had not
17 yet demonstrated any ability to develop a high volume
18 manufacturing facility?

19 A. No.

20 Q. Okay. Who at National Securities reviewed the
21 Essex Capital Corporation equipment lease facility that
22 Beamreach had?

23 A. Again, I could not be specific, but it was most
24 likely reviewed. As to who reviewed it, I couldn't be
25 specific who reviewed it, but it was reviewed.

1 assessment done by Dr. Surek"; correct?

2 A. Yes.

3 Q. Okay, and that was just to reaffirm that -- his
4 prior positive findings; correct?

5 A. Yes, more or less, yes.

6 Q. Okay. So -- sorry. One second here.

7 So Mr. Troccoli, do you see this portion here?

8 A. Uh-huh.

9 Q. So. National understood that the Asian solar
10 manufacturers drove down pricing; correct?

11 A. I'm sorry. Repeat that again.

12 Q. "National understood that a large influx of Asian
13 solar manufacturers drove the pricing below cost of
14 production causing many producers to shut plants or
15 cease production."

16 Do you see that?

17 A. Yes, I do.

18 Q. So wouldn't that be considered a red flag?

19 A. No, not necessarily.

20 Again, you know, it was just a fact and the
21 company was fully aware of that and, again, the plan was
22 to secure manufacturing, high volume manufacturing, in
23 an offsite away from the U.S. where cost production is
24 much lower.

25 Q. Okay, and similarly, National understood that many

1 assessment done by Dr. Surek"; correct?

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21 company was fully aware of that and, again, the plan was
22 to secure manufacturing, high volume manufacturing, in
23 an offsite away from the U.S. where cost production is
24 much lower.

25 Q. Okay, and similarly, National understood that many

1 of these novel solar technologies failed to secure
2 additional funding and were forced to wind down;
3 correct?

4 A. Correct.

5 Q. And that National understood that prior to this,
6 more than a hundred solar companies were sold or
7 liquidated; correct?

8 A. Uh-huh.

9 Q. So it's fair to say that National fully understood
10 that Beamreach was operating in a very challenging -- at
11 a very challenging time for the solar industry; correct?

12 A. Yes.

13 Q. Okay, and what did National do in its due
14 diligence to verify that Beamreach's business model may
15 succeed in light of these challenging conditions?

16 A. Again, conversations with management team, general
17 market understanding that come hell or high water, the
18 solar industry would survive and it would be a matter of
19 competitiveness and the management team being able to
20 operate in this environment.

21 Q. Did National Securities investigate the
22 liquidation value of any of the other solar companies
23 that went under prior to Beamreach?

24 A. No.

25 Q. Okay. Let me scroll down a little bit more here.

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2 additional funding and were forced to wind down;
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19 competitiveness and the management team being able to
20 operate in this environment.

21 Q. Did National Securities investigate the
22 liquidation value of any of the other solar companies
23 that went under prior to Beamreach?

24 A. No.

25 Q. Okay. Let me scroll down a little bit more here.

1 A. Somewhere around that area, yeah, that sounds
2 about right.

3 Q. So roughly, based on this document, Beamreach had
4 approximately a 15-month cash runway if the raise was
5 successful; is that correct?

6 A. That's correct.

7 Q. Okay. At this time, what analysis did National
8 Securities conduct on the liquidation value of
9 Beamreach?

10 A. Liquidation value, none, not at that time.

11 Q. Okay. Was Beamreach, during this time period,
12 subject to a going concern disclosure in their audited
13 financial reports?

14 A. I would assume so, yes.

15 Q. Okay. So is it fair to say that National
16 understood that there was a high probability that
17 Beamreach may not make it if sufficient capital wasn't
18 raised?

19 A. As disclosed in the PPM, yes.

20 Q. Okay, and you'd agree -- strike that.

21 And National would agree that that would make
22 Beamreach at that time a distressed company; correct?

23 A. I disagree.

24 Q. You disagree or National disagrees?

25 A. Well, National disagrees with that assertion --

1 A. That is correct.

2 Q. Okay, and just for the record, so I'm straight,
3 National Securities referred to this as Project Ra, R-a;
4 correct?

5 A. That's correct, yes.

6 Q. And who referred to it as Project Ray, R-a-y?

7 A. In writing or in the verbiage, I guess, as far as
8 I know, it's Project Ra. I don't --

9 Q. Yeah.

10 A. I don't know.

11 Q. Okay.

12 A. I'm sure if it's that, it's most likely a typo.

13 Q. We'll get to that later, but the potential sale of
14 Beamreach didn't come around until later in time;
15 correct?

16 A. Yes.

17 Q. Okay. Fine.

18 So let's jump back to, you know, early 2015.

19 What was National Securities' understanding of how
20 long Beamreach had on the Opus financing facility before
21 it had to start paying principal back?

22 A. Again, I couldn't tell you, but most likely, it's
23 in the PPM.

24 Q. Okay. What sort of conversations did National
25 have with Opus about that financing facility?

1 A. None. We had none.

2 Q. Okay. So National would not have known how happy
3 or unhappy Opus was with Beamreach; correct?

4 A. No, not directly, no.

5 Q. Okay, and National would not have known,
6 therefore, how flexible or inflexible Opus might have
7 been; correct?

8 A. We had -- we would have -- again, the multiple
9 amendments to the original note gave us some inclination
10 that Opus was an agreeable, you know, lender to the
11 company and willing to work with the company.

12 Q. I'll just jump down.

13 Do you see point 5 here, Mr. Troccoli, that
14 Beamreach expected most revenues to come from a small
15 number of distributors and project developers?

16 Do you see that?

17 A. Yes.

18 Q. Who at National reviewed the list of distributors
19 and project developers that they had secured
20 relationships with?

21 A. Again, I couldn't be specific, but it was
22 reviewed.

23 Q. Okay, and was that review documented?

24 A. In a sense that a -- I'm sure a schedule was
25 provided and reviewed and, again, only documented if

1 there was anything there to be documented on, a red flag
2 or some issue.

3 Q. And at this point in time, Mr. Troccoli, is it
4 fair to say that one of the cornerstones of Beamreach's
5 business model was developing this Malaysian
6 manufacturing plant; is that right?

7 A. Yes, more or less. I mean it's how the company
8 would have gotten to high volume production.

9 Q. Okay, and at that time, National knew that
10 Beamreach's high volume production wasn't proven at all;
11 right?

12 A. Correct.

13 Q. Okay. Prior to Beamreach, how many other solar
14 companies had National served as placement agent for?

15 A. None.

16 Q. Okay.

17 MR. KONS: All right. Why don't we take a
18 couple minutes break and then we can keep working
19 ahead here.

20 So we can go off the record for a minute.

21 (Thereupon, a recess was taken at 2:33 p.m.,
22 after which time the deposition resumed at
23 2:41 p.m.)

24 MR. KONS: Back on the record, 2:41 p.m.
25 Eastern on September 16th, 2020.

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22 after which time the deposition resumed at
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24 MR. KONS: Back on the record, 2:41 p.m.
25 Eastern on September 16th, 2020.

1 there was only a small number of revenue sources, did
2 National do anything to follow up to test the viability
3 of Beamreach's business model in light of that
4 disclosure?

5 A. Again, the viability of the business model in and
6 of itself is the fact that the company would be selling
7 to these distributors and, more importantly, the
8 discussions with the company, this is where the company
9 was at the given time.

10 So what you have to think through is you're
11 selling to a number of distributors, you see the uptake,
12 if you will, and then you go forward and possibly sell
13 it to others.

14 So at the end of the day, the additional renew is
15 to understand what the business plan of the company was
16 and whether or not that was viable, and again, that was
17 done and it met our satisfaction at the time.

18 Q. Okay, and National understood that Beamreach's
19 product wasn't commercially tested; correct?

20 A. Not as of yet, no.

21 Q. Yeah, and National understood that Asian solar
22 manufacturers had flooded the market with below cost to
23 production PV modules; correct?

24 A. Yes. All the facts that were disclosed in the
25 PPM, National was aware of as were every single investor

1 many members need to be present?

2 A. That information, I do not know.

3 Q. Okay.

4 A. I would assume a majority, a super majority, I
5 mean, enough to get -- that -- I don't know what the
6 rule is on that.

7 Q. Okay, and so is it fair to say -- strike that.

8 Who was leading this Com Com discussion?

9 A. Well, the committee is usually the lead banker is
10 presenting the offering or the transaction, again,
11 reviewing the memo that was delivered to the committee
12 members. So that -- by leading, they are, you know, the
13 moderator.

14 Then once the presentation's done, then again, you
15 have open discussion, Q and A, as you can see there,
16 regarding that transaction.

17 Q. Okay. I'm just going to walk through a few points
18 and ask a few questions about it.

19 So did the Com Com committee know that no
20 valuation analysis had been performed on the patent
21 portfolio?

22 A. I mean would they have known, again, you know,
23 negative, that they -- they knew -- they would have
24 known had we done one, I guess.

25 Q. Okay, and at this time, was Beamreach already

1 Peter poses a question, "How well did they do
2 compared to budget last year?"

3 You respond, "Not well."

4 Do you see that?

5 A. I do.

6 Q. Okay. What was National Securities' understanding
7 of how Beamreach was performing with respect to their
8 budget during that time period?

9 A. Again, as you read there, they were not meeting
10 their projections.

11 Q. When you say not meeting their projections, which
12 projections?

13 A. Their internal budgets, if you will.

14 Q. Okay. What were their internal budgets?

15 A. I don't have that in front of me, so I couldn't
16 tell you, but in general -- go ahead.

17 Q. Was it National's understanding that they were
18 spending more money than they had or that they were
19 bringing in basically?

20 A. That's understood, I think, yes, --

21 Q. Okay, --

22 A. -- obviously.

23 Q. -- and you'd agree -- strike that.

24 National would agree that that's a red flag;
25 correct?

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2 compared to budget last year?"

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22 A. -- obviously.

23 Q. -- and you'd agree -- strike that.

24 National would agree that that's a red flag;

25 correct?

1 A. Again, to the extent of requiring additional
2 review.

3 Q. Okay. As a placement agent, National can demand
4 certain things on behalf of the issuer; correct?

5 A. On behalf of the investor, I assume, is what you
6 meant.

7 Q. The issuer.

8 A. On behalf of the issuer or from the issuer?

9 Q. Sorry. Let me rephrase.

10 As a placement agent, National Securities can
11 demand certain things from the issuer like a board seat,
12 for example?

13 A. Yes.

14 Q. Or in the previous example, another report from
15 Dr. Surek; correct?

16 A. Correct.

17 Q. Okay. Did National Securities demand stricter
18 internal financial controls from Beamreach during this
19 time?

20 A. No.

21 Q. Okay, and then if you scroll down here, there's
22 discussion of more money needed to be raised and PZ, do
23 you see this, he requested to see a report, and then RC
24 said, "I would also like to", and then Goldie said that
25 as well.

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22 discussion of more money needed to be raised and PZ, do
23 you see this, he requested to see a report, and then RC
24 said, "I would also like to", and then Goldie said that
25 as well.

1 Q. What are the common reasons Com Com turns down an
2 offering?

3 A. Again, the offering doesn't meet the level of
4 scrutiny or the members don't feel that the risk reward
5 is warranted for the offering.

6 Q. Okay. At what point does Com Com deem that the
7 investment proposed isn't suitable for any investors?

8 A. I couldn't speak on behalf of the commitment
9 committee. They just do or don't, right, straight up
10 and down. Either you do or you don't, --

11 Q. Okay.

12 A. -- and they're an individual member of the Com
13 Com, right. So each person, I assume, has their own
14 criteria.

15 Q. Okay.

16 MR. KONS: Okay. I'll move forward and mark
17 this next document as Plaintiffs' 15.

18 (Thereupon, the above-referred to document
19 was marked as Plaintiffs' Exhibit Number 15 for
20 Identification.)

21 BY MR. KONS:

22 Q. Now, who ultimately paid Dr. Surek for that last
23 report; was it Beamreach or National?

24 A. It was a combination, I believe. I believe we
25 both paid them -- paid him. I believe that we -- I

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(Thereupon, the above-referred to document was marked as Plaintiffs' Exhibit Number 16 for Identification.)

MR. KONS: Can you guys hear me?

MR. KNOPF: Yes. We're on the same page now.

MR. KONS: Okay.

BY MR. KONS:

Q. Mr. Troccoli, I'm not going to go through the PPM. I just have a few quick questions.

So once Com Com approved, the sales process started to the retail investors; correct?

A. And institutional investors, yes.

Q. Okay, and as part of National's obligation to keep accurate books and records, you have a list of all the names and people that invested in Series D; correct?

A. Yes.

Q. And all of their addresses; correct?

A. Yes.

Again, these are the people that were introduced by National, not everybody who invested in the Series D.

Q. Yeah, correct, and when we talk about that, that's what I mean, all the people National introduced by way of their retail sales force.

So name; correct?

1 or were not.

2 Q. Okay, and the last bullet, "Cash-out in first half
3 October requires urgency in extending runway."

4 What did that mean to National?

5 A. That the company was running out of cash.

6 MR. WOJCIECHOWSKI: Yeah. Off the record for a
7 second.

8 (Discussion off the record.)

9 MR. KONS: Okay. Back on the record, please,
10 Sandi.

11 THE COURT REPORTER: Yes.

12 BY MR. KONS:

13 Q. Okay. What other placement agents did Beamreach
14 engage during this time period?

15 A. I wouldn't be able to tell you.

16 Q. Okay.

17 A. Again, we were nonexclusive again.

18 Q. But as part of National's due diligence
19 obligation, it's important to understand what sources of
20 capital they seek to find; correct?

21 A. Yes. I mean I think it's prudent for us to
22 understand if there's anybody else out there, but the
23 company has no obligation to tell us whether or not they
24 have other parties soliciting investments on their
25 behalf. It's more about if they do have money inflows,

1 A. Not at that time, no.

2 Q. Okay. Next bullet up, "Actively pursuing other
3 sources of cash; equipment sales, MPPT IP sale to
4 Diodes, loans", this bullet seems to indicate that
5 National or that Beamreach is selling equipment and IP.

6 Is that right?

7 A. It could be selling equipment and IP, yes.

8 Q. Okay. Isn't that a red flag?

9 A. Again, to the extent the red flag is being defined
10 that we inquire as to what they're doing, yes.

11 Q. Okay, and at this point in time, National would
12 agree that Beamreach was a distressed company; correct?

13 A. At this time, yes, the company was much more in
14 distress than it was in distress, yes.

15 Q. And one bullet up is, we previously talked about
16 placement agents, but they're expanding to new placement
17 agents.

18 Do you see that?

19 A. Yes.

20 Q. Okay, but you don't know who they were talking
21 to -- strike that.

22 But National didn't know what other placement
23 agents they were talking to?

24 A. Correct.

25 Q. Okay. Who's Nate McOmber?

1 A. Not at that time, no.

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3 sources of cash; equipment sales, MPPT IP sale to
4 Diodes, loans", this bullet seems to indicate that
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23 agents they were talking to?

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25 Q. Okay. Who's Nate McOmber?

1 actually speak with customers who had signed the MSAs?

2 A. I don't believe we had, no.

3 Q. Again, and did anyone at National go to Asia to
4 confirm the existence of the contract manufacturing
5 facility?

6 A. No. No one traveled, no.

7 Q. Okay. Did Beamreach even have a contract
8 manufacturing facility during this time period?

9 A. They had a contract manufacturing arrangement.
10 Again, the facility is owned by somebody else.

11 Q. Okay. Did anyone at National go to Asia to visit
12 and inspect the viability of the contract manufacturing
13 arrangement?

14 A. We did not.

15 Q. Okay. Did National hire an expert to opine on the
16 viability of their proposed contract manufacturing
17 arrangement during this time period?

18 A. We did not.

19 Q. Okay, and you previously testified that Opus had a
20 lien on all the IP.

21 So how did National expect for Beamreach to sell
22 some of the IP to Fortress or for Fortress to take a
23 lien on it if it was an encumbered asset?

24 A. It would have been required to have a negotiation
25 discussion with Opus.

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23 lien on it if it was an encumbered asset?

24 A. It would have been required to have a negotiation
25 discussion with Opus.

1 Q. Okay. So National's understanding was that the
2 Fortress loan was contingent on Opus being --
3 renegotiating the Opus credit facility; correct?

4 A. More or less, yes.

5 Q. Okay, and the Fortress deal never went through;
6 correct?

7 A. Correct.

8 Q. Okay, and what's your recollection in terms of why
9 it fell apart?

10 A. Fortress could not get comfortable with what IP
11 was being provided and, you know, again, discussions
12 essentially just died on the vine at this point.

13 Q. Okay, and when were the Fortress discussions?

14 A. Again, somewhere in the time frame of September,
15 October, November.

16 Q. Okay. So after July?

17 A. After July, yes.

18 Q. Okay. Fine.

19 So, Mr. Troccoli, what prompted the change from
20 the D-1 round into the D-2 convertible note round?

21 A. The D-1 was getting no interest. Again, even
22 internally, we just could not -- we felt in general that
23 the D-1 was not going to be a successful offer.

24 Q. Okay, and why did National feel that that was the
25 case?

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22 internally, we just could not -- we felt in general that
23 the D-1 was not going to be a successful offer.

24 Q. Okay, and why did National feel that that was the
25 case?

1 A. Again, putting yourself back in that day and time,
2 the risk reward wasn't sufficient enough to take a pure
3 equity position into the company at that time.

4 Q. Okay, and because there was no Com Com meeting for
5 D-1, that was something that was missed; correct?

6 A. When you say missed --

7 Q. Let's back up.

8 So Com Com never approved D-1 in the first place;
9 correct?

10 A. Again, I would have to go back to my records. I
11 don't believe so, no.

12 Q. Okay, and so had there been a Com Com meeting,
13 potentially there would have been an evaluation of the
14 risk reward; correct?

15 A. Yes.

16 Q. Okay, but because that didn't happen, the sales
17 occurred and the risk reward for pure equity did not
18 make sense anymore; correct?

19 A. When you say the sales occurred, what do you mean
20 sales occurred?

21 Q. Investors sent in money for D-1; right?

22 A. Again, I do not -- I do not know -- if investors
23 actually sent in money, then there would have been a Com
24 Com. I just do not -- again, I cannot speak perfectly
25 about the timeline during this time period.

1 Q. Okay, and is it fair to say, since you were at the
2 launch, one of the big concerns was still the price
3 point?

4 A. One of the concerns for whom?

5 Q. The consumers, the customers.

6 A. The buyers of the product, yes, I don't know what
7 their concerns were, but, yeah, that sounds about right
8 as to a pushback.

9 Q. Okay.

10 A. Any customer would always want to buy something as
11 cheaply as possible.

12 Q. Okay, and what were the other pushbacks that you
13 recall from that conference?

14 A. I don't recall, but I know we had reports on
15 feedback of the sales pipeline. That should be in the
16 documentation provided.

17 Q. Okay. So at what point was the D-1 round pretty
18 much dead?

19 A. Like I said, the total time periods ran fluid from
20 October, November, September. So if you pick the middle
21 of October, I'm sure you're not too far off.

22 Q. Okay, and I guess between September and October,
23 what sort of -- strike that.

24 You recall our discussion about all of the items
25 of due diligence from earlier today; correct?

1 A. Yes.

2 Q. Okay, and between September and November of 2016,
3 you'd agree that National did not perform every single
4 one of those items that we went through earlier; right?

5 A. Well, which items; the ones that we talked about
6 in the morning session or the ones you alluded to
7 earlier with regards to visiting the Malaysian plant or
8 a contract manufacturer and talking to?

9 So which ones are you alluding to?

10 Q. All of the above.

11 A. Well, again, I -- so the ones from this morning
12 are fair and reasonable and you would have to bring
13 those up again and then we can go one by one to see
14 which ones were or were not performed.

15 I can only speak to the ones that you alluded to
16 just in this second session in relation to the, you
17 know, site visits in Asia and discussions with signees
18 of the MSAs.

19 Q. Okay. Just give me a second.

20 All right. So for D-1, did National go through
21 all the financials with Beamreach?

22 A. Yes.

23 Q. Did it go through all the internal audit controls?

24 A. Yes.

25 Q. Okay, and you testified that it -- National did

1 not reach out to customer suppliers; correct?

2 A. We did not have direct conversations with their --

3 with suppliers or customers, correct.

4 Q. Okay, and I'm going to try and kill two birds with
5 one stone. So correct me if there's a difference
6 because the time period seems to be the same. So I'll
7 ask the questions about both D-1 and D-2.

8 Did you evaluate the credit history or credit
9 worthiness of Beamreach for these offerings?

10 A. We reviewed it, yes. We had a balance sheet
11 review.

12 Q. Okay, and did you review the management expertise
13 at this time?

14 A. Yes.

15 Q. Okay. Was it a red flag that board members
16 started to drop out?

17 A. Yes.

18 Q. Okay, and did you request a report of the
19 viability of the patents or IP at this time?

20 A. No.

21 Q. Okay, and did you get a valuation of the IP at
22 this time?

23 A. No.

24 Q. Okay, and what sort of analysis of the business
25 prospects of the issuer, Beamreach in this case, did you

1 not reach out to customer suppliers; correct?

2 A. We did not have direct conversations with their --
3 with suppliers or customers, correct.

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19 viability of the patents or IP at this time?

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21 Q. Okay, and did you get a valuation of the IP at
22 this time?

23 A. No.

24 Q. Okay, and what sort of analysis of the business
25 prospects of the issuer, Beamreach in this case, did you

1 value; correct?

2 A. Yes and no.

3 I would say that we were most likely doing our own
4 assessment of price points, price analyses and
5 understanding of kind of where the company's price
6 points were in comparison to other viable products.

7 We were looking at the sales pipeline, again,
8 comparing its product and its ability -- its claims on
9 the product, right, as far as faster installation and
10 what have you, whether or not those claims bear fruit
11 and, you know, to our satisfaction, they did at that
12 time.

13 Q. Okay, and so but you would agree with me that for
14 D-1 and D-2, there were big red flashing lights on
15 Beamreach as a viable entity in the near future;
16 correct?

17 A. Yes.

18 Q. Okay, and you would also agree that there was
19 really no chance of an IPO in early 2017 as predicted;
20 correct?

21 A. Predicted by whom and when?

22 Q. Beamreach previously predicted an IPO in 2016.

23 Do you remember that?

24 A. Yes.

25 Q. And then at this point, late 2016, there's no

1 disclosures; correct?

2 A. What are you -- where are you at right now; can
3 you highlight --

4 Q. A couple bullets down, "DL: Right. So we don't
5 need to kill the deal. We just need additional
6 disclosures."

7 A. Yes.

8 Q. Okay, but at this point, National hadn't
9 formulated the terms of the convertible note offering;
10 correct?

11 A. Not quite yet, no.

12 Q. Okay. So National was still trying to find a way
13 to move the deal forward?

14 A. We were trying to find a way to save the company.

15 Q. Okay, but National owes duties to the investor
16 customers too; right?

17 A. Oh, correct.

18 Q. Okay, and during this time period, what were you
19 trying to do for the customers?

20 A. Well, again, the customers that were already
21 investors in the company, so we are -- for the existing
22 customers or existing investors that had already put
23 money into Solexel or Beamreach, we were trying to save
24 the company so that that money was not a complete loss.

25 Q. So basically, in gambling terms, doubling down;

1 correct?

2 A. If you want to use that nomenclature, sure.

3 Q. Okay. Sorry. I'm going to -- strike that.

4 Okay. So is it fair to say at this time, the
5 Malaysian manufacturing is just gone; correct?

6 A. The Malaysian company owned, again, you have to
7 remember where the contract manufacturer that the
8 company had or was -- you know, had contracted with was
9 located, and I don't recall that.

10 Q. Okay. Taiwan and Indonesia; does that sound
11 right?

12 A. Sounds right.

13 Q. Okay. So Malaysia is out of consideration at this
14 time; correct?

15 A. Yes.

16 Q. Okay, and who was MM?

17 A. Mike Mullen.

18 Q. And who is Mike Mullen?

19 A. Well, again, at the time, I don't know his
20 official role (inaudible) CEO.

21 Q. Okay. So it looks like the notes reflect that he
22 wanted to go back to counsel and get opinion on
23 disclosures; is that right?

24 A. Yes.

25 Q. Okay, and then it looks like the next day, do you

1 capabilities.

2 Q. Okay, but you'd agree that on a scale of 1 to 10,
3 10 being the highest risk, this was a 9 or a 10 at this
4 point; correct?

5 A. As to what; what are my -- what's my scale,
6 meaning risk factor?

7 Q. Yes.

8 It was extremely risky at this point; correct?

9 A. Yes.

10 Q. Okay, and it's fair to say that this -- at this
11 point in time, investors that came in after, it was
12 essentially a Hail Mary with a minimal chance of getting
13 their money back?

14 A. It would be a -- a Hail Mary is a good
15 nomenclature.

16 Q. Okay. Who is Stuart Updegrave?

17 A. So he is a broker out of our Connecticut office,
18 one of our Connecticut offices.

19 Q. Okay. Was he the largest seller of the Beamreach
20 offerings?

21 A. Most likely.

22 Q. Okay. So he would have been a good source of
23 information for the Com Com on the potential reception
24 from the retail customers; correct?

25 A. Yes.

1 A. Sagiv Shiv is a senior member of our investment
2 banking department. He is an advisory expert. He works
3 on a lot of restructurings and, you know, he's a 35-year
4 veteran of the banking community.

5 Q. Okay. So he says, "What's the worst situation on
6 the fire sale of the IP, we can't say."

7 Do you see that?

8 A. Yes.

9 Q. Okay. So at the D-2 time frame, National did not
10 have any idea of what the IP might be worth; right?

11 A. Correct.

12 Q. Okay, and National understood that the IP was
13 encumbered first by Opus; correct?

14 A. Right.

15 Q. And National understood that there couldn't be a
16 fire sale on the IP without someone satisfying Opus?

17 A. Well, that fire sale would -- whatever proceeds
18 from a fire sale would first go to Opus.

19 You're not going to satisfy in order to have a
20 fire sale. So no one's claiming -- you would not have
21 to first satisfy Opus in order to have a fire sale. The
22 fire sale itself, whatever proceeds you'd generate from
23 said fire sale, would first go to Opus.

24 Q. Okay, and when National talks about fire sale,
25 that means a deeply discounted liquidation of assets;

1 correct?

2 A. Yes.

3 Q. Okay, and so further down, RC says, "Who's the
4 bankruptcy counsel?"

5 Do you see that?

6 A. Yes.

7 Q. Okay. So National was aware that Beamreach was in
8 the process of retaining bankruptcy counsel; right?

9 A. Again, the answer is no one yet, but they were in
10 discussions, yes.

11 Q. Okay. Is it fair to say that the retention of
12 bankruptcy counsel is a huge red flag in connection with
13 a securities offering?

14 A. Yes.

15 Q. Okay. All right. October 27, 2016, 10:30 a.m.,
16 do you remember that Com Com meeting?

17 A. Let me just read it.

18 Q. Okay. Just bear with me one second.

19 Going back to the previous Com Com meeting when
20 bankruptcy was discussed, did National believe it was a
21 realistic possibility that Beamreach would declare
22 bankruptcy in the near future?

23 A. I believe it's obviously one of the many scenarios
24 that could happen.

25 Q. Along with the fire sale or the sale or the -- the

1 Q. When did that occur would you say?

2 A. When you say this deal, I mean, Beam -- I was the
3 lead banker on all the Beamreach transactions.

4 Q. Okay. So since the beginning, you were kind of
5 the point person; correct?

6 A. Yes.

7 Q. Okay. Did National hire any third party to
8 conduct an analysis on all of the different scenarios
9 that we just discussed for the D-2 round?

10 A. No.

11 Q. Okay. So at the bottom of this page on
12 October 27, 2016, RC -- who's RC?

13 A. Richard Cohen, I guess.

14 Q. Okay. So Richard Cohen states, "What's the risk
15 of National getting sued for this?"

16 Do you see that?

17 A. Yes.

18 Q. And since you were at this meeting, what's your
19 recollection of what was discussed on that point?

20 A. I don't have any.

21 Q. Okay. Is it fair to say that it's highly unusual
22 for litigation risk to come up during a Com Com meeting?

23 A. Yes.

24 Q. Okay, and it's fair to say that on October 27th,
25 Com Com was really nervous about the D-2 offering?

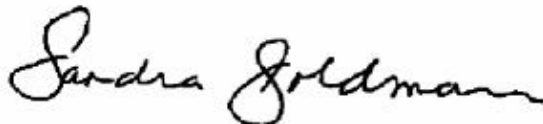
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CERTIFICATE OF OATH OF WITNESS

STATE OF FLORIDA)
) SS:
COUNTY OF BROWARD)

I, SANDRA A. GOLDMAN, Court Reporter and Notary Public in and for the State of Florida at Large, certify that the witness, CARMELO TROCCOLI, remotely appeared before me on September 16, 2020 and was duly sworn by me.

WITNESS my hand and official seal this 30th day of September, 2020.



SANDRA A. GOLDMAN, FPR, Court Reporter and Notary Public, State of Florida at Large.

Notary #GG068484
My commission expires: 4/9/2021

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REPORTER'S VIDEO CONFERENCE DEPOSITION CERTIFICATE

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I, SANDRA A. GOLDMAN, Florida Professional Reporter, certify that I was authorized to and did stenographically report the video conference deposition of CARMELO TROCCOLI, the witness herein; that a review of the transcript was requested; that the foregoing pages numbered from 1 to 258 inclusive is a true and complete record of my stenographic notes of the video conference deposition by said witness; and that this computer-assisted transcript was prepared under my supervision.

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I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action.

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DATED this 30th day of September, 2020.

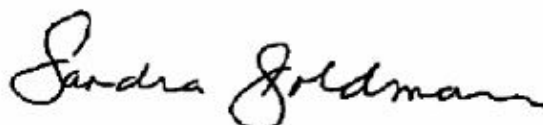
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SANDRA A. GOLDMAN,

Florida Professional Reporter