

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK**

**MIDRAIL LLC,**

**Plaintiff,**

**-against-**

**PARNTERS GROUP (USA) INC.,**

**Defendant.**

Index No. 654563/2019

Hon.

**COMPLAINT**

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Plaintiff MidRail LLC (“MidRail”), by and through its undersigned attorneys, alleges as follows for its Complaint against Defendant Partners Group (USA) Inc. (“PG”):

**NATURE OF THE ACTION**

1. This suit arises from PG’s unauthorized use of MidRail’s confidential business information, in clear violation of a non-disclosure agreement between the parties. MidRail originally agreed to provide its confidential business information to PG because PG claimed to be considering investing in or with MidRail. That turned out to be a ruse. In fact, PG solicited MidRail’s most sensitive information and then used it to compete directly with MidRail. PG’s unauthorized use of MidRail’s confidential information has already cost MidRail tens of millions of dollars, and will certainly cause MidRail further damage in the future; PG has also been unjustly enriched through its exploitation of MidRail’s confidential information. Accordingly, PG must both make MidRail whole for the damage caused by PG’s wrongful conduct and also be enjoined from further using MidRail’s confidential information.

2. MidRail is a next-generation freight rail operating company with over 200 years of combined leadership experience in the railroad industry. Through MidRail’s expenditures of extensive time and effort, it has developed expertise, proprietary insights, financial and operational models, and strategies for the rail industry. In May 2017, it entered into discussions with PG, an investment firm with no prior experience in the rail industry, about partnering on transactions in the rail industry. In effect, PG would put up the money and MidRail would provide the know-how for investments in the rail industry. As one of MidRail’s key strategic advantages lies in its proprietary information, MidRail required PG to enter into a non-disclosure agreement that would protect this information. This agreement was entered into in June 2017, and subsequently renewed in January 2019 (the “NDA”).

3. The NDA reflects the fundamental nature of MidRail's and PG's business relationship. PG is an investment manager with significant assets but lacking in expertise and understanding about the rail industry. PG sought out MidRail's extensive expertise and innovative and proprietary strategies as part of PG's efforts to explore its entry into the rail space. MidRail, on the other hand, needed to make sure that one of its chief assets – its intellectual property and the deal pipeline and roadmap derived from this property – was protected. It was not going to give away its trade secrets for free so that PG could use them for PG's sole benefit. The NDA memorializes how the parties came together around their competing interests: PG was obligated to and agreed to keep the information MidRail provided confidential, and could use it only to conduct deals with MidRail.

4. MidRail provided PG with a substantial amount of proprietary information and confidential documents pursuant to the NDA. MidRail shared its business model, its pipeline of mergers and acquisitions ("M&A") targets, its operational plans, and its financial models with PG, along with myriad other proprietary insights and analyses. As explained further below, PG then betrayed MidRail when PG used MidRail's own confidential information to bid against MidRail, causing tens of millions of dollars in direct damages to MidRail.

5. MidRail required that this information be protected with the NDA, because this confidential information is at the heart of MidRail's business model and is what sets it apart from its competitors. MidRail's proprietary materials offer a roadmap for a strategy that has never before been attempted in the railroad industry: purchasing disconnected, last-mile rail assets and turning them into a cohesive railroad platform. For example, numerous industrial facilities across North America have their own railroad tracks used for transporting materials within that facility, such as shuttling chemicals from one part of a plant to another. Despite these industrial

rail fixtures often having all the same features of a railroad, these were never, before MidRail, considered independent, investable assets.

6. MidRail introduced the industry to the revolutionary notion that these industrial rail facilities are actually concentrated railroads and that running them like profit-seeking railroads – instead of cost-centers – could yield millions of dollars in value *per facility* for the shippers. This industrial rail strategy forms one prong of MidRail’s broader strategy to combine industrial rail facilities with other underused and undeveloped rail assets (including storage yards and short-line railroads), then integrating them seamlessly into a cohesive railroad business (referred to throughout as the proprietary “MidRail Strategy”). MidRail’s cohesive strategy promises enormous returns, far in excess of what industrial rail lines, storage yards, and short-line railroads can generate under their current business models.

7. Successfully executing on this strategy would require a rare combination of innovative thinking, expertise in the rail industry, and sensitivity to rail customer’s needs, together with a willingness to invest significant time and resources into creating the analyses, planning, and financial models necessary to turn the strategy into a thriving business. MidRail was created with the goal of building a platform that has those very qualities and can create those materials. Since its inception, it has invested time and effort to building out, in painstaking detail, plans for executing on the MidRail Strategy. These efforts have resulted in multiple trade secrets, including:

8. (A) MidRail’s Mergers and Acquisitions Pipeline (the “M&A Pipeline”), a spreadsheet of rail assets and operations that could be acquired and integrated into a next-generation railroad using the MidRail Strategy. The assets total more than \$3 billion in value and are categorized around the three prongs of MidRail’s strategy: industrial rail assets; regional

rail assets, and assets spun-off from Class I railroads, including storage yards. To create this list, MidRail conducted substantial due diligence on specific industrial rail assets, including outreach to and negotiations with identified target companies regarding the sale of their in-plant rail assets;

9. (B) MidRail's Industrial Rail Operating Plan (the "Operating Plan"), a 40-plus page, highly technical and highly detailed operating plan, explaining how MidRail will acquire industrial plant rail assets and reconfigure every aspect of how those assets are run, including: switching; railcar inspection; railcar repair; railcar cleaning; blasting; loading and unloading; storage; tracking and optimizing operations; and rail asset maintenance. MidRail developed these plans based on MidRail's own proprietary, scientific methodology for maximizing rail efficiency; and

10. (C) MidRail's financial models for the different business lines of this next-generation railroad (the "Financial Models"). These analyses, which include thousands of rows of data and calculations, dovetail with MidRail's operating plans by memorializing the economic inputs and expected outputs of building a next-generation railroad based on MidRail's novel strategies and insights for industrial rail and other underdeveloped rail assets. Using these models, an investor would know how much capital was needed, how it would need to be deployed, and what return on investment could be expected under different components of MidRail's Strategy – information that cannot be had anywhere else.

11. Each of these materials are confidential and none of them could be reproduced by MidRail's competitors absent assembling a team of veteran rail-industry leaders and innovative thinkers and then investing in them to work extensively and in painstaking detail, as MidRail did.

12. Pursuant to the NDA, PG was able to receive the benefit of MidRail's heavy investment of time and resources without having to replicate those efforts itself. Starting in 2017 and continuing into 2019, PG solicited MidRail's confidential information. MidRail in turn provided that information to PG pursuant to the NDA. These interactions were ongoing, with PG continuing to request information and MidRail sharing updates to existing plans as well as plans for new opportunities and targets as they were developed. In addition to sharing its trade secrets, MidRail shared myriad other confidential documents, analyses, and strategies, all of which were protected under the NDA.

13. The NDA states that MidRail and PG intend to "explore the evaluation of a potential . . . 'Business Transaction'[]" and in connection with such a Business Transaction each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential." NDA § 1. A "Business Transaction" under the NDA is defined as a potential "acquisition, merger or investment opportunity of mutual interest" to PG and MidRail. *Id.* § 1.

14. The NDA defines "any information received from" MidRail "in connection [with] a Business Transaction" as "Confidential Information," with certain enumerated exceptions, including for information that becomes publicly available "other than as a result of disclosure by" PG. *Id.* § 2.

15. The NDA obligates PG "not to use any Confidential Information for any purpose except to evaluate, negotiate, engage in discussions concerning, and consummate a Business Transaction between the parties." *Id.* § 3 (emphasis added). The NDA further obligates PG "not to disclose any Confidential Information to third parties, except to those Representatives who need to know such Confidential Information in order to assist" PG "to evaluate, negotiate,

engage in discussions concerning or consummate the Business Transaction,” such as lawyers or consultants who might assist in finalizing such a Business Transaction. *Id.*

16. The information MidRail provided to PG pursuant to the NDA is highly sensitive. MidRail’s confidential insights are what allow it to execute on the MidRail Strategy, thereby deriving greater value from rail assets and operations than its competitors. Because MidRail can derive additional value through its proprietary methods, it is positioned to pay more for rail assets, and therefore to secure their acquisition even in a competitive bid scenario. Put differently, because MidRail’s confidential information allows MidRail to unlock value from railroad investments that no one else can, MidRail is willing to pay more to acquire those investments knowing that, even at a higher price point, the investment will yield superior returns. MidRail’s confidential strategies, trade secrets, and insights thereby give MidRail a distinct competitive advantage in the market for rail assets.

17. If others in the rail industry were privy to MidRail’s proprietary information, its key competitive advantage would vanish. Competitors would price investments in the same way as MidRail, and therefore drive up the purchase price to MidRail’s detriment. Accordingly, MidRail provided this information to PG on the express understanding that PG would use it only for evaluating and/or entering into Business Transactions with MidRail and for no other purpose.

18. One of these potential Business Transactions was to purchase Patriot Rail (“Patriot”), an operator of twelve regional and short-line railroads throughout the United States, comprising over 580 rail miles. MidRail had begun investigating an acquisition of Patriot in 2017, spending years developing a proprietary and highly sensitive Patriot acquisition plan. MidRail introduced this potential transaction to PG in 2018, before Patriot was even on the

market for sale. PG responded with interest, and MidRail continued to share information about the potential acquisition with PG throughout 2018.

19. Early the next year, around January 2019, MidRail and PG began discussing another such potential Business Transaction: partnering together to acquire Petroleum Services Corporation (“PSC”). As part of these discussions, MidRail provided PG with memoranda developed for MidRail’s investment committee, plans, and other proprietary information both referring back to and supplementing the trade secret M&A Pipeline, Operating Plan, and Financial Models that MidRail already provided to PG. As before, MidRail provided this information pursuant to the NDA and in contemplation of a potential Business Transaction between the parties.

20. The parties ultimately did not partner on the PSC acquisition, and PSC was acquired by a third party. However, soon after, in May and June 2019, the parties resumed discussions about Patriot, whose parent had by then placed Patriot in a formal sale process.

21. In or about May 2019, as part of the parties’ discussions about Patriot, PG informed MidRail that it was planning to put in a first round bid for Patriot and assured MidRail that if it made it past the first round of bidding, it would partner with MidRail on the transaction and in any subsequent bidding. Based on these representations, and at PG’s request, MidRail provided PG with confidential information regarding its strategy for Patriot, including information on how the materials it had provided regarding PSC could be adapted to a Patriot acquisition. PG subsequently made repeated requests for detailed information from MidRail about the application of MidRail’s proprietary strategy and M&A pipeline to Patriot, which MidRail provided. All of this information was provided pursuant to the NDA and in connection

with potential Business Transactions involving PG and MidRail; PG was therefore required not to use it for any purpose other than working with MidRail.

22. Instead of complying with its obligations under the NDA, PG betrayed MidRail's trust. After getting into the second round of bidding in mid-June 2019, PG refused to work with MidRail but continued to rely on the confidential information it had received from MidRail pursuant to the NDA. As MidRail would later learn, PG's repeated requests for additional detailed, confidential information concerning the Patriot strategy was simply an effort to extract maximal value out of MidRail before PG showed its true colors – PG never intended to partner with MidRail on the Patriot deal. Instead, PG misappropriated MidRail's confidential information and used it to compete against MidRail in the Patriot bidding process, a breach of the NDA.

23. PG met with Patriot on multiple occasions in July 2019, including a management meeting and a dinner, during which PG improperly shared MidRail's confidential plans for Patriot, including the M&A Pipeline and MidRail Strategy with Patriot's management team, while falsely representing these MidRail creations as PG's own. PG made these representations willfully to create the impression that PG were a sophisticated rail investor who could bid aggressively on the Patriot asset, while knowing that these false representations would be harmful to MidRail. By relying on and sharing MidRail's confidential information for purposes other than working with MidRail, PG breached the NDA.

24. After PG had cut MidRail out of the sale process, but before MidRail learned of PG's misconduct, MidRail made arrangements to pursue the Patriot acquisition without PG. But once it became clear to MidRail what PG was doing, MidRail realized that it had a problem. Because PG was relying – improperly – on MidRail's confidential information, PG's second-

round bidding would be influenced by that information, including MidRail's M&A Pipeline, Operating Plan, and Financial Models. These trade secrets allowed MidRail to project substantially greater growth for Patriot than conventional wisdom in the rail sector allowed, and correspondingly greater returns on investment for MidRail from the acquisition. As a result of PG's wrongful misappropriation of MidRail's confidential information, MidRail was now competing with another bidder, PG, that had the benefit of MidRail's own planning, analyses, and models. As a direct result, MidRail was forced to drastically increase its bid, and therefore cut into its projected investment profits, to compete against (for all practical purposes) itself.

25. MidRail and its new equity partner originally planned on putting in a bid that been calculated to be just high enough that it would outbid anyone that did not have access to MidRail's confidential information while still generating substantial profit based on MidRail's strategies. This planned bid was based on MidRail's proprietary Financial Models, M&A Pipeline, and Industrial Rail Strategy. But because MidRail knew that PG was competing against it using MidRail's own materials, MidRail could not rely on simply outbidding competitors who relied on traditional rail strategies. MidRail now had to compete with someone armed with MidRail's own strategy and plans for unlocking value.

26. MidRail and its financing partner had to increase their bid accordingly. MidRail ultimately bid over \$100 million more for Patriot than it had originally planned. While MidRail and its financing partner won the bidding, it was at a substantially increased cost. But for PG's misappropriation of MidRail's confidential information, MidRail and its financing partner would not have increased their originally-planned bid to the upper bounds of what MidRail's financial models justified. Had PG not misappropriated MidRail's information, MidRail and its new equity financing partner could have bid substantially lower and still won the bidding process.

Because MidRail instead had to overpay for Patriot, the profitability of that investment has been reduced, causing tens of millions of dollars of damages to MidRail.

27. On information and belief, PG is continuing to use MidRail's confidential information for purposes barred by the NDA and to MidRail's detriment, including as part of PG's ongoing fundraising efforts. These misappropriations are causing ongoing harm to MidRail's competitive position in the rail industry, and are unjustly enriching PG.

28. As a result of PG's improper conduct, MidRail seeks (i) damages representing the loss in value to MidRail caused by the increase in its bid for the Patriot asset; (ii) damages representing PG's destruction of the value of MidRail's novel business strategies, proprietary and confidential information, and trade secrets; (ii) a permanent injunction barring PG, its affiliates, and its and their directors, officers, shareholders, employees, investors, advised entities, financing sources, portfolio companies, merger partners, agents, or advisors from breaching the NDA or unfairly competing with MidRail, including appropriate oversight or remedial measures to ensure PG's compliance with such an injunction.

### **THE PARTIES**

29. MidRail is a Delaware limited liability company, formed in 2016. Its principal place of business is New York, New York. MidRail is a next-generation freight rail operating company focused on applying innovative strategies to underdeveloped and underutilized rail assets and operations. At the heart of MidRail's business model is a proprietary strategy for acquiring, consolidating, developing, and integrating underutilized rail assets and operations across North America, the "MidRail Strategy," and the confidential and trade secret materials MidRail developed for implementing that strategy. These proprietary creations are the product of the 200-plus years of combined railroad experience by MidRail's principals together with extensive efforts by those individuals. Among MidRail's distinguished executives are its

Chairman, Gilbert Lamphere – who has headed multiple private equity firms and has served on the boards of both rail carriers (including CSX, Canadian National, Illinois Central Railroad, and Florida East Coast) and important industrial companies (including Cleveland-Cliff’s Inc., Global Natural Resources, and R.P. Scherer) – and Alexander Lynch – who previously served as the Global Chairman of Investment Banking for J.P. Morgan and has decades of experience with the rail industry.

30. PG is a Delaware corporation with its principal place of business in New York, New York, and additional offices in Denver, Colorado, and Houston, Texas. PG is part of the Partners Group organization, which is headquartered in Switzerland, and provides investment management services.

#### **JURISDICTION AND VENUE**

31. This Court has jurisdiction over PG because its principal place of business is New York.

32. Venue is proper in this Court pursuant to CPLR 503, because both MidRail and PG reside in New York County.

33. This action is also properly before this Court, pursuant to CPLR 501, because the parties agreed in the NDA “that any action brought to resolve any controversy arising under or relating to this Agreement shall be subject to the exclusive jurisdiction of, and may only be brought or maintained in, the state and federal courts located in the City of New York, New York and that any right any party might have to a trial by jury in any such action is hereby irrevocably waived.” NDA § 10.

## FACTUAL ALLEGATIONS

### **I. The Freight Rail Industry**

34. The freight rail industry represents one of the oldest transportation networks in the United States. At a basic level, the industry is comprised of “rail carrier[s]” (the entities that run the trains), 49 U.S.C. § 10102(5), and shippers (the entities seeking to have goods shipped via rail), 49 U.S.C. § 10709(g)(2)(B)(i). Railroad carriers are further divided into three federally-mandated classes, based on annual operating revenues: Class I (\$447,621,226 or more); Class II (more than \$35,809,698 but less than the Class I threshold); and Class III (\$35,809,698 or less).

35. Until the 1980s, the standard strategy for railroad carriers was to meet increasing customer demand by adding more cars and more crews, leading ultimately to more congestion. This problem was aggravated by lack of coordination between different departments even within the same railroad. Instead of working together, sales, operations, and asset management departments conducted themselves in silos, with the result that train cars, and the people needed to keep them running, were not being deployed where they were needed to meet customer’s needs.

36. All this changed when the late Ed Moyers teamed up with MidRail’s founder and chairman, Gilbert Lamphere, to pioneer a new strategy that has come to be known as “Precision Scheduled Railroading.” This strategy is built on the simple – but at the time revolutionary – notion that adding more trains to a given set of track will simply result in congestion; thereby resulting in fewer goods shipping and arriving on time and at disproportionate costs. Precision Scheduled Railroading solves this problem by focusing relentlessly on efficiency: delivering more goods with fewer cars, thus reducing congestion and maximizing the value of assets while minimizing costs, increasing safety, and dramatically improving on-time delivery rates at lower prices for shippers. With Precision Scheduled Railroading, every process – from the way the

train cars are loaded, to the order in which they are hitched up behind the engine, to the number of times railcars are switched between trains on a journey – is thought through and coordinated to maximize efficiency. To accomplish this, Precision Scheduled Railroading emphasizes continuous data tracking and data analysis, so that railroads can monitor whether the right cars are in the right place at the right time with the right people.

37. Starting in the 1980s, Mr. Moyers and Mr. Lamphere, as well as several other railroad executives who would go on to join the MidRail team, took this strategy and applied it successfully to several Class I and Class II railroads, including MidSouth Railways, Illinois Central Railroad, Southern Pacific Railroad, Canadian National Railroad, and Florida East Coast Railway. The results were transformative: for example, at MidSouth, operating margins improved from 6% to 40% (creating more than \$200 million of capital gains); at Illinois Central, operating margins improved from 7% to 41% (creating more than \$2.3 billion of capital gains); and, at Southern Pacific, the company went from losing \$150 million a year to turning an annual profit of \$250 million, all within just two years of Mr. Moyers and Mr. Lamphere's team implementing Precision Scheduled Railroading.

38. Since their pioneering changes, the techniques and strategies of Precision Scheduled Railroading have been adopted by essentially all major Class I railroads in the United States and Canada, yielding billions in value creation. But the industry as a whole still remains inefficient, with underdeveloped assets and lack of integration, particularly outside the networked world of Class I carriers.

39. These underdeveloped, and in some cases orphaned, assets include: industrial rail, single-user railroads on industrial sites, such as manufacturing, refining, or production facilities; storage and storage-in-transit yards (collectively, "Storage/SIT Yards"), which are essentially

parking lots for train cars; and short-line railroads, which are railroads limited to specific regions. Despite being underused, these assets are strategic and critically important to the industry, as they often make up the “last mile” or “first mile” at the beginning and ending of freight rail journeys. Short-line railroads, for example, generate approximately 35% of all rail traffic in the United States. But these assets are still, in many ways, stuck on outdated operating models, and their inefficiencies have ripple effects throughout the industry, and the overall economy.

## **II. MidRail Developed a Unique, Proprietary Business Strategy to Reinvent the Rail Industry**

40. MidRail was formed in 2016 by many of the same people who created and implemented Precision Scheduled Railroading. MidRail’s Chairman, Mr. Lamphere, has headed multiple private equity firms and has served on the boards of both rail carriers (including CSX, Canadian National, Illinois Central Railroad, and Florida East Coast) and important industrial companies (including Cleveland-Cliff’s Inc., Global Natural Resources, and R.P. Scherer). Raj Gupta, MidRail’s president, has decades of experience as an advisor, investor, and entrepreneur in private equity funded transactions. Henry Chidgey, a member of MidRail’s operations team, has spent over 40 years in the rail industry and is known worldwide as an expert in rail processes, procedures, and systems. He, along with the late Mr. Moyers, worked to turn around Southern Pacific with phenomenal results. Alexander Lynch, another member of the operations team, previously served as the Global Chairman of Investment Banking for J.P. Morgan, and has decades of experience with the rail industry.

41. MidRail brought together these individuals and other rail industry veterans with the goal of ushering in the next revolution in rail, this one focusing on the underdeveloped and underused rail assets and operations that exist outside of large Class I railroads: the thousands of miles of industrial rail operations, short-line railroads, and Storage/SIT Yards. MidRail’s

founders foresaw that the rail industry is being held back by inefficiencies in these assets. No matter how much the national Class I railroads master the Precision Scheduled Railroading techniques that MidRail's team pioneered, backlogs and bottlenecks at the first-mile, last-mile, and temporary stops of a journey will continue to cause delays and increase costs.

42. Until MidRail, these problems had gone unaddressed. First-mile assets, last-mile assets, and the stops in-between are, by their nature, disconnected from one another, like the spokes on a wheel. They also are not part of the huge network of Class I railroads and therefore do not receive the same investments and efficiencies that Class I-managed assets do. Because of the disconnected nature of these assets, the revolutions taking place on large, interconnected railroads have left them behind.

43. Industrial rail assets, for example, were not thought of traditionally as being a class of profit-producing rail assets. Similar to how a large university may have its own streets and buses, many large industrial plants have their own railroads. These industrial rail operations suffer from numerous inefficiencies. They are treated as cost-centers rather than railroads. They are managed parochially rather than as an integrated part of a nationwide rail network. And while Class I railroads benefit from combining rail ownership and operations together, the operation of industrial rail sites is often outsourced to multiple vendors with competing interests, leading to a lack of cohesion and a world where long-term thinking is replaced with a focus on short-term, cost-plus service contracts.

44. This status quo has persisted, because the traditional railroad model has no place for these industrial assets. In an industry divided between railroads and their customers, industrial rail was considered exclusively part of the *customers'* business. Also these assets are comparatively small (on an individual basis) in track size and equipment. Class I railroads

therefore had no interest or incentive in purchasing those assets or integrating them. There was simply no business model for running a set of railroad tracks at one company's petroleum refinery in tandem with a set of tracks at another company's chemical plant. So despite serving as integral parts of multi-billion dollar industrial plants, these industrial rail assets had little perceived value for rail investors.

45. The other assets at the center of the MidRail Strategy – Storage/SIT Yards and short-line railroads – have also been left behind by Class I railroads. In some cases, they have been literally left behind as Class I railroads streamline their operations and no longer can find uses for storage yards and regional trains. MidRail's team, though, has had the foresight to envision how the geographic and strategic role of these assets will shift (as more of the industry adopts Precision Scheduled Railroading) and how to take advantage of that shift: including by buying up a critical mass of Storage/SIT Yards close to first-mile and last-mile assets where demand will be growing

46. MidRail's business thus focuses on acquiring industrial rail, short-line railroads, and Storage/SIT Yards, integrating them around a shared rail services platform (*e.g.*, track maintenance, rail switching, and railcar cleaning), and operating them cohesively with next-generation Precision Scheduled Railroading principles.

47. MidRail's model has never before been attempted in the railroad industry. The traditional railroad model is about owning the track between Point A and Point B; the MidRail Strategy, by contrast, focuses on the tracks at and around Point A and Point B (including the customers' industrial production facilities).

48. The first prong of the MidRail Strategy is acquiring and transforming industrial rail sites. MidRail's plans call for treating these industrial assets as concentrated railroads, that

like larger Class I railroads, can be centrally managed with a focus on profits and efficiencies. Under MidRail's Strategy, the management of these assets, which is often outsourced to various third parties, would be brought under a single owner who would take responsibility for all aspects of the industrial rail facilities. Following this strategy, and MidRail's trade secret implementation methods, can generate, for example, hundreds of millions in value for an industrial customer. When extended across multiple industrial customers, this strategy can yield billions in value that has, to date, been untapped.

49. The MidRail Strategy also focuses on short-line railroads, such as Patriot, and Storage/SIT Yards. MidRail had the foresight to see that these assets could both facilitate and supplement MidRail's industrial rail efforts while also benefiting from transformative changes in their own right. For example, Storage/SIT Yards have fallen into disfavor with Class I railroads, turning them into orphaned assets. But MidRail has devised a new model for these yards that could allow them to turn profits even while charging much lower rates than Class I railroads would request for the same services.

50. MidRail's Strategy thus represents a first-of-its-kind plan to combine rail assets that had never been combined before (and in some instances had never even been conceived of as rail assets), enhance them with Precision Scheduled Railroading principles, and integrate them around transformative business model. Through this strategy, MidRail expects to build a cohesive group of assets that could grow into one of the largest railroads in the United States in less than a decade.

51. PG is well aware of this strategy as MidRail shared it with PG in multiple materials and conversations over two years' time. PG, in turn, saw the value in the MidRail strategy and, as described further below, entered into an NDA with MidRail specifically so that

PG could draw on MidRail's expertise and ability to realize and implement this visionary strategy.

### **III. MidRail Developed Proprietary Insights, Plans, and Financial Models for Implementing Its Strategy**

52. Despite promising lucrative returns, MidRail's Strategy presents a daunting challenge for even the most experienced railroad operators. How do you go about finding and buying rail assets that are not, and in some cases have never been, for sale? How do you develop a transformation plan to turn rail facilities, traditionally run as cost-centers, into profit-making rail enterprises? What are the financial components of such a plan? How are they measured, and how can the investment be structured around them so that the financial incentives drive the parties to meet the business goals? How can assets, personnel, and expertise be shared among industrial rail facilities serving different, and sometimes competing, customers? How can profits be squeezed out of storage / SIT yards that Class I railroads – with all of their knowledge and economies of scale – deem not worthy of investment? And can these assets be combined in a cohesive, efficient operating model with short-line railroads? Even for railroad veterans familiar with Precision Scheduled Railroading, the answers to these questions are not obvious.

53. MidRail has spent the better part of its existence, and invested significant time and resources, finding and refining the answers to these questions. The result is a set of trade secret materials that form the backbone of the MidRail Strategy. These materials are the key for turning MidRail's Strategy into a reality and are what set MidRail apart as a company.

#### **A. MidRail's Industrial Operating Plan**

54. To implement the industrial-rail aspects of its strategy, MidRail has developed a detailed, 40-plus page Operating Plan (with an accompanying financial model). The plan proceeds to explain, step-by-step, how MidRail will acquire an industrial site's operations, take

in-house all of the operations that the shipper had previously out-sourced to run the rail assets, and then provide a turn-key on-site railroad service for the industrial site. The plan sets out how MidRail will manage each aspect of the industrial rail operation, including: switching; railcar inspection; railcar repair; railcar cleaning; blasting; loading and unloading; storage; tracking and optimizing operations; and rail asset maintenance. MidRail's Operating Plan brims with valuable details on executing each of these tasks.

**B. MidRail's M&A Pipeline**

55. MidRail has spent significant time and resources to identify assets to acquire for building MidRail's next-generation rail holding company. Leveraging its members' extensive experience and contacts in the industry, MidRail has identified previously undiscovered rail assets and operations, many of which were not for sale before MidRail contacted them, and created detailed business plans to fold these assets into its vision for a next-generation freight rail business. MidRail's team of over twenty-five people cultivated relationships with the executives at the target assets and spent considerable time and resources in negotiating potential acquisitions, as well as in developing the analysis surrounding the incorporation of these assets into the MidRail network. One result of these efforts is MidRail's proprietary "M&A Pipeline": a spreadsheet, created internally by MidRail, of rail assets and operations that could be acquired and integrated into MidRail's new railroad model. The assets total more than \$3 billion in value and are categorized around the three prongs of MidRail's strategy: industrial rail assets; regional rail assets, and assets spun-off from Class I railroads, including storage yards.

56. The M&A Pipeline focuses on assets that are not publicly traded, making it all the more difficult to assemble information about those assets. MidRail nonetheless undertook significant efforts to gather non-public information about these assets and used it to build out the M&A Pipeline with extensive details about each asset. As a result, the M&A Pipeline contains

entries for nearly one hundred different industrial rail sites in North America and for each site it includes information for the number of miles of track at the site and the amount of expected revenue that could be generated per site under MidRail's operating model, among other information.

57. The pipeline details the discussions MidRail's team has had with the potential target. These entries contain valuable information about the inclinations of key people at each asset. They also serve as an ongoing record of the extensive outreach efforts MidRail engaged in to build the M&A Pipeline:

- For one chemical company with hundreds of miles of industrial track the pipeline describes MidRail's interactions with the relevant management and the deliverables the management has sought from MidRail.
- For an energy company the spreadsheet records MidRail's having met with all key supply chain members.
- For a different energy company, the spreadsheet records how an executive at the organization reacted to MidRail's proposal.
- For a Class I railroad with assets that could be spun off and sold to MidRail, the pipeline records multiple meetings between MidRail executives and the railroad's executives.

58. Copying entries from the phonebook this was not. MidRail developed the pipeline through a combination of its expertise at identifying rail assets together with its extensive efforts at building relationships with the key people at those assets (efforts that were helped, in no small part, by the reputations of the veteran MidRail team members). Through repeated contacts with those individuals, MidRail was able to build out the pipeline with confidential and proprietary information about these target assets. Along with all this information, the M&A Pipeline also includes MidRail's proprietary assessment of how successful each acquisition would be – an assessment based on both MidRail's internal financial modeling and its executives' decades of experience – expressed in a user-friendly five-tier

ranking. MidRail also determined, based on its expertise and extensive analyses, how the seemingly disparate rail assets could be combined at regional and national levels to realize untapped efficiencies.

59. In short, the M&A Pipeline is a proprietary guide to who owns industrial rail assets in North America, what the key characteristics of those assets are, how amenable their owners are to selling them to MidRail, and how they would add value when integrated into MidRail's strategic operating model. No public listing has the information that MidRail's M&A Pipeline does.

### **C. MidRail's Financial Models**

60. MidRail's has painstakingly developed financial models detailing the economic inputs and outputs for each for the different business lines of the MidRail Strategy. These proprietary models are built on thousands of rows of confidential data prepared and curated by MidRail and are designed in tandem with MidRail's operating plans. For example, the Operating Plan, discussed above, is paired with an Industrial Rail Model that analyzes the financial aspects of the MidRail's strategy for industrial rail.

61. Building out this financial model is no small feat. MidRail analyzed, down to the dollar, the economic aspects of a business strategy that has never before been attempted. Without any baseline on which to work, MidRail had to draw on its own expertise and innovative thinking to build out the model and make projections. MidRail did not stop there. Instead, it invested time and resources into continually updating and refining the models as MidRail acquired more data and revised its views. To recreate these models, a competitor would have to have access to, at the very least: (i) MidRail's operating plans; (ii) a team of MidRail's caliber; (iii) and the resources and time to devote to creating and continually revising the models.

62. MidRail has built several such proprietary models, including models for specific acquisitions, such as MidRail's analysis of a possible acquisition of Petroleum Services Corporation ("PSC"). These models set out itemized calculations and projections for planning, evaluating, and executing on potential investments to build out the MidRail Strategy. The insights from these models underlie much of MidRail's other work product, including its review committee memorandum, which are lengthy documents created by MidRail for evaluating and performing due diligence on potential investments.

63. Using these models, an investor would know how much capital was needed, how it would need to be deployed, and what return on investment could be expected – information that cannot be had anywhere else. In other words, the models allow potential investors, such as MidRail and PG, to know what to bid on specific assets to realize MidRail's economic advantage.

64. Together with its Operating Plan and M&A Pipeline, MidRail's Financial Models set MidRail apart as the only company with an actionable plan for taking historically underused rail assets and maximizing their value. These materials are key to MidRail's competitive advantage, as they enable MidRail to execute on a strategy that promises billions of dollars of value creation that could not be achieved with traditional railroad methods. Losing confidentiality over these materials would be an existential threat to MidRail's business model. MidRail has therefore taken steps to ensure that these materials, and the information they contain, are kept confidential. MidRail is careful to share these materials only with a select group of individuals and under circumstances where strict confidentiality is maintained.

#### **IV. MidRail and Partners Group Entered into a Non-Disclosure Agreement Shortly After Partners Group Expressed Interest in Partnering with MidRail**

65. To implement its strategies, MidRail has actively sought business partners who could fund and otherwise help leverage MidRail's platform into a dominant transportation infrastructure services and rail company.

66. On May 24, 2017, Scott Gardner, then a senior-vice president at PG, met with MidRail's president, Mr. Gupta, at a rail conference in San Francisco. PG is an investment firm focused on investments in the private equity, real estate, and infrastructure sectors. PG's operations in the United States are directly overseen by offices in Denver and Houston, ultimately reporting to Partners Group Holding AG in Switzerland. Gardner informed Mr. Gupta that PG wanted to enter the rail industry via a mergers and acquisition transaction and was interested in partnering with MidRail to capitalize on MidRail's industry expertise in acquiring and growing rail assets.

67. MidRail was also looking to execute acquisitions in the rail industry, but it was evident from these initial communications that neither Gardner nor PG was very knowledgeable about the rail industry. Gardner revealed to Mr. Gupta that PG was attempting to write a white paper on the rail industry, something that PG had never done before then. MidRail, by contrast, offered extensive experience as well as insights, analyses, strategies, and lists of acquisition targets that MidRail had developed through significant time and effort. These included MidRail's proprietary strategies for acquiring and developing rail assets as well as MidRail's proprietary M&A Pipeline underlying that strategy. Because these strategies and proprietary information are central to MidRail's business, MidRail required that PG enter into a non-disclosure agreement that protected MidRail's confidential information. Less than 48 hours after

PG and MidRail's initial meeting on May 24, 2017, MidRail sent its non-disclosure agreement to Gardner.

68. On June 2, 2017, MidRail and PG executed the NDA, which was subsequently renewed on January 17, 2019. NDA at 1 & Amend. No. 1. The NDA states that MidRail and PG "wish to explore the evaluation of a potential . . . 'Business Transaction'[]" and in connection with such a Business Transaction each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential." *Id.* § 1. A "Business Transaction" under the NDA is defined as a potential "acquisition, merger or investment opportunity of mutual interest" to PG and MidRail. *Id.* § 1.

69. The NDA defines "any information received from" MidRail "in connection [with] a Business Transaction" as "Confidential Information," with certain enumerated exceptions, including for information that becomes publicly available "other than as a result of disclosure by" PG. *Id.* § 2.

70. The NDA obligates PG "not to use any Confidential Information for any purpose except to evaluate, negotiate, engage in discussions concerning, and consummate a Business Transaction between the parties." *Id.* § 3. The NDA further obligates PG "not to disclose any Confidential Information to third parties, except to those Representatives who need to know such Confidential Information in order to assist" PG "to evaluate, negotiate, engage in discussions concerning or consummate the Business Transaction." *Id.*

71. PG further "agree[d] to be responsible for any breach of this Agreement by any of [PG's] Representatives and agrees to take all reasonable measures to restrain its Representatives from prohibited or unauthorized disclosure or use of Confidential Information." *Id.* § 3. "Representatives" is defined to include, a party's "affiliates and its and their directors, officers,

shareholders, employees, investors, advised entities, financing sources, portfolio companies, merger partners, agents [and] advisors (including, without limitation, attorneys, accountants, consultants, bankers, and financial advisors).” *Id.* § 2.

72. The NDA provides that upon MidRail’s written request, PG must “promptly return[] or destroy[]” all “documents and other tangible objects containing or representing Confidential Information which have been disclosed by” MidRail to PG, along with all copies thereof. *Id.* § 7.

73. The NDA also includes a separate “Exclusivity” clause. *Id.* § 4. This clause does not turn on confidential information and instead deals with a list of acquisition targets that PG “agree[d] (a) not to pursue . . . and (b) not to contact” “for a period of twelve months.” *Id.* These provisions are in addition to, and not in lieu of, the NDA’s other restrictions on using or disseminating MidRail’s confidential information.

74. The NDA thus sets out two separate levels of protections. First, PG is not permitted to bid on certain specific companies for twelve months. *Id.* Second, for all other companies (and for exclusivity-period companies after the twelve month period lapses), PG can compete with MidRail in trying to acquire them, but as per the non-use and non-disclosure clauses, PG cannot do so using MidRail’s confidential information. *Id.* § 3.

**V. At Partners Group’s Request, MidRail Shared Extensive Proprietary and Highly Confidential Information with Partners Group**

75. For almost two years after the NDA was signed, PG regularly solicited confidential information from MidRail pursuant to the NDA. These requests were part of extensive discussions between the parties about potential transactions. The information PG sought, and that MidRail provided, often concerned MidRail’s proprietary strategies and its trade secrets for implementing those strategies. MidRail provided PG with MidRail’s Operating Plan

and M&A Pipeline in 2017, and continued to share its Financial Models, as well as other confidential information, with PG over the next two years. When sharing such information, MidRail frequently reminded PG that the information was confidential and sensitive, using terms such as “confidential,” “super confidential,” “highly confidential,” and “do not copy or distribute.”

76. Throughout their relationship, PG continued to express interest in executing deals with MidRail and, on that basis, continued to solicit confidential information from MidRail pursuant to the NDA. These information sought included not just MidRail’s trade secrets, but also its confidential insights and analyses, such as MidRail’s assessments of specific investments. In August 2018, for example, PG requested “written answers or documents” that PG could incorporate into its own internal investment committee memo in connection with a potential deal that MidRail and PG were working on. PG asked MidRail for detailed information concerning “key customers,” the “contract structure, tenor and pricing by customer,” the “fundamental economics of each line,” “cost comparisons” of different routes, “key assets” that need to be acquired, historical and projected financial information, and the “actionable business development pipeline.”

77. MidRail undertook extensive efforts to accommodate these and other requests from PG for information. In response to PG’s lengthy list of questions from August 2018, for example, MidRail provided a line-by-line response, along with an analysis of specific assets and a detailed, 88-page business and operating plan (marked “CONFIDENTIAL”) for the target company.

78. MidRail also in 2018 provided PG with information about a potential acquisition of Patriot. Patriot operates twelve regional and short-line railroads throughout the United States,

comprising over 580 rail miles. Patriot therefore fits directly into MidRail's short-line railroad strategy and its overall strategy for combining short-line railroads with other underdeveloped assets, including Storage/SIT Yards and industrial rail yards, with which short-line railroads connect. Starting in 2017, and continuing into the following years, MidRail developed a proprietary and highly sensitive Patriot acquisition plan. MidRail was able to create this proprietary plan, in part, through its extensive discussions with Patriot management and MidRail's confidential knowledge that Patriot's private equity owner was then looking to sell it.

79. After MidRail discussed Patriot with PG in 2018, PG was very interested in acquiring Patriot and on several occasions requested MidRail to arrange meetings with Patriot to push for a management buyout. MidRail did not arrange these meetings due to the uncertainty surrounding the timing of a Patriot transaction. However, MidRail continued to refine its plans for Patriot in 2019 and kept PG updated on the latest developments.

#### **VI. Partners Group Established a New Fund that Featured MidRail's Confidential Information in Order to Solicit Investments**

80. On May 7, 2019, PG informed MidRail that it was in the process of setting up a new five billion Euro infrastructure investment fund, of which rail would be a key feature. PG explained that it had included rail, based upon the MidRail Investment Strategy – specifically carve outs of industrial rail assets – as an element of the new fund, which could provide significant capital, up to \$1 billion, for use in Business Transactions between MidRail and PG. At the time, MidRail had no reason to doubt that PG was conducting its fundraising and fund setup in compliance with the NDA, *i.e.*, that it was using MidRail's information solely to raise money for investments that would be performed in partnership with MidRail.

**VII. Partners Group Sought Confidential Information from MidRail about Two Investment Targets: Petroleum Services Corporation and Patriot Rail**

**A. The PSC Acquisition**

81. Also in 2019, MidRail contacted PG about purchasing Petroleum Services Corporation (“PSC”). PSC is a leading service provider to the oil and gas industry and the chemicals industry, with extensive experience in rail operations, including rail loading, rail unloading, and rail switching. It was being sold by its parent company at the time, SGS, with investment bank Rothschild & Co. overseeing the bidding process.

82. PG responded enthusiastically to MidRail’s proposal to work together on a bid for PSC. The PG personnel working on the proposed PSC transaction included Ed Diffendal, Managing Director, and Robert Vincze, Vice President. MidRail provided PG with multiple internal documents that MidRail had developed about the potential PSC acquisition. The documentation MidRail provided to PG included MidRail’s own review committee memorandum for the PSC acquisition as well as a proprietary financial model for MidRail’s proposed investment in PG operating plans that detailed how MidRail planned to grow PSC’s business.

83. These documents were based on and included MidRail’s trade secrets. They contain highly sensitive information and analyses about the MidRail Strategy, including its plans for industrial rail and its pipeline of potential acquisitions to perform following (in this case) the PSC acquisition to amplify its value. Indeed, MidRail did not see PSC as merely an acquisition; it viewed PSC as a platform company that would enable MidRail to execute its broader MidRail Strategy, including its plans to acquire industrial-rail assets. MidRail’s PSC business plans and financial models were built around, and provided a roadmap for, the MidRail Strategy. The materials and information MidRail provided to PG laid out, in detail, how after acquiring PSC,

MidRail would invest \$1 billion or more in additional assets to build out the company into MidRail's vision for a new type of railroad.

84. If these confidential materials and information were to come into the hands of one of MidRail's competitors, it would provide them with a roadmap for copying MidRail's business model and undercutting its profits. Consistent with their confidential nature, MidRail provided these documents and information to PG pursuant to the NDA and on the express understanding that they would be used by PG exclusively for evaluating and collaborating on a potential Business Transaction with MidRail.

85. After receiving MidRail's documentation, PG continued to express interest in working together with MidRail on acquiring PSC. MidRail engaged in more than 20 separate discussions with PG personnel, including Diffendal and Vincze, about PSC from early- to mid-2019. PG requested granular detail about PSC and MidRail's plans for it, and MidRail accommodated these requests. As part of these PSC discussions, MidRail explained to PG how PSC could be combined with Patriot to create an integrated railroad and rail services company with nationwide reach.

86. Still believing that PG was genuinely interested in partnering for this acquisition, MidRail provided PG with a proposed term sheet for how the two entities could work together. The term sheet included, among other things, the proposed amount that MidRail would invest and the total amount that MidRail believed would need to be invested. However, during conference calls from April 29 to May 1, 2019, PG representatives Diffendal and Vincze informed MidRail that PG was prepared to move forward only on significantly lower profit sharing terms between PG and MidRail. Ultimately the parties did not partner on the PSC acquisition. As PSC is one of the entities covered by the NDA's "Exclusivity" clause that PG

had “agree[d] (a) not to pursue . . . and (b) not to contact,” NDA § 4, PG asked MidRail for permission to make a bid for PSC without MidRail. MidRail declined to waive its rights under the NDA. PSC was subsequently acquired by a third party.

**B. The Patriot Acquisition**

87. PG continued to express interest in working with MidRail on a transaction, and MidRail, believing PG was acting in good faith, continued to provide PG confidential, proprietary information, this time in connection with the potential acquisition of Patriot, which had since been entered into a formal sales process by its parent. As explained below, PG specifically solicited confidential information from MidRail about how to apply MidRail’s PSC strategy to Patriot. On the promise that PG would partner with MidRail in the Patriot deal, MidRail spent considerable time and resources analyzing Patriot and educating PG on exactly how to maximize Patriot’s value. But PG never intended to pursue Patriot with MidRail.

88. In or around June 2019, PG explained to MidRail that it had put in a first round bid for Patriot but promised that if PG made it into the second round, it would work together with MidRail to win the auction. PG also promised that after the two companies acquired Patriot, PG would work together with MidRail to implement the MidRail M&A pipeline and MidRail Strategy using Patriot. On June 14, 2019 – after PG submitted its opening bid on Patriot – PG requested an opportunity to discuss MidRail’s plans for Patriot on the following Monday.

89. On June 17, 2019, on a conference call, PG asked MidRail about the similarities between the business cases for PSC and Patriot. PG specifically asked about how the growth plan that MidRail developed regarding PSC could be applied to Patriot. (That PG, an international firm with billions in assets, would specifically seek MidRail’s insights illustrates how unique and valuable MidRail’s trade secrets are.)

90. Believing that PG had a good-faith interest in pursuing Patriot as a Business Transaction between the parties, MidRail responded to PG's questions by providing PG with confidential information on what modifications would need to be made to MidRail's PSC materials to make them fit Patriot. MidRail explained how the plans it had provided PG regarding PSC could be, with certain modifications, applied to the Patriot acquisition. MidRail and PG reviewed in detail MidRail's plans for Patriot, including how it could be integrated into the MidRail Strategy. MidRail also shared with PG specific names of targets and investment opportunities from MidRail's M&A Pipeline that could be used to build out Patriot. In these discussions, PG also obtained analytics from MidRail's Financial Models, including MidRail's projected internal rates of return on invested capital under various growth and acquisition scenarios for Patriot. During these discussions, PG agreed with MidRail that the MidRail Strategy that the parties had discussed at length regarding PSC could be applied to Patriot.

**VIII. In a Betrayal of MidRail's Trust and in Clear Violation of the NDA, Partners Group Used MidRail's Confidential Information to Bid on Patriot Without MidRail, Eliminating MidRail's Economic Advantage**

91. Shortly after PG asked for, and MidRail provided, MidRail's proprietary strategies and analyses on Patriot, PG informed MidRail that, contrary to its prior representations, it would be proceeding alone on the Patriot transaction. Rather than partnering, MidRail and PG would be competing for Patriot. PG, though, had no interest in competing fairly. In pursuing its solo bid for Patriot, PG improperly relied on the confidential information and strategies MidRail had provided under the NDA and shared that information with third parties while passing it off as PG's own.

92. PG representatives, including Diffendal, had multiple meetings with Patriot's management in or around late July 2019. During these meetings, Diffendal, acting on behalf of PG, explained to Patriot what PG's plans for Patriot were post-acquisition. These plans were a

carbon copy of the strategies that MidRail had explained during the June 17, 2019, conference call and in the materials it had been providing PG for the last two years. Among other things, PG shared information from MidRail's M&A Pipeline and Operating Plan. Instead of explaining that these were MidRail's concepts and trade secrets, PG passed them off as its own. PG made these representations with the intent to benefit PG at MidRail's expense.

93. In late July 2019, MidRail learned that PG was breaching the NDA. MidRail acted swiftly to protect its confidential and proprietary information. On August 1, 2019, it sent a letter, through counsel, to PG seeking a certification that the information MidRail had provided to PG pursuant to the NDA "is not being used for evaluation or consummation of any transaction except in partnership with MidRail." MidRail's letter did not seek to stop PG from competing for the Patriot asset, only to ensure that PG competed fairly and not in breach of the NDA. If PG wanted to bid on Patriot without MidRail, PG could not rely on MidRail's confidential and proprietary financial models and business strategies; PG would have to develop, or buy, its own models and strategies. MidRail had found a new financial partner and still planned on acquiring Patriot, so it was critical for MidRail to ensure that it would not be facing unfair competition from PG.

94. Four days later, on August 5, 2019 – just one week before the second-round bids were due for Patriot – Diffendal responded to MidRail's two page letter with a brief, two-line email stating, "Partners Group confirms that it has been, and continues to be, in compliance with the NDA, including Section 7 regarding the return or destruction of confidential information." As this message fell far short of MidRail's request, MidRail wrote to PG again, through counsel, on August 8, 2019. The letter pointed out the insufficiency of Diffendal's response and again

asked for specific confirmation that PG has “not used to date and will not use going forward Confidential Information for any other purpose except to enter into a transaction with MidRail.”

95. The next day, August 9, 2019, Diffendal replied, “We are in receipt of your letter. We are looking into the issues raised and will reply next week,” *i.e.*, after the Monday, August 12, 2019 deadline for second round bids for Patriot. Meanwhile, PG continued to pursue aggressively the Patriot asset using MidRail confidential information and trade secrets as its economic foundation.

96. PG’s evasive responses confirmed MidRail’s fears: following the PSC deal, PG never intended to partner with MidRail on Patriot – PG simply wanted the greatest advantage it could obtain in bidding on Patriot. Nothing had changed between the time PG solicited MidRail’s guidance and strategy for the Patriot bid and the time that PG attempted to cut MidRail out. PG did not just breach the NDA by misappropriating confidential information, it induced MidRail to create new confidential information and strategies related to Patriot which PG actively solicited for the obvious purpose of using it to bid against MidRail.

97. Faced with PG’s continued breach of the NDA and its refusal to remedy those breaches, MidRail was forced to take action to protect its interests. It filed a summons with notice against PG for breach of contract on August 12, 2019. NYSCEF Doc. No. 1 at 1 (Summons with Notice (Aug. 12, 2019)). MidRail and its financing partner also increased their bid for Patriot to account for the fact that they were competing with an entity, PG, that was relying on the same business plan as MidRail and possessed all the same confidential information as MidRail about how to build Patriot into a much larger and significantly more valuable entity.

98. MidRail's original bidding strategy relied on the discrepancy between how much could be earned using MidRail's proprietary strategies and how much Patriot could earn under a conventional growth plan used by MidRail's competitors. Based on MidRail's anticipated cash investment and equity interest in Patriot, MidRail was motivated to put in a bid that was as low as possible but still sufficient to outbid conventional market participants. During the period when MidRail believed its proprietary strategies were still confidential, MidRail could confidently assume that all other bidders would base their bids on some variation of a conventional growth plan. The conventional growth plans could only produce limited value from the Patriot acquisition, so bids based on that model were constrained by a ceiling lower than what MidRail's anticipated profit margins could afford.

99. But after PG breached the NDA and actively exploited MidRail's confidential information as part of its Patriot bid, MidRail knew that it was not competing against just conventional thinking; it was competing against its own proprietary innovations and strategies. As a result, MidRail and its equity financing partner were forced to increase their bid substantially, ultimately bidding over \$100 million more than MidRail originally anticipated. The increase in the bid came at a substantial cost to MidRail, reducing both the investment's overall profitability and MidRail's own share of those reduced profits.

100. MidRail and its financing partner won the bidding and have since proceeded to close the acquisition of Patriot. But for PG's breach, MidRail would have won the auction with a substantially lower bid.

**IX. Partners Group Caused MidRail to Suffer Damages in the Patriot Bid and in the Diminution in Value of MidRail's Confidential and Proprietary Information****A. MidRail Suffers Lost Profits**

101. PG's misappropriation of MidRail's confidential information forced MidRail to bid higher than it otherwise would have needed to win the Patriot auction process, thereby reducing MidRail's profits on the Patriot transaction. Being forced to overbid has reduced MidRail's potential return both on its direct equity interest and on its carried interest in Patriot. The increased bid also caused MidRail's hurdle rate to increase, meaning that MidRail will not start earning carry until a higher return is achieved than under the originally-contemplated bid. As a result of these direct consequences of PG's misappropriation, MidRail's profits on the transaction will be reduced by at least tens of millions of dollars from what they otherwise would have been.

**B. MidRail's Competitive Advantage Is Threatened**

102. MidRail's competitive advantage in the freight rail industry and the value of MidRail's proprietary ideas and strategies have been diminished because of PG's breaches and misappropriations. Prior to these breaches and misappropriations, MidRail was positioned to reap the benefits of the skill, experience, and labor it put into developing its proprietary strategies and trade secrets. Now, MidRail faces a competitor, PG, who is using MidRail's confidential information, undercutting MidRail's position in the market. And because PG is not keeping this confidential information to itself, but rather sharing it in the marketplace – both in the context of specific bids on assets like Patriot and in connection with broader fundraising efforts, such as with PG's new five billion Euro infrastructure fund – there is a risk that more MidRail competitors will gain access to MidRail's valuable confidential information, including its trade secrets.

**CLAIMS FOR RELIEF**

**First Cause of Action**

**Breach of Contract**

103. MidRail re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

104. MidRail and PG entered into a valid contract, the NDA.

105. The contract prohibited PG from using the confidential information MidRail provided pursuant to the agreement for any purpose other than exploring or executing on potential transactions with MidRail.

106. The contract provides that “[i]n any action or proceeding arising out of or relating to this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief that may be granted, reasonable attorneys’ fees, costs, and expenses incurred by such prevailing party.” NDA § 9.

107. MidRail provided PG with confidential information pursuant to the NDA.

108. PG breached the NDA by using MidRail’s confidential information in its attempt to purchase Patriot without MidRail.

109. On information and belief, PG continues to rely improperly on MidRail’s confidential information in evaluating potential transactions and in soliciting investments.

110. MidRail has suffered damages because of PG’s breaches of the NDA, including the loss in value to MidRail of the Patriot investment due to MidRail’s increase in its bid.

**Second Cause of Action**

**Unjust Enrichment  
(in the alternative to Breach of Contract)**

111. MidRail re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

112. PG has been unjustly enriched at MidRail's expense through its exploitation of MidRail's confidential information.

113. PG caused injury to MidRail by causing MidRail to increase its bid for the Patriot asset and by diminishing the value of MidRail's proprietary and confidential business information.

114. It would be against equity and good conscience to permit PG to retain the value of MidRail's proprietary and confidential business information.

**Third Cause of Action**

**Unfair Competition**

115. MidRail re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

116. MidRail, through its own skills, expenditures, and labors, developed confidential and proprietary business plans and confidential information, including the M&A Pipeline, the Operating Plan, and the Financial Models.

117. PG obtained access to MidRail's confidential information by representing that it was interested in entering into transactions with MidRail and by entering into the NDA.

118. PG misappropriated the information in bad faith by using it to compete against MidRail in the Patriot transaction.

119. PG also misappropriated the information by misrepresenting, in bad faith, MidRail's information to third parties as PG's own creations.

120. Because of PG's tortious conduct, MidRail has suffered damages including loss of potential profits and competitive harms.

#### **Fourth Cause of Action**

##### **Fraud**

121. MidRail re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

122. In or about June 2019, PG falsely represented to MidRail that PG was interested in working together to win the auction for Patriot.

123. On Friday, June 14, 2019, PG requested an opportunity to discuss MidRail's plans for Patriot on the following Monday. On the conference call on June 17, 2019, PG requested specific details concerning how MidRail's growth plan for PSC could be applied to Patriot.

124. MidRail relied on PG's representations that its requests for MidRail's confidential information concerning Patriot were part of a good faith effort to work together toward acquiring Patriot. But PG's representations to MidRail were materially false and misleading because PG in fact intended to proceed, and did proceed, without MidRail in the Patriot auction. PG then used confidential information provided by MidRail in connection with PG's attempt to acquire Patriot.

125. PG's fraud continued when it falsely represented to Patriot's management that PG's post-acquisition plans for Patriot were PG's own ideas and strategies.

126. PG knew that its representations to MidRail and to Patriot were materially false and misleading.

127. MidRail relied on PG's false representations when MidRail shared its confidential information with PG, and MidRail was damaged when MidRail increased its anticipated bid on the Patriot asset.

### **Fifth Cause of Action**

#### **Misappropriation of Trade Secrets**

128. MidRail re-alleges and incorporates by reference the allegations set forth in the foregoing paragraphs.

129. A legal relationship exists between MidRail and PG in the form of the NDA.

130. Under the terms of the NDA, MidRail provided PG with proprietary materials including the M&A Pipeline, the Operating Plan and Financial Models.

131. The M&A Pipeline represents a detailed list of acquisition targets (with total value of over \$3 billion) assembled by MidRail. Many of these targets are not publicly listed for sale. The pipeline was developed by MidRail by identifying, contacting, and developing relationships with a number of businesses with rail assets or operations.

132. The Operating Plan is a proprietary 40-plus page document, detailing how to transform how an industrial rail site is operated. It is highly valuable, as it provides a roadmap for unlocking \$500 million in value from even a mid-size company with industrial rail sites. It was developed through significant time and effort by MidRail.

133. The Financial Models detail the economic inputs and outputs for as well as proprietary quantitative analysis of, different aspects of MidRail's Strategy, including the Industrial Rail Strategy and potential acquisitions. The financial models are integral to determining how much capital is needed, and how it should be deployed, when executing on MidRail's Strategy. The financial models were developed through significant time and effort by MidRail.

134. MidRail has taken steps to protect the confidential nature of its M&A Pipeline, Industrial Rail Operating Plan, and financial models.

135. PG has used MidRail's M&A pipeline, Operating Plan, and financial models in breach of the NDA.

136. MidRail has suffered damages because of PG's misappropriation of MidRail's trade secrets in an amount to be determined at trial.

**RELIEF DEMANDED**

137. WHEREFORE, Plaintiff MidRail respectfully requests that this Court award the following relief:

A. Awarding compensatory damages to MidRail in an amount to be determined at trial;

B. Awarding punitive damages to MidRail in an amount to be determined at trial;

C. Entering a permanent injunction barring PG, its affiliates and its and their directors, officers, shareholders, employees, investors, advised entities, financing sources, portfolio companies, merger partners, agents, and advisors from breaching the NDA, using MidRail's confidential information, and/or unfairly competing with MidRail, including appropriate oversight or remedial measures to ensure PG's compliance with such an injunction

D. Granting MidRail costs and disbursements, including reasonable attorneys' fees and expenses incurred in connection with this action; and

E. Such other and further relief as the Court deems just and proper.

Dated: New York, New York  
January 17, 2020

Respectfully submitted,  
**BOIES SCHILLER FLEXNER LLP**  
/s/ Matthew Schwartz

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