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Clerk of Court  
Superior Court of CA,  
County of Santa Clara  
16CV294673  
Reviewed By:R. Walker

9 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SANTA CLARA**

11 DEAN DRULIAS, on Behalf of Himself and  
12 All Others Similarly Situated,

13 Plaintiff,

14 v.

15 1st CENTURY BANCSHARES, INC.,  
16 ALAN I. ROTHENBERG, WILLIAM W.  
17 BRIEN, M.D., DAVE BROOKS, JASON P.  
18 DINAPOLI, ERIC M. GEORGE, ALAN D.  
19 LEVY, BARRY D. PRESSMAN, ROBERT  
20 A. MOORE, LEWIS N. WOLFF, NADINE  
21 WATT, STANLEY R. ZAX, and SANDLER  
22 O'NEILL & PARTNERS, L.P.,

23 Defendants.

CASE NO. 16CV294673

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR  
BREACH OF FIDUCIARY DUTY AND  
FAILURE TO DISCLOSE**

[Public Version]

**JURY TRIAL DEMANDED**

JUDGE: Honorable Brian C. Walsh  
DEPT: 1C

Date Action Filed: May 3, 2016

1 Plaintiff, as and for his First Amended Class Action Complaint, alleges as follows upon  
2 personal knowledge as to himself and his own acts, and upon information and belief derived from,  
3 *inter alia*, a review of documents filed with the Securities and Exchange Commission (“SEC”)  
4 and the limited deposition discovery taken in this Action to date, as to all other matters:

5 **NATURE OF THE ACTION**

6 1. This is a shareholder class action (the “Action”) on behalf of Plaintiff and the  
7 other former public stockholders of 1st Century Bancshares, Inc. (“1st Century” or the  
8 “Company”) common stock against 1st Century, the members of its board of directors (the  
9 “Board” or the “Individual Defendants) and Sandler O’Neill & Partners, L.P. (“Sandler”). The  
10 Action challenges Defendants’ actions in causing 1st Century to be sold to privately-held Midland  
11 Financial Co. (“Midland”) on or about July 1, 2016 (the “Sale Agreement”), in a sale that was  
12 orchestrated by 1st Century’s Chief Executive Officer (“CEO”) Alan I. Rothenberg, and President  
13 and Chief Operating Officer (“COO”) Jason P. DiNapoli (“DiNapoli”), to ensure 1st Century was  
14 sold to a buyer that would keep them on in their executive positions with lucrative employment  
15 contracts to boot. Rothenberg and DiNapoli did so once the sale of 1st Century became inevitable  
16 in the face of pressure from a short term activist investor, Maltese Capital Management LLC, who  
17 had acquired a significant amount of 1st Century’s stock and insisted that the Company be put up  
18 for sale with the implicit, if not explicit, threat of a public proxy fight to remove the then current  
19 senior management and directors if its wishes were not acceded to. Rothenberg and DiNapoli  
20 were joined in their actions by the other members of 1st Century’s board of directors (the  
21 “Board”),

[REDACTED]

22  
23  
24 2. Indeed, the Defendants have publicly admitted that all 1st Century Board  
25 members had economic interests in the Sale Agreement that were different from, or in addition to,  
26 those of 1st Century shareholders generally, including but not limited to, that CEO Alan I.  
27 Rothenberg had entered into a lucrative employment agreement with Midland and has received  
28 over \$2.7 million in cash payments; that President DiNapoli too had entered into a lucrative

1 employment agreement with Midland and has received over \$4.1 million in cash payments; and  
2 that each of the Company's other directors has received over \$22,000 in cash payments as a result  
3 of the Sale Agreement.

4 3. The domination and control exercised by CEO Rothenberg and President  
5 DiNapoli over the Board is further illustrated by the fact that not only did they browbeat the Board  
6 into allowing them to simultaneously negotiate their own generous employment agreements with  
7 Midland at the very same time they were negotiating the sale of 1st Century to Midland, but by  
8 the fact that on February 16, 2016 when Midland suddenly communicated that it was reducing its  
9 proposed offering price from \$12.00 to \$11.13 per share, [REDACTED]

10 [REDACTED]  
11 [REDACTED]. With Rothenberg and DiNapoli's financial  
12 and professional futures thus contractually assured, the Board proceeded to agree to a decreased  
13 price of \$11.22 per share for the Company. [REDACTED]

14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]. Rothenberg and DiNapoli's domination and  
17 control over the Board and the process is further illustrated by the fact that the Board allowed  
18 them alone among Board members to direct and oversee management's creation of financial  
19 projections used as the primary valuation metric of 1st Century's value were it to remain a  
20 standalone company instead of being sold going forward, including the all important ultimate  
21 projections used by investment bank Sandler in rendering the fairness opinion touted to plaintiff  
22 and shareholders that the price to be paid by Midland was fair to shareholders.<sup>1</sup> Indeed,  
23 Rothenberg and DiNapoli repeatedly oversaw the manipulation/changing of those projections  
24 during the sale process in order to ensure that the price paid by Midland could be defended as fair.

25 4. Rothenberg and DiNapoli's control over the Board and the sale process is further  
26

27 <sup>1</sup> [REDACTED]

28 [REDACTED]

1 illustrated by the fact that they were allowed by the Board to retain Sandler to advise the Board,

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]. The Board even allowed

9 Rothenberg and DiNapoli to structure Sandler's compensation such that it was paid \$1.66 million  
10 when the sale to Midland closed, but would have been paid only \$250,000 if it had not opined that  
11 the purchase price was fair and hence the sale to Midland not have closed.

12 **JURISDICTION**

13 5. This Court has jurisdiction over the subject matter of this Action pursuant to the  
14 California Constitution, Article VI, Section 10, because this case is an action not given by statute  
15 to other trial courts.

16 6. This Court has jurisdiction over the Defendants in this Action because each  
17 Defendant was a citizen of California at the time of the wrongful conduct alleged herein and each  
18 Defendant, [REDACTED], continues to be a citizen of  
19 California. Further, 1st Century is a corporation which was headquartered in California at all  
20 relevant times and the improper conduct alleged in this Complaint occurred in and/or was directed  
21 at California.

22 7. Venue lies in this Court because, upon information and belief derived from public  
23 records, at the time this lawsuit was filed Defendants Lewis N. Wolff and Jason P. DiNapoli were  
24 residents of Santa Clara County. Further, subsequent to the filing of this Action, all Defendants,  
25 including 1st Century, have explicitly or implicitly consented in writing to venue in this Court,  
26 including by filing a motion (jointly with Plaintiff) for preliminary approval of a class-wide  
27 settlement of this Action, which motion was denied by this Court on the merits on November 18,  
28 2016. Any attempt to revoke that written consent following an adverse ruling by this Court on

1 such a substantive motion would constitute forum shopping or judge shopping and violate the  
2 public policy of California.

3 8. This action challenges the internal affairs or governance of 1st Century and hence  
4 is not removable to Federal Court under the Class Action Fairness Act of 2005 ("CAFA") or the  
5 Securities Litigation Uniform Standards Act ("SLUSA"), 15 U.S.C. § 78bb(f).

6 **THE PARTIES**

7 9. Plaintiff Dean Drulias is a citizen of California who has owned shares of 1st  
8 Century at all relevant times.

9 10. Defendant 1st Century was at all relevant times a California citizen. The  
10 Company was a bank holding company headquartered in California with one subsidiary, 1st  
11 Century Bank National Association ("1st Century Bank"), also headquartered in California. 1st  
12 Century Bank was a commercial bank that focuses on family and closely held middle market  
13 businesses, professional service firms, real estate professionals and investors, the legal,  
14 accounting and medical professions, and small and medium-sized businesses and individuals  
15 principally. Prior to its sale to Midland, 1st Century's common stock was traded on the  
16 NASDAQ CM under the symbol "FCTY." Following its sale to the privately held Midland, 1st  
17 Century's stock is no longer traded on a public stock exchange. This Court has jurisdiction over  
18 1st Century because it was a California citizen at all relevant times and because its conduct  
19 challenged in this Action occurred in, was directed at, and/or intended to have its primary effect  
20 in, California.

21 11. Defendant Alan I. Rothenberg ("CEO Rothenberg" or "Mr. Rothenberg") served  
22 as Chairman of the Board and as CEO of 1st Century from 2007 until the consummation of the  
23 Sale Agreement. He currently serves as Chairman of 1st Century, a division of Midland's wholly  
24 owned subsidiary, MidFirst Bank ("MidFirst"). This Court has jurisdiction over Mr. Rothenberg  
25 because he is and was a citizen of California at all relevant times and because Mr. Rothenberg's  
26 conduct challenged in this Action occurred in substantial part, was directed at, and/or was  
27 intended to have its primary effect in, California.

1           12.           Defendant William W. Brien, M.D. ("Dr. Brien") served as a director of 1st  
2 Century from 2012 until the consummation of the Sale Agreement. This Court has jurisdiction  
3 over Dr. Brien because he was a citizen of California at the time of the wrongful conduct alleged  
4 herein and because Dr. Brien's conduct challenged in this Action occurred in substantial part, was  
5 directed at, and/or was intended to have its primary effect in, California.

6           13.           Defendant Dave Brooks ("Mr. Brooks") served as a director of 1st Century from  
7 2007 until the consummation of the Sale Agreement. This Court has jurisdiction over Mr. Brooks  
8 because he is and was a citizen of California at all relevant times and because Mr. Brooks'  
9 conduct challenged in this Action occurred in substantial part, was directed at, and/or was  
10 intended to have its primary effect in, California.

11           14.           Defendant Jason P. DiNapoli ("Mr. DiNapoli" or "President DiNapoli") served as  
12 a director and Chief Operating Officer of 1st Century from 2007 until the consummation of the  
13 Sale Agreement, as President of 1st Century at all relevant times, as President of 1st Century  
14 Bank from 2007 until the consummation of the Sale Agreement, and as CEO of 1st Century Bank  
15 from 2008 until the consummation of the Sale Agreement. He currently serves as an Executive  
16 Vice President of MidFirst and as President and Chief Executive Officer of 1st Century, a  
17 division of MidFirst. This Court has jurisdiction over Mr. DiNapoli because he is and was a  
18 citizen of California at all relevant times and because Mr. DiNapoli's conduct challenged in this  
19 Action occurred in substantial part, was directed at, and/or was intended to have its primary effect  
20 in, California.

21           15.           Defendant Eric M. George ("Mr. George") served as a director of 1st Century  
22 from 2008 until the consummation of the Sale Agreement. This Court has jurisdiction over  
23 Mr. George because he is and was a citizen of California at all relevant times and because  
24 Mr. George's conduct challenged in this Action occurred in substantial part, was directed at,  
25 and/or was intended to have its primary effect in, California.

26           16.           Defendant Alan D. Levy ("Mr. Levy") served as a director of 1st Century from  
27 2007 until the consummation of the Sale Agreement. This Court has jurisdiction over Mr. Levy  
28 because he is and was a citizen of California at all relevant times and because Mr. Levy's conduct

1 challenged in this Action occurred in substantial part, was directed at, and/or was intended to have  
2 its primary effect in, California.

3 17. Defendant Barry D. Pressman ("Mr. Pressman") served as a director of 1st  
4 Century from 2007 until the consummation of the Sale Agreement. This Court has jurisdiction  
5 over Mr. Pressman because he is and was a citizen of California at all relevant times and because  
6 Mr. Pressman's conduct challenged in this Action occurred in substantial part, was directed at,  
7 and/or was intended to have its primary effect in, California.

8 18. Defendant Robert A. Moore ("Mr. Moore") served as a director of 1st Century  
9 from 2007 until the consummation of the Sale Agreement. This Court has jurisdiction over  
10 Mr. Moore because he is and was a citizen of California at all relevant times and because  
11 Mr. Moore's conduct challenged in this Action occurred in substantial part, was directed at,  
12 and/or was intended to have its primary effect in, California.

13 19. Defendant Lewis N. Wolff ("Mr. Wolff") has served as a director of 1st Century  
14 from 2007 until the consummation of the Sale Agreement. This Court has jurisdiction over  
15 Mr. Wolff because he is and was a citizen of California at all relevant times and because Mr.  
16 Wolff's conduct challenged in this Action occurred in substantial part, was directed at, and/or was  
17 intended to have its primary effect in, California.

18 20. Defendant Nadine Watt ("Ms. Watt") served as a director of 1st Century from  
19 2008 until the consummation of the Sale Agreement. This Court has jurisdiction over Ms. Watt  
20 because she is and was a citizen of California at all relevant times and because Ms. Watt's  
21 conduct challenged in this Action occurred in substantial part, was directed at, and/or was  
22 intended to have its primary effect in, California.

23 21. Defendant Stanley R. Zax ("Mr. Zax") served as a director of 1st Century from  
24 2011 until the consummation of the Sale Agreement. This Court has jurisdiction over Mr. Zax  
25 because he is and was a citizen of California at all relevant times and because Mr. Zax's conduct  
26 challenged in this Action occurred in substantial part, was directed at, and/or was intended to have  
27 its primary effect in, California.

28 22. Defendant Sandler is an investment banking firm with offices in San Francisco,

1 California. Sandler was retained by 1st Century to act as its financial advisor in connection with  
2 the Sale Agreement, and to render an opinion as to whether the consideration to be paid by  
3 Midland to 1st Century shareholders was fair to such shareholders. This Court has jurisdiction  
4 over Sandler because Sandler transacts business in California, including business related to the  
5 transaction challenged herein. Further, the conduct of Sandler and its employees challenged in  
6 this Action occurred in substantial part, was directed at, and/or was intended to have its primary  
7 effect in California.

8 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

9 23. Under applicable law, the directors of a publicly held company such as 1st  
10 Century have fiduciary duties of care, loyalty, disclosure, good faith and fair dealing and are  
11 liable to shareholders for breaches thereof. They were required to: (i) use their ability to control  
12 and manage 1st Century in a fair, just and equitable manner; (ii) act in furtherance of the best  
13 interests of 1st Century and its shareholders; (iii) act to maximize shareholder value in connection  
14 with any change in ownership and control; (iv) govern 1st Century in such a manner as to heed  
15 the expressed views of its public shareholders; (v) refrain from abusing their positions of control;  
16 and (vi) not to favor their own interests, the interests of 1st Century's senior management or  
17 Midland's interests at the expense of 1st Century and its public shareholders. Where, as here, it  
18 appears that a director has obtained any personal benefit from dealing with the corporation, and  
19 the transaction is drawn into question as between him and the stockholders of the corporation, the  
20 burden is upon the director or officer to show that the transaction has been entirely fair, open and  
21 in the utmost good faith.

22 24. As alleged in detail below, each of the Individual Defendants have breached,  
23 and/or aided other Defendants' breaches of, their fiduciary duties to 1st Century's public  
24 shareholders by acting to cause or facilitate the Sale Agreement because the Sale Agreement was  
25 not in the best interests of those shareholders, but was in the best interests of the Individual  
26 Defendants, particularly Messrs. Rothenberg and DiNapoli.

27 25. Because the Individual Defendants have knowingly or recklessly breached their  
28 fiduciary duties in connection with the Sale Agreement, and/or are personally profiting from the



1 same, the burden of proving the inherent or entire fairness of the Sale Agreement, including all  
2 aspects of its negotiation, structure, and terms, is borne by the Individual Defendants as a matter  
3 of law.

4 26. Further, as alleged in detail *infra*, the Individual Defendants breached their  
5 fiduciary duty of disclosure in that the Individual Defendants caused the Proxy Statement to be  
6 filed with the SEC and mailed to Plaintiff and 1st Century's other public shareholders in  
7 conjunction with seeking shareholders' vote on the Sale Agreement, but concealed therein certain  
8 material information which a reasonable shareholder would find material in determining whether  
9 to vote in favor of the sale of the Company. Among other things, the Defendants have failed to  
10 disclose material information regarding (i) the conflicts of interest of 1st Century's directors, and  
11 (ii) the sale process.

#### 12 CLASS ACTION ALLEGATIONS

13 27. Plaintiff brings this action as a class action pursuant to California Code of Civil  
14 Procedure § 382 on behalf of himself and all other shareholders 1st Century as of May 17, 2016  
15 or their successors in interest (the "Class"). The following are excluded from the Class (a) the  
16 Defendants herein and any person(s), firm(s), trust(s), corporation(s), or other entit(ies) related to  
17 or affiliated with them as defined under SEC rules, (b) Maltese Capital Management LLC and any  
18 person(s), fund(s), firm(s), trust(s), corporation(s), or other entit(ies) related to or affiliated with  
19 them as defined under SEC rules and (c) Midland and any person(s), firm(s), trust(s),  
20 corporation(s), or other entit(ies) related to or affiliated with them as defined under SEC rules.

21 28. The members of the Class are so numerous that joinder of all of them would be  
22 impracticable. While the exact number of Class members is unknown to Plaintiff, and can be  
23 ascertained only through appropriate additional discovery, Plaintiff believes there are many  
24 hundreds, if not thousands, of Class members. As of the May 17, 2016 record date for the Sale  
25 Agreement, 1st Century had over 10.3 million shares of common stock outstanding held by at  
26 least 273 holders of record.

27 29. Plaintiff's claims are typical of the claims of the Class since Plaintiff and the other  
28 members of the Class have and have sustained harm arising out of Defendants' breaches of their

1 fiduciary duties. Plaintiff does not have any interests that are adverse or antagonistic to those of  
2 the Class. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is  
3 committed to the vigorous prosecution of this action and has retained counsel competent and  
4 experienced in this type of litigation.

5 30. There are questions of law and fact common to the members of the Class that  
6 predominate over any questions which, if they exist, may affect individual Class members. The  
7 predominant questions of law and fact include, among others, whether:

8 a. the Defendants have breached their fiduciary duties to the detriment of 1st  
9 Century shareholders;

10 b. Sandler has aided and abetted the other Defendants' breaches of fiduciary  
11 duties;

12 c. Plaintiff and the Class are entitled to declaratory, injunctive and other  
13 equitable relief; and

14 d. Plaintiff and the Class have been damaged and the extent to which they  
15 have sustained damages, and what is the proper measure of those damages.

16 31. A class action is superior to all other available methods for the fair and efficient  
17 adjudication of this controversy since joinder of all members is impracticable. Further, as  
18 individual damages may be relatively small for most members of the Class, the burden and  
19 expense of prosecuting litigation of this nature makes it unlikely that members of the Class would  
20 prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action  
21 as a class action. Further, the prosecution of separate actions by individual members of the Class  
22 would create a risk of inconsistent or varying results, which may establish incompatible standards  
23 of conduct for Defendants.

24 **SUBSTANTIVE ALLEGATIONS**

25 **Prior to the Sale to Midland, 1st Century was a Strong Company with Strategic Plans to**  
26 **Raise Additional Capital to Fuel its Continued Growth**

27 32. Prior to its sale to Midland, 1st Century was a strong company which was well  
28 positioned for future growth as a stand-alone entity. In this regard, since 2006, the Company's

1 total assets have increased at a compounded annual rate of 15.7%. Prior to its sale, the Company  
2 had projected this growth to continue, and indeed anticipated that its total assets in 2019 would be  
3 valued at over \$1.4 billion, a more than 100% increase from the approximately \$851 million in  
4 assets 1st Century held at the end of 2015.

5 33. In this regard, the Individual Defendants were so confident in 1st Century's long-  
6 term prospects as a public company that in September 2015 they specifically determined to raise  
7 \$30 million or more in new capital through a public offering of common stock, which [REDACTED]

8 [REDACTED]  
9 [REDACTED]  
10 The Individual Defendants thereafter engaged Sandler as lead underwriter in the capital raise and  
11 on September 25, 2015 filed a draft Registration Statement on Form S-1 with the SEC (the "S-1")  
12 to raise \$30 million.

13 **After Funds Affiliated with Maltese Capital Management LLC Acquired a Stake in 1st**  
14 **Century and Pushed for a Quick Sale, Rothenberg and DiNapoli, Used Their Control of the**  
15 **Other Directors to Embark on a process to Sell 1st Century to a Bank that [REDACTED]**

16 34. The filing of the S-1 apparently drew the immediate attention and then interest of  
17 an activist investor, however. [REDACTED]

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 35. Alarmed by these actions, Rothenberg and DiNapoli determined to acquiesce to a  
28 sale of 1st Century, [REDACTED]

1 [REDACTED]

2 [REDACTED]. In conjunction therewith, they determined to appoint a Special  
3 Transactions Committee that they could control to oversee the process.

4 **Management Sought to Cultivate Influence Over Directors By [REDACTED]**

5 [REDACTED]

6 [REDACTED] In conjunction with running 1st Century, [REDACTED]

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 **A Transaction Committee Controlled by Management is Appointed to Oversee the Sale of**  
23 **the Company**

24 37. On January 7, 2016, the Board, led by CEO Rothenberg, determined to appoint a  
25 "Special Transactions Committee" ostensibly consisting of "independent board members" Eric  
26 George (Chair), David Brooks and Alan Levy, to oversee the sale of the Company. [REDACTED]

27 [REDACTED]  
28 [REDACTED]

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[REDACTED]

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[REDACTED]

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2 [REDACTED]

3 [REDACTED]

1 [REDACTED]

2 **Midland Becomes the Preferred Buyer, Indeed the Only Seriously Considered Buyer, when**  
3 **its Original Indication of Interest Expressly Indicates a Desire to Keep Rothenberg and**  
4 **DiNapoli On**

5 39. [REDACTED]

6 All ascribed a value to 1st Century of  
7 between \$10.00 and \$11.00 per share. However, [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] As a result,

13 Midland immediately became Messrs. Rothenberg and DiNapoli's preferred buyer for the  
14 Company. The 1st Century Board, under the domination of Rothenberg and DiNapoli,  
15 immediately authorized Sandler to ignore all other offers, to make a counter proposal to Midland  
16 of \$12.00 per share and to offer an explicit agreement to negotiate exclusively with Midland if it  
17 agreed to make a non-binding expression of interest at that price.

18 40. During the following weeks, negotiations between 1st Century (with those  
19 negotiations being led by CEO Rothenberg) and Midland continued as did *simultaneous*  
20 discussions between CEO Rothenberg, COO DiNapoli and Midland regarding employment  
21 agreements for Rothenberg and DiNapoli with Midland were Midland to acquire 1st Century.

22 [REDACTED]

23 [REDACTED]

24 41. Following several months of exclusive negotiations over the proposed sale of 1st  
25 Century to Midland and several months of simultaneous negotiations over the employment  
26 agreements between Midland and Rothenberg and DiNapoli about their employment agreements,  
27 on February 16, 2016, Midland dropped a bombshell. It was lowering its proposed offering price  
28 from \$12.00 per share to \$11.13 per share. The Special Transactions Committee and Rothenberg

1 and DiNapoli immediately met to decide how to respond. With Rothenberg and DiNapoli  
2 concerned about their future employment and the Special Transactions Committee members  
3 concerned about their outstanding and future loans with the bank and under the influence and  
4 control of Rothenberg and DiNapoli, they reached a decision. They would *not* go out and solicit  
5 other potential buyers, including any of the multiple other banks who had originally made initial  
6 indications of interest between \$10 and \$11 per share, to see if they would offer a higher price.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 42. On February 18, 2016, Rothenberg and DiNapoli reported to the board that they  
11 had reached agreement with Midland on the substantive terms of their employment agreements  
12 with Midland and that attention could now be turned to how to deal with Midland's proposed  
13 price reduction. Following further proceedings and meetings, on March 4, 2016  
14 Messrs. Rothenberg and DiNapoli conveyed to Midland that they thought the board would  
15 support a sale at a price in the \$11.40's. On March 7, 2016 Midland sent a letter to Rothenberg  
16 and DiNapoli with a proposal at \$11.22 per share which it characterized as its "best and final  
17 proposal." On March 10, the 1st Century board met and following the recommendation of the  
18 Special Transactions Committee and receipt of a "fairness opinion" from Sandler that the \$11.22  
19 price was fair, voted to accept and the Merger Agreement was executed.

20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 **Sandler O'Neil's Conflicts of Interest Infect the Process**

24 43. Both the entire sale process (with which Sandler was involved in advising the  
25 Board and Special Transactions Committee), and the fairness opinion by Sandler upon which the

26 [REDACTED]  
27 4 [REDACTED]  
28 [REDACTED]

1 Board relied (and which was touted to shareholders in the proxy), were embedded with the  
2 conflicts of interest of Sandler. [REDACTED]

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] Additionally,  
6 at the same time Sandler was advising 1st Century, it had a prior and ongoing relationship with  
7 Midland (including representing Midland in mergers and acquisitions) from which it had recently  
8 earned \$500,000 in fees. [REDACTED]

9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] And lastly, First Century's board even allowed Rothenberg and DiNapoli to structure  
12 Sandler's compensation such that it was paid \$1.66 million when the sale to Midland closed, but  
13 would have been paid only \$250,000 if it had not opined that the price was fair and hence the sale  
14 not have closed.

15 **The Individual Defendants Used a Materially Misleading and/or Incomplete Proxy**  
16 **Statement to Obtain a Favorable Shareholder Vote**

17 44. On May 18, 2016, the Individual Defendants caused the Company to mail a  
18 materially misleading proxy statement to the Company's shareholders in conjunction with seeking  
19 their votes on the Sale Agreement. However, the Proxy Statement was materially misleading  
20 because it failed to disclose and/or misrepresented the following material information:

21 (a) The Proxy Statement was deficient because it failed to disclose [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 Information concerning the conflicts of interests of the Company's directors is  
material and must be disclosed.

26 (b) The Proxy Statement was deficient because it failed to disclose that [REDACTED]  
27 [REDACTED]  
28 [REDACTED]



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[REDACTED]

This information was material to the Company's public shareholders in determining the extent to which the Individual Defendants complied with their duties of loyalty and care to protect the best interests of the Company's public shareholders and to put the interests of these shareholders before their own.

- (c) The Proxy Statement was deficient because it failed to disclose that when Midland made its last minute reduction in its proposed purchase price from \$12.00 to \$11.13 per share, [REDACTED]

This information was material to the Company's public shareholders in determining the extent to which the Individual Defendants complied with their duties of loyalty and care to protect the best interests of the Company's public shareholders and to put the interests of these shareholders before their own.

- (d) The Proxy Statement was deficient because it failed to disclose that [REDACTED]

This information was material to the Company's public shareholders in determining the extent to which the Individual Defendants complied with their duties of loyalty and care to protect the best interests of the Company's public shareholders and to put the interests of these shareholders before their own.

- (e) The Proxy Statement was deficient because it failed to disclose that [REDACTED]

Information concerning the conflicts of interests of the Company's financial advisor is material and must be disclosed.

- (f) The Proxy Statement was deficient because it failed to disclose that [REDACTED]

Information concerning the conflicts of interests of the Company's financial advisor is material and must be disclosed.

- (g) The Proxy Statement was deficient because it failed to disclose that [REDACTED]

Information concerning the conflicts of interests of the Company's financial advisor is material and must be disclosed.

1 (h) The Proxy Statement was deficient because it failed to disclose that [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 Financial projections relied on by a financial advisor to formulate its fairness  
5 opinion (and opportunistic changes thereto) are material to 1st Century's public  
6 shareholders in determining how much weight to place on the fairness opinion and  
7 must therefore be disclosed.

8 (i) According to the Company's public filings, 1st Century has leased office space for  
9 its main branch office and executive offices at 1875 Century Park East from  
10 1875/1925 Century Park East Company, a California general partnership. The  
11 president of this partnership is Nadine Watt. As of December 31, 2014, the  
12 remaining aggregate lease payments in connection with this lease were  
13 approximately \$7.1 million. The Proxy Statement is deficient because it fails to  
14 disclose whether this lease has been renewed and, if so, the terms of the renewal,  
15 including the amount being paid to Ms. Watt's partnership in connection of the  
16 renewal.

17 Information concerning the conflicts of interests of the Company's directors is  
18 material and must be disclosed.

19 45. A shareholder vote based on this materially inaccurate proxy was held on June 20,  
20 2016. 71.8 percent of all outstanding shares were voted in favor of the Sale Agreement and the  
21 remaining 28.2 percent were cast against the Sale Agreement either by voting no or by not voting  
22 (the proxy explicitly informed shareholders that if they did not vote it would be counted as a "no"  
23 vote). However, excluding the shares held by 1st Century's conflicted directors and executive  
24 officers, only 49.2% of the Company's shareholders voted in favor and the remaining 50.8%  
25 voted against the Sale Agreement. In any event, the results of the shareholder vote are  
26 meaningless as a matter of law because accurate and complete disclosure was not made to  
27 shareholders in the Proxy Statement.

## 28 COUNT I

### **Breach of Fiduciary Duties of Care, Good Faith and Loyalty (Against the Individual Defendants)**

46. Plaintiff repeats and realleges all previous allegations as if set forth in full herein.

47. By reason of the foregoing, the Individual Defendants have breached the fiduciary  
duties of care, good faith, and loyalty they owe to Plaintiff and the other shareholders of 1st  
Century.



1 Class and/or aided and abetted such breaches;

2 C. enjoining the Sale Agreement and, if the Sale Agreement is consummated,  
3 rescinding it;

4 D. awarding Plaintiff and the Class compensatory and/or rescissory damages as  
5 allowed by law;

6 E. awarding interest, attorney's fees, expert fees and other costs, in an amount to be  
7 determined; and

8 F. granting such other relief as the Court may find just and proper.

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial by jury.

11 DATED: January 13, 2017

HULETT HARPER STEWART LLP  
KIRK B. HULETT

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13

/s/ Kirk B. Hulett

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KIRK B. HULETT

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