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ENDORSED
FILED

MAY - 9 2016

[Signature]
Clerk of Superior Court
County of Santa Clara
San Jose, CA

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

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

Plaintiff,

v.

1st CENTURY BANCSHARES, INC.,
ALAN I. ROTHENBERG, WILLIAM W.
BRIEN, M.D., DAVE BROOKES, JASON
P. DINAPOLI, ERIC M. GEORGE, ALAN
D. LEVY, BARRY D. PRESSMAN,
ROBERT A. MOORE, LEWIS N.
WOLFF, NADINE WATT, and
STANLEY R. ZAX,

Defendants.

CASE NO. 16CV294673

CLASS ACTION

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

JURY TRIAL DEMANDED

1 Plaintiff, as and for his Class Action Complaint, alleges upon personal knowledge as to
2 himself and his own acts, and upon information and belief derived from, *inter alia*, a review of
3 documents filed with the Securities and Exchange Commission ("SEC") and publicly available
4 news sources, such as newspaper articles, as to all other matters, as follows:

5 **NATURE OF THE ACTION**

6 1. This is a shareholder class action (the "Action") on behalf of Plaintiff and the
7 other public stockholders of 1st Century Corp. ("1st Century" or the "Company") common stock
8 against 1st Century and the members of its board of directors (the "Board" or the "Individual
9 Defendants). The Action arises from Defendants' actions in causing 1st Century to agree to be
10 sold to Midland Financial Co. ("Midland") in a transaction which protects and advances the
11 interests of 1st Century's directors at the expense of 1st Century's public shareholders (the "Sale
12 Agreement").

13 2. Not only have Defendants publicly admitted that all Board members have
14 economic interests in the Sale Agreement that are different from, or in addition to, those of 1st
15 Century shareholders generally, but Defendants have admitted that they permitted the Company's
16 Chairman and Chief Executive Officer ("CEO"), Alan I. Rothenberg, and 1st Century's President
17 and Chief Operating Officer ("COO"), Jason P. DiNapoli, to dominate and control the sale
18 process – notwithstanding the fact that both individuals were simultaneously negotiating their
19 own lucrative employment agreements with Midland. As discussed herein, Plaintiff further
20 alleges that Messrs. Rothenberg and DiNapoli were motivated to sell the Company to Midland in
21 order to protect their positions with the Company in the face of pressure from an activist
22 shareholder. Additionally, in connection with consummation of the Sale Agreement, 1st
23 Century's non-employee directors will all receive cash payments for their unvested equity awards.
24 As a result of these conflicts of interest, the Company's directors were unable to fairly evaluate
25 the Sale Agreement to ensure that it is in the best interest of Plaintiff and 1st Century's other
26 public shareholders.

27 3. The Action also challenges Defendants' efforts to conceal material information
28 from Plaintiff and 1st Century's other public shareholders in the proxy statement (the "Proxy

1 Statement”) that 1st Century’s directors have caused to be filed with the SEC and made available
2 to Plaintiff and 1st Century’s other shareholders via the Internet in conjunction with the Sale
3 Agreement.

4 JURISDICTION

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

8 5. This Court has jurisdiction over the Defendants in this Action because 1st Century
9 is a corporation headquartered in this state and because the improper conduct alleged in this
10 Complaint occurred in and/or was directed at this state. Additionally, this Court has jurisdiction
11 over each of the Defendants because their wrongful conduct challenged in this Complaint was
12 directed at, and intended to have its primary effect in, this state.

13 6. Venue lies in this Court because, upon information and belief derived from public
14 records, Defendants Lewis N. Wolff and Jason P. DiNapoli are residents of Santa Clara County.

15 7. This action arises challenges the internal affairs or governance of 1st Century and
16 hence is not removable to Federal Court under the Class Action Fairness Act of 2005 or the
17 Securities Litigation Uniform Standards Act (“SLUSA”), 15 U.S.C. § 78bb(f).

18 THE PARTIES

19 8. Plaintiff Dean Drulias is a resident of California who has owned shares of 1st
20 Century at all relevant times.

21 9. Defendant 1st Century is a Delaware corporation headquartered at 1875 Century
22 Park East, Suite 1400, Los Angeles, California 90067. 1st Century is a bank holding company
23 with one subsidiary, 1st Century Bank National Association (“1st Century Bank”). 1st Century
24 Bank is a commercial bank that focuses on family and closely held middle market businesses,
25 professional service firms, real estate professionals and investors, the legal, accounting and
26 medical professions, and small and medium-sized businesses and individuals principally in Los
27 Angeles County. The Company’s common stock trades on the NASDAQ CM under the symbol
28 “FCTY.” This Court has jurisdiction over 1st Century because the Company is headquartered in

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

3 10. Defendant Alan I. Rothenberg ("CEO Rothenberg" or "Mr. Rothenberg") has
4 served as Chairman of the Board and as CEO of 1st Century since 2007. In connection with
5 consummation of the Sale Agreement, Mr. Rothenberg has entered into a lucrative employment
6 agreement with Midland's wholly owned subsidiary, MidFirst Bank ("MidFirst"), pursuant to
7 which, in addition to all of the payments and benefits that he is entitled to under his current 1st
8 Century employment agreement, he will be entitled to receive (i) a cash retention bonus of
9 \$888,252.00 and (ii) a cash retention pool bonus of \$540,000.00. Further, in connection with
10 consummation of the Sale Agreement, CEO Rothenberg will be entitled to receive a cash payment
11 of \$1,346,400.00 for his currently unvested 1st Century restricted shares, and will be granted a
12 right to indemnification for all acts and/or omissions occurring prior to consummation of the Sale
13 Agreement. This Court has jurisdiction over Mr. Rothenberg because 1st Century is
14 headquartered in California and because Mr. Rothenberg's conduct challenged in this Action
15 occurred in substantial part, was directed at, and /or was intended to have its primary effect in,
16 California.

17 11. Defendant William W. Brien, M.D. ("Dr. Brien") has served as a director of 1st
18 Century since 2012. In connection with consummation of the Sale Agreement, Dr. Brien will be
19 entitled to receive a cash payment of an undisclosed amount for his 1st Century restricted shares
20 and will be granted a right to indemnification or all acts and/or omissions occurring prior to
21 consummation of the Sale Agreement. This Court has jurisdiction over Dr. Brien because 1st
22 Century is headquartered in California and because Dr. Brien's conduct challenged in this Action
23 occurred in substantial part, was directed at, and /or was intended to have its primary effect in,
24 California.

25 12. Defendant Dave Brooks ("Mr. Brooks") has served as a director of 1st Century
26 since 2007. In connection with consummation of the Sale Agreement, Mr. Brooks will be entitled
27 to receive a cash payment of an undisclosed amount for his 1st Century restricted shares and will
28 be granted a right to indemnification for all acts and/or omissions occurring prior to

1 consummation of the Sale Agreement. This Court has jurisdiction over Mr. Brooks because 1st
2 Century is headquartered in California and because Mr. Brooks' conduct challenged in this
3 Action occurred in substantial part, was directed at, and /or was intended to have its primary
4 effect in, California.

5 13. Defendant Jason P. DiNapoli ("Mr. DiNapoli" or "President DiNapoli") has
6 served as a director and COO of 1st Century since 2007, as President of 1st Century at all relevant
7 times, as President of 1st Century Bank since 2007, and as CEO of 1st Century Bank since 2008.
8 Upon information and belief, derived from publicly available records, Mr. DiNapoli lives in Santa
9 Clara County. In connection with consummation of the Sale Agreement, Mr. DiNapoli has
10 entered into a lucrative employment agreement with MidFirst, pursuant to which, in addition to
11 all of the payments and benefits that he is entitled to under his current 1st Century employment
12 agreement, he will be entitled to receive: (i) a cash retention bonus of \$1,024,726.00; (ii) a cash
13 retention pool bonus of \$540,000.00; and (iii) a cash bonus of \$500,000.00 payable subject to his
14 continued employment through the applicable payment dates, in equal 50% installments on each
15 of the third and fourth anniversaries of closing respectively, or upon President DiNapoli's earlier
16 termination of employment. Further, in connection with consummation of the Sale Agreement,
17 President DiNapoli will be entitled to receive a cash payment of \$1,346,400.00 for his currently
18 unvested 1st Century restricted shares, and will be granted a right to indemnification for all acts
19 and/or omissions occurring prior to consummation of the Sale Agreement. This Court has
20 jurisdiction over Mr. DiNapoli because 1st Century is headquartered in California and because
21 Mr. DiNapoli's conduct challenged in this Action occurred in substantial part, was directed at,
22 and /or was intended to have its primary effect in, California.

23 14. Defendant Eric M. George ("Mr. George") has served as a director of 1st Century
24 since 2008. In connection with consummation of the Sale Agreement, Mr. George will be entitled
25 to receive a cash payment of an undisclosed amount for his 1st Century restricted shares and will
26 be granted a right to indemnification for all acts and/or omissions occurring prior to
27 consummation of the Sale Agreement. This Court has jurisdiction over Mr. George because 1st
28 Century is headquartered in California and because Mr. George's conduct challenged in this

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

3 15. Defendant Alan D. Levy ("Mr. Levy") has served as a director of 1st Century
4 since 2007. Upon information and belief, Mr. Levy lives in Palm Springs, California. In
5 connection with consummation of the Sale Agreement, Mr. Levy will be entitled to receive a cash
6 payment of an undisclosed amount for his 1st Century restricted shares and will be granted a right
7 to indemnification for all acts and/or omissions occurring prior to consummation of the Sale
8 Agreement. This Court has jurisdiction over Mr. Levy because 1st Century is headquartered in
9 California and because Mr. Levy's conduct challenged in this Action occurred in substantial part,
10 was directed at, and/or was intended to have its primary effect in, California.

11 16. Defendant Barry D. Pressman ("Mr. Pressman") has served as a director of 1st
12 Century since 2007. In connection with consummation of the Sale Agreement, Mr. Pressman will
13 be entitled to receive a cash payment of an undisclosed amount for his 1st Century restricted
14 shares and will be granted a right to indemnification for all acts and/or omissions occurring prior
15 to consummation of the Sale Agreement. This Court has jurisdiction over Mr. Pressman because
16 1st Century is headquartered in California and because Mr. Pressman's conduct challenged in this
17 Action occurred in substantial part, was directed at, and /or was intended to have its primary
18 effect in, California.

19 17. Defendant Robert A. Moore ("Mr. Moore") has served as a director of 1st
20 Century since 2007. In connection with consummation of the Sale Agreement, Mr. Moore will be
21 entitled to receive a cash payment of an undisclosed amount for his 1st Century restricted shares
22 and will be granted a right to indemnification for all acts and/or omissions occurring prior to
23 consummation of the Sale Agreement. This Court has jurisdiction over Mr. Moore because 1st
24 Century is headquartered in California and because Mr. Moore's conduct challenged in this
25 Action occurred in substantial part, was directed at, and /or was intended to have its primary
26 effect in, California.

27 18. Defendant Lewis N. Wolff ("Mr. Wolff") has served as a director of 1st Century
28 since 2007. Upon information and belief, derived from publicly available records, Mr. Wolff

1 lives in Santa Clara County. In connection with consummation of the Sale Agreement, Mr. Wolff
2 will be entitled to receive a cash payment of an undisclosed amount for his 1st Century restricted
3 shares and will be granted a right to indemnification for all acts and/or omissions occurring prior
4 to consummation of the Sale Agreement. This Court has jurisdiction over Mr. Wolff because 1st
5 Century is headquartered in California and because Mr. Wolff's conduct challenged in this Action
6 occurred in substantial part, was directed at, and /or was intended to have its primary effect in,
7 California.

8 19. Defendant Nadine Watt ("Ms. Watt") has served as a director of 1st Century since
9 2008. In connection with consummation of the Sale Agreement, Ms. Watt will be entitled to
10 receive a cash payment of an undisclosed amount for her 1st Century restricted shares and will be
11 granted a right to indemnification for all acts and/or omissions occurring prior to consummation
12 of the Sale Agreement. This Court has jurisdiction over Ms. Watt because 1st Century is
13 headquartered in California and because Ms. Watt's conduct challenged in this Action occurred in
14 substantial part, was directed at, and /or was intended to have its primary effect in, California.

15 20. Defendant Stanley R. Zax ("Mr. Zax") has served as a director of 1st Century
16 since 2011. In connection with consummation of the Sale Agreement, Mr. Zax will be entitled to
17 receive a cash payment of an undisclosed amount for his 1st Century restricted shares and will be
18 granted a right to indemnification for all acts and/or omissions occurring prior to consummation
19 of the Sale Agreement. This Court has jurisdiction over Mr. Zax because 1st Century is
20 headquartered in California and because Mr. Zax's conduct challenged in this Action occurred in
21 substantial part, was directed at, and /or was intended to have its primary effect in, California.

22 **THE INDIVIDUAL DEFENDANTS' FIDUCIARY DUTIES**

23 21. Under applicable substantive statutory and common law, the directors of a
24 publicly held company such as 1st Century have fiduciary duties of care, loyalty, disclosure, good
25 faith and fair dealing and are liable to shareholders for breaches thereof. They are required to:
26 (i) use their ability to control and manage 1st Century in a fair, just and equitable manner; (ii) act
27 in furtherance of the best interests of 1st Century and its shareholders; (iii) act to maximize
28 shareholder value in connection with any change in ownership and control; (iv) govern 1st

1 Century in such a manner as to heed the expressed views of its public shareholders; (v) refrain
2 from abusing their positions of control; and (vi) not to favor their own interests or Midland's
3 interests at the expense of 1st Century and its public shareholders. Where it appears that a
4 director has obtained any personal benefit from dealing with the corporation, and the transaction
5 is drawn into question as between him and the stockholders of the corporation, the burden is upon
6 the director or officer to show that the transaction has been fair, open and in the utmost good
7 faith.

8 22. As alleged in detail below, Defendants have breached, and/or aided other
9 Defendants' breaches of, their fiduciary duties to 1st Century's public shareholders by acting to
10 cause or facilitate the Sale Agreement because the Sale Agreement is not in the best interests of
11 those shareholders, but is in the best interests of the Individual Defendants who will receive
12 significant personal benefits as a result of the Sale Agreement -- and particularly
13 Messrs. Rothenberg and DiNapoli, who have entered into lucrative agreements with Midland for
14 employment following consummation of the Sale Agreement.

15 23. Because Defendants have knowingly or recklessly breached their fiduciary duties
16 in connection with the Sale Agreement, and/or are personally profiting from the same, the burden
17 of proving the inherent or entire fairness of the Sale Agreement, including all aspects of its
18 negotiation, structure, and terms, is borne by Defendants as a matter of law.

19 24. Further, as alleged in detail *infra*, the Individual Defendants have breached their
20 fiduciary duty of disclosure in that the Individual Defendants caused the Proxy Statement to be
21 filed with the SEC and mailed to Plaintiff and 1st Century's other public shareholders, but
22 concealed therein certain material information which a reasonable shareholder would find
23 material in determining whether to vote in favor of the sale of the Company. Among other things,
24 the Defendants have failed to disclose material information regarding (i) the conflicts of interest
25 of 1st Century's directors, (ii) the conflicts of interest of the Company's financial adviser, Sandler
26 O'Neill & Partners, L.P. ("Sandler") hired to, among other things, issue an opinion on the fairness
27 of the consideration to be paid for the Company (the "Fairness Opinion"), (iii) the sale process,
28 and (iv) information underlying Sandler's Fairness Opinion.

1 CLASS ACTION ALLEGATIONS

2 25. Plaintiff brings this action as a class action pursuant to California Code of Civil
3 Procedure § 382 on behalf of himself and all other shareholders of the Company who are or will
4 be threatened with injury arising from Defendants' actions, as more fully described herein except
5 (a) the Defendants herein and any person(s), firm(s), trust(s), corporation(s), or other entit(ies)
6 related to or affiliated with them as defined under SEC rules (the "Class").

7 26. The members of the Class are so numerous that joinder of all of them would be
8 impracticable. While the exact number of Class members is unknown to Plaintiff, and can be
9 ascertained only through appropriate discovery, Plaintiff believes there are many hundreds, if not
10 thousands, of Class members. As of February 19, 2016, 1st Century had over 10.336 million
11 shares of common stock outstanding.

12 27. Plaintiff's claims are typical of the claims of the Class since Plaintiff and the other
13 members of the Class have and will sustain harm arising out of Defendants' breaches of their
14 fiduciary duties. Plaintiff does not have any interests that are adverse or antagonistic to those of
15 the Class. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is
16 committed to the vigorous prosecution of this action and has retained counsel competent and
17 experienced in this type of litigation.

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

21 a. the Defendants have breached and are breaching their fiduciary duties to
22 the detriment of 1st Century shareholders;

23 b. Midland has aided and abetted the other Defendants' breaches of fiduciary
24 duties;

25 c. Plaintiff and the Class are entitled to an injunction and other equitable
26 relief; and

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

1 29. A class action is superior to all other available methods for the fair and efficient
 2 adjudication of this controversy since joinder of all members is impracticable. Further, as
 3 individual damages may be relatively small for most members of the Class, the burden and
 4 expense of prosecuting litigation of this nature makes it unlikely that members of the Class would
 5 prosecute individual actions. Plaintiff anticipates no difficulty in the management of this action
 6 as a class action. Further, the prosecution of separate actions by individual members of the Class
 7 would create a risk of inconsistent or varying results, which may establish incompatible standards
 8 of conduct for Defendants.

9 **SUBSTANTIVE ALLEGATIONS**

10 **1st Century is a Strong Company with the Potential for Greater Growth**

11 30. 1st Century is a strong company, well positioned for future growth as a stand-
 12 alone entity. In this regard, since 2006, the Company's total assets have increased at a
 13 compounded annual rate of 15.7%.

14 31. The Company has projected this growth to continue, and indeed anticipates its
 15 total assets in 2019 to be valued at over \$1.4 billion, a more than 100% increase from the
 16 approximately \$731 million in assets 1st Century held at the end of 2015.

17 32. Further, the Individual Defendants have publicly admitted that, prior to being
 18 pressured to sell the Company by certain funds affiliated with Maltese Capital Management LLC
 19 ("Maltese"), the Board had planned on raising additional capital in order to sustain the
 20 Company's growth trajectory through a public offering. Thus, the Board clearly believed that 1st
 21 Century has the potential for even greater future growth as a stand-alone entity, and even publicly
 22 stated that it was the shareholders' best interests to grow organically through the influx of new
 23 capital resulting from a public offering.

24 **Despite 1st Century's Strength and Growth Potential, the Individual Defendants,**
 25 **Dominated and Controlled by Messrs. Rothenberg and DiNapoli, Caused the Company to**
 26 **Agree to be Sold for Insufficient Consideration Following a Deeply Flawed Sale Process**

27 33. Despite 1st Century's strength and potential for future growth as a stand-alone
 28 entity, the Individual Defendants, dominated and controlled by Messrs. DiNapoli and Rothenberg,
 were motivated to seek a sale of the Company after being confronted by a large 1st Century

1 activist shareholder, Maltese. In this regard, in September 2015, the Individual Defendants
2 determined that it was in the best interests of 1st Century and its stockholders to support 1st
3 Century's organic growth strategy by raising \$125 million or more in new capital through a public
4 offering of common stock. The Individual Defendants thereafter engaged Sandler as lead
5 underwriter in the capital raise and filed a draft Registration Statement on Form S-1 with the SEC
6 (the "S-1"). However, Maltese had been encouraging 1st Century to pursue a sale process and,
7 following the filing of the S-1, on October 20, 2015 Maltese filed a Schedule 13D with the SEC
8 which stated that Maltese collectively beneficially owned approximately 9.69% of the Company's
9 outstanding common stock. The Individual Defendants then promptly abandoned the capital raise
10 and determined to the sell the Company.

11 34. Upon information and belief, Messrs. Rothenberg and DiNapoli, in order to
12 protect their jobs, embarked upon a scheme to sell 1st Century to Midland, knowing that Midland
13 would seek to retain them. Indeed, Midland expressed its intent to retain management early on in
14 the sale process, and even conditioned its initial indication of interest on retention of
15 Messrs. DiNapoli and Rothenberg.

16 35. In furtherance of their scheme to sell 1st Century to Midland, CEO Rothenberg
17 and President DiNapoli convinced the other Individual Defendants to allow them to dominate and
18 control the sale process. This is illustrated by the fact that, despite creating a special committee
19 comprised of purportedly independent directors (the "Special Transaction Committee"),
20 Messrs. Rothenberg and DiNapoli were present at a majority, if not all, of the Special Transaction
21 Committee's meetings.

22 36. Additionally, it is clear that the Individual Defendants favored Midland from the
23 start of the sale process. For example, according to the Proxy Statement, seven of the parties
24 contacted during the sale process, including Midland, entered into confidentiality agreements that
25 included a one year standstill provision pursuant to which the applicable counterparty is
26 prohibited from taking certain actions with respect to 1st Century during such period, including
27 requesting that 1st Century waive the standstill. However, there are certain exceptions in the case
28 of the confidentiality agreement with Midland – exceptions that were *not* included in the

1 confidentially agreements with the other parties.

2 37. The sale process was further flawed because, despite not having highest
3 preliminary indication of interest, the Individual Defendants determined to negotiate with
4 Midland as opposed to the other buyers. Indeed, they agreed to grant Midland exclusivity for 60
5 days on the condition that Midland agreed to a \$12.00 per share counter-proposal. However, one
6 month after granting exclusivity, the Individual Defendants stood idly by while Midland lowered
7 its offer to \$11.13 per share – essentially back to where it was prior to Midland’s acceptance of
8 1st Century’s \$12.00 counter-proposal. Having essentially already committed to selling the
9 Company to Midland, the Individual Defendants ultimately agreed to sell 1st Century for the
10 inadequate \$11.22 per share price.

11 **The Individual Defendants Will Each Receive Extensive Personal Benefits that They Would**
12 **Not Otherwise Receive at This Time**

13 38. Additionally, the Company has publicly admitted that each of the Individual
14 Defendants has interests in the Sale Agreement that are different from, or in addition to, the
15 interest of 1st Century stockholders generally.

16 a. **Payments and Benefits to CEO Rothenberg.** In connection with the
17 Sale Agreement, CEO Rothenberg has entered into a lucrative employment agreement with
18 MidFirst, pursuant to which, in addition to all of the payments and benefits that he is entitled to
19 under his current 1st Century employment agreement, he will be entitled to receive (i) a cash
20 retention bonus of \$888,252.00; and (ii) a cash retention pool bonus of \$540,000.00. Further, in
21 connection with consummation of the Sale Agreement, CEO Rothenberg will be entitled to
22 receive a cash payment of \$1,346,400.00 for his currently unvested 1st Century restricted shares.

23 b. **Payments and Benefits to President DiNapoli.** In connection with the
24 Sale Agreement, Mr. DiNapoli has also entered into a lucrative employment agreement with
25 MidFirst, pursuant to which, in addition to all of the payments and benefits that he is entitled to
26 under his current 1st Century employment agreement, he will be entitled to receive (i) a cash
27 retention bonus of \$1,024,726.00; (ii) a cash retention pool bonus of \$540,00.00; and (iii) a cash
28 bonus of \$500,000.00 payable subject to his continued employment through the applicable

1 payments dates, in equal 50% installments on each of the third and fourth anniversaries of closing
2 respectively, or upon President DiNapoli's earlier termination of employment. Further, in
3 connection with consummation of the Sale Agreement, President DiNapoli will be entitled to
4 receive a cash payment of \$1,346,400.00 for his currently unvested 1st Century restricted shares.

5 c. **Cash Payments to the Non-Employee Directors for their Accelerated**
6 **Restricted Share Awards.** In connection with consummation of the Sale Agreement, 1st
7 Century restricted shares held by the non-employee directors will vest upon closing, and the non-
8 employee directors will be entitled to cash payments in exchange for their restricted shares.

9 d. **Indemnification.** Additionally, each of the Individual Defendants will be
10 granted rights to indemnification for acts or omissions occurring prior to the consummation of the
11 Sale Agreement – thereby insulating them from all liability arising from the Sale Agreement.

12 39. The Individual Defendants would not receive the payments and personal benefits
13 described above now absent the Sale Agreement. Therefore, each of the Individual Defendants
14 had and has a conflict of interest with regard to the Sale Agreement.

15 **The Materially Misleading and/or Incomplete Proxy Statement**

16 40. Additionally, the Individual Defendants are breaching their fiduciary duties of full
17 disclosure to Plaintiff and 1st Century's other public shareholders in connection with the Sale
18 Agreement. In this regard, the Individual Defendants caused the Company to file the Proxy
19 Statement with the SEC and make it available via the SEC's website to Plaintiff and 1st Century's
20 other public shareholders. However, the Proxy Statement is deficient in that it misrepresents
21 and/or omits, *inter alia*, material information as set forth below:

22 (i) According to the Proxy Statement, Midland's preliminary indication of
23 interest stated that Midland would require certain key employees, including
24 Messrs. Rothenberg and DiNapoli, to enter into employment agreements to
25 be effective upon the closing. The Proxy Statement is deficient because it
26 fails to disclose if this was the first instance in which Midland had
27 expressed its intent to retain Messrs. Rothenberg and DiNapoli, and if not,
28 at what point did Midland first express its intent to retain these individuals.

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

(ii) According the Proxy Statement, Messrs. Rothenberg and DiNapoli have
entered into employment agreements with MidFirst. These employment

1 agreements specific certain compensation and benefits payable to such
2 executive officers for their continuing employment with MidFirst
3 following the completion of the merger, and are generally consistent, in
4 most respects with the compensation and benefits arrangements that
5 currently apply to the executive officers' employment with 1st Century
6 other than with respect to certain differences described in the Proxy
7 Statement. The Proxy Statement is deficient because it fails to disclose the
8 positions/roles that Messrs. Rothenberg and DiNapoli will have at MidFirst
9 financial following consummation of the Sale Agreement.

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

- 12 (iii) According to the Proxy Statement, 1st Century restricted shares held by its
13 executive officers and nonemployee directors immediately prior to the
14 effective time of the Sale Agreement will fully vest and be cancelled in
15 exchange for a cash payment. Also according to the Proxy Statement, 1st
16 Century non-employee directors as a group hold 18,000 restricted shares of
17 1st Century stock, valued at \$201,960.00. The Proxy Statement is deficient
18 because it fails to disclose the value of restricted shares each 1st Century
19 director holds.

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

- 22 (iv) According to the Proxy Statement, Sandler is acting as financial advisor to
23 the 1st Century board in connection with the merger and a will receive a
24 fee in an amount equal to 1.375% of the aggregate purchase price, which
25 will become due and payable to Sandler upon the closing of the Sale
26 Agreement. Sandler received a fee in an amount equal to \$250,000 from
27 1st Century upon rendering its fairness opinion, which fairness opinion fee
28 will be credited in full towards the transaction fee becoming due upon the
closing. The Proxy Statement is deficient because it fails to disclose the
precise amount of the fee payable to Sandler.

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

- (v) According to the Proxy Statement, in the two years preceding the date of
its opinion, Sandler provided certain investment banking services to
Midland in connection with Midland's acquisition of Steele Street Bank &
Trust, which transaction closed on January 7, 2015, and received fees in an
amount of \$500,000 for such services and may provide, and receive
compensation for, investment banking services to Midland in the future,
including during the pendency of the merger. The Proxy Statement is
deficient because it fails to disclose the amount of fees that Sandler has an
expectation of receiving from Midland for investment banking services in
the future, including during the pendency of the merger.

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

1 (vi) According to the Proxy Statement in the ordinary course of its business as a
2 broker-dealer, Sandler may actively trade the equity and debt securities of
3 Midland or its affiliates for Sandler's own account and for the accounts of
4 Sandler customers. The Proxy Statement is deficient because it fails to
disclose the amounts of securities Sandler held in Midland or its affiliates
at relevant times.

5 Information regarding the conflicts of interest of the Company's financial
6 advisor is material and must be disclosed.

7 (vii) According to the Proxy Statement, each of the seven confidentiality
8 agreements entered into with the seven companies that expressed interest in
9 potential transaction with 1st Century, include a one year standstill
10 provision pursuant to which the applicable counterparty is prohibited from
11 taking certain actions with respect to 1st Century during such period,
including requesting that 1st Century waive the standstill. However, the
12 Defendants admit that there were certain exceptions in the case of the
13 standstill provisions. The Proxy Statement is deficient because it fails to
14 disclose what the exceptions were.

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

20 (viii) According to the Proxy Statement, on January 7, 2016, the 1st Century
21 Board determined to form a special transaction committee consisting of
22 Dave Brooks, Eric George and Alan Levy. The Proxy Statement is
deficient because it fails to disclose: (a) the qualifications of
Messrs. Brooks, George and Levy upon which they were chosen serve as
members of the Special Transaction Committee, and (b) the criteria used to
elect Mr. George to serve as the chair of the Special Transaction
Committee.

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

28 **The Defendants Unilaterally Adopted a Corporate Bylaw Designating Delaware as the
Exclusive Forum for any Shareholder Litigation Challenging the Sale Agreement
Notwithstanding California Corporations Code Section 2116**

41. Cal. Corp. Code § 2116 specifically provides that the liability of directors of a
foreign corporation transacting business in California for violation of their official duty may be
enforced in California, reflecting a policy choice by the California legislature to provide a
California forum for such suits. This policy is particularly cogent where, as here, Plaintiff is a

1 California resident. Notwithstanding this, on March 10, 2016, on the same day they caused the
2 Company to enter into the Sale Agreement, and after much of the wrongdoing complained of
3 herein, the Individual Defendants unilaterally amended the Company's bylaws to add a new
4 section which purportedly designates the state courts of Delaware as the exclusive forum for
5 shareholder litigation against the Defendants. Notably, the Defendants did not seek shareholder
6 approval and no shareholder voted to adopt Delaware as the exclusive forum for shareholder
7 litigation.

8 42. The Individual Defendants added the provision to 1st Century's bylaws to avoid a
9 shareholder vote on the provision. Had they sought to include the provision in 1st Century's
10 Charter, a shareholder vote would have been required. The manner in which the Individual
11 Defendants adopted the forum provision was calculated to bypass the shareholders and to deprive
12 them of a say on the selection of faraway Delaware as the exclusive forum for litigation. For this
13 reason, Glass Lewis, a highly regarded proxy service, has opposed exclusive forum provisions
14 adopted without a shareholder vote. *See Glass Lewis on Exclusive Forum Provisions* ("Glass
15 Lewis believes that such exclusive forum bylaws are generally not in shareholders' interests since
16 they unnecessarily limit full legal recourse by preventing shareholders from bringing suit in a
17 forum of their choosing. As with other bylaw provisions that affect shareholder rights, Glass
18 Lewis believes shareholders should have the opportunity to vote on the adoption of such
19 bylaws").

20 43. In addition to bypassing the shareholders when they adopted the forum provision,
21 the Individual Defendants bypassed the shareholders a second time when they denied the
22 shareholders an opportunity to approve the forum provision at the special meeting of 1st
23 Century's shareholders to be held in connection with the Sale Agreement. Notably, there are
24 three proposals to be voted on at that meeting (including the Sale Agreement). The Individual
25 Defendants could have put the matter of a Delaware litigation forum to the shareholders for a vote
26 at that meeting too. Tellingly, they did not. The calculated denial of that opportunity further
27 undercuts enforcement of the bylaw.

28 44. Moreover, although the bylaw is written in general terms, its only purpose is to

1 venue litigation involving the transaction with Midland in director-friendly Delaware, a
2 jurisdiction that is known for its lax standards.¹ Prior to the Sale Agreement, the Individual
3 Defendants made no effort to adopt a forum provision and after the merger 1st Century will cease
4 to exist. Despite claiming to have adopted a bylaw of general application, the Individual
5 Defendants in fact adopted the bylaw for a singular purpose: to protect themselves from litigation
6 seeking to hold them personally liable for the merger during the period between the
7 announcement of the merger and the closing of the merger. Enforcement of the bylaw under
8 these circumstances would be fundamentally inequitable.

9 45. Furthermore, the Individual Defendants designated Delaware as their preferred
10 forum notwithstanding that, other than Delaware serving as 1st Century's state of incorporation,
11 none of the Defendants, nor the transaction at issue, have any connections to Delaware. In this
12 regard, 1st Century is headquartered in California; all of the Individual Defendants actually
13 reside in California, or states other than Delaware; the Sale Agreement was negotiated in
14 California; notices required by the Sale Agreement are to be given to 1st Century's office in
15 California; the "fairness opinion" issued by Sandler was issued by its California office; the special
16 meeting of shareholders called for the purpose of voting on the sale will be held in California; and
17 if the Sale Agreement closes, it will close in California, not Delaware.

18 46. Given the above, it would be unfair and prejudicial to Plaintiff, and against public
19

20 ¹ As *The New York Times* noted on June 30, 2012:

21 Big corporations, small-time businesses, rogues, scoundrels and worse – all have turned
22 up at Delaware addresses in hopes of minimizing taxes, skirting regulations, plying
23 friendly courts or, when needed, covering their tracks. . . . The First State . . .
24 increasingly resembles a freewheeling offshore haven, right on America's shores.
25 Officials in other states complain that Delaware's cozy corporate setup robs their states of
26 billions of tax dollars. Officials in the Cayman Islands, a favorite Caribbean haunt of
27 secretive hedge funds, say Delaware is today playing faster and looser than the offshore
28 jurisdictions that raise hackles in Washington.

26 The *American Lawyer* has also commented on Delaware's lax standards:

27 It's no mystery why corporate America loves Delaware. *The state's courts are*
28 *extravagantly tolerant of corporate misconduct.* Directors – and officers, it appears – are
protected by Delaware's business judgment rule unless their actions are so outrageously
bad that they rise to the level of "gross negligence."

1 policy, to apply the bylaw retroactively to cover misconduct that had already occurred at the time
2 that the Individual Defendants unilaterally adopted the bylaw.

3 **COUNT I**

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

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

7 48. By reason of the foregoing, the Individual Defendants have violated the fiduciary
8 duties of care, good faith, and loyalty they owe to Plaintiff and the other shareholders of 1st
9 Century.

10 49. As a result, Plaintiff and the Class have been and will be damaged.

11 **COUNT II**

12 **Breach of Fiduciary Duty of Disclosure**
13 **(Against 1st Century and the Individual Defendants)**

14 50. Plaintiff repeats all previous allegations as if set forth in full herein.

15 51. Under applicable law, the fiduciary duties of 1st Century and the Individual
16 Defendants require them to fairly disclose to Plaintiff and the Class all information material to the
17 decisions confronting 1st Century's public shareholders with regard to their vote on the Sale
18 Agreement.

19 52. As set forth above, 1st Century and the Individual Defendants have breached their
20 fiduciary duties through materially inadequate disclosures and material omissions.

21 53. By reason of the foregoing, Plaintiff and each member of the Class have been and
22 will be damaged.

23 54. As a result, Plaintiff and the Class have been and will be irreparably harmed
24 absent injunctive relief from the Court.

25 **PRAYER**

26 **WHEREFORE**, Plaintiff demands judgment as follows:

27 A. determining that this action is a proper class action, and that Plaintiff is a proper
28 class representative;

- 1 B. declaring that Defendants have breached their fiduciary duties to Plaintiff and the
2 Class and/or aided and abetted such breaches;
- 3 C. enjoining the Sale Agreement and, if the Sale Agreement is consummated,
4 rescinding it;
- 5 D. awarding Plaintiff and the Class compensatory and/or rescissory damages as
6 allowed by law;
- 7 E. awarding interest, attorney's fees, expert fees and other costs, in an amount to be
8 determined; and
- 9 F. granting such other relief as the Court may find just and proper.

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff hereby demands a trial by jury.

12 DATED: May 3, 2016

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