

INVITATION HOMES OPERATING)
PARTNERSHIP LP,)
1717 Main Street, Suite 2000, Dallas, Texas 75201)
)
and)
)
IH MERGER SUB, LLC,)
1717 Main Street, Suite 2000, Dallas, Texas 75201)
)
Defendants.)

COMPLAINT FOR VIOLATION OF THE SECURITIES EXCHANGE ACT OF 1934

Plaintiff, by his undersigned attorneys, for this complaint against defendants, alleges upon personal knowledge with respect to himself, and upon information and belief based upon, *inter alia*, the investigation of counsel as to all other allegations herein, as follows:

NATURE OF THE ACTION

1. This action stems from a proposed transaction announced on August 10, 2017 (the “Proposed Transaction”), pursuant to which Starwood Waypoint Homes (“SFR” or the “Company”) and Invitation Homes Inc. (“INVH”), and their respective affiliates, will combine with in a merger-of-equals.

2. On August 9, 2017, SFR’s Board of Trustees (the “Board” or “Individual Defendants”) caused SFR and Starwood Waypoint Homes Partnership, L.P. (“SFR LP,” and together with SFR, “Starwood”) to enter into an agreement and plan of merger (the “Merger Agreement”) with INVH, Invitation Homes Operating Partnership LP (“INVH LP”), and IH Merger Sub, LLC (“REIT Merger Sub,” and together with INVH and INVH LP, “Invitation Homes”). Pursuant to the terms of the Merger Agreement, each common share of SFR will be converted into the right to receive 1.6140 newly issued shares of common stock of INVH.

3. In connection with the Proposed Transaction, SFR will merge with and into REIT Merger Sub, with REIT Merger Sub surviving as a wholly-owned subsidiary of INVH, and as

promptly as practicable thereafter, SFR LP will merge with and into INVH LP, with INVH LP surviving as a subsidiary of INVH. Upon completion of the mergers, the continuing INVH stockholders are expected to own approximately 59.1% of the combined company's fully diluted equity, and the former SFR common shareholders are expected to own the remaining 40.9%.

4. On September 20, 2017, defendants filed a Form S-4 Registration Statement (the "Registration Statement") with the United States Securities and Exchange Commission ("SEC") in connection with the Proposed Transaction.

5. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading. Accordingly, plaintiff alleges herein that defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 (the "1934 Act") in connection with the Registration Statement.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the claims asserted herein pursuant to Section 27 of the 1934 Act because the claims asserted herein arise under Sections 14(a) and 20(a) of the 1934 Act and Rule 14a-9.

7. This Court has jurisdiction over defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

8. Venue is proper under 28 U.S.C. § 1391(b) because a substantial portion of the transactions and wrongs complained of herein occurred in this District.

PARTIES

9. Plaintiff is, and has been continuously throughout all times relevant hereto, the

owner of Starwood common stock.

10. Defendant SFR is a Maryland real estate investment trust and maintains its principal executive offices at 8665 East Hartford Drive, Scottsdale, AZ 85255. The Company's common stock is traded on the NYSE under the ticker symbol "SFR."

11. Defendant SFR LP is a Delaware limited partnership and a party to the Merger Agreement. A wholly-owned subsidiary of SFR is the sole general partner of SFR LP, and SFR conducts substantially all of its business through SFR LP. SFR owns 95.6% of the outstanding SFR LP units as of June 30, 2017.

12. Defendant Barry S. Sternlicht ("Sternlicht") has served as one of the Company's two Co-Chairmen of the Board since January 2016. From 2012 until January 2016, he served as the chairman of the board of trustees of the Company's predecessor company, Starwood Waypoint Residential Trust.

13. Defendant Thomas M. Bowers ("Bowers") serves as a trustee of the Company.

14. Defendant Richard D. Bronson ("Bronson") has served as a Board member of the Company since January 2016. He served as a member of the Starwood Waypoint Residential Trust board from January 2014 to January 2016.

15. Defendant Michael D. Fascitelli ("Fascitelli") has served as a Board member of the Company since January 2016. He was a member of the Starwood Waypoint Residential Trust board from January 2014 to January 2016.

16. Defendant Renee Lewis Glover ("Glover") has served as a Board member of the Company since February 2017.

17. Defendant Jeffrey E. Kelter ("Kelter") has served as a Board member of the Company since January 2016. He was a member of the Starwood Waypoint Residential Trust

board from January 2014 to January 2016.

18. Defendant Thomas W. Knapp (“Knapp”) has served as a Board member of the Company since January 2016.

19. Defendant J. Ronald Terwilliger (“Terwilliger”) has served as a Board member of the Company since January 2016.

20. Defendant Frederick C. Tuomi (“Tuomi”) has served as Chief Executive Officer (“CEO”) of the Company since January 2016 and as a Board member since March 2017.

21. The defendants identified in paragraphs 12 through 20 are collectively referred to herein as the “Individual Defendants.”

22. Defendant INVH is a Maryland corporation and a party to the Merger Agreement.

23. Defendant INVH LP is a Delaware limited partnership, is wholly-owned by INVH, and is a party to the Merger Agreement.

24. Defendant REIT Merger Sub is a Delaware limited liability company, a wholly-owned subsidiary of INVH, and a party to the Merger Agreement.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action as a class action on behalf of himself and the other public stockholders of Starwood (the “Class”). Excluded from the Class are defendants herein and any person, firm, trust, corporation, or other entity related to or affiliated with any defendant.

26. This action is properly maintainable as a class action.

27. The Class is so numerous that joinder of all members is impracticable. As of August 9, 2017, there were approximately 128,307,181 shares of Starwood common stock issued and outstanding, held by hundreds, if not thousands, of individuals and entities scattered throughout the country.

28. Questions of law and fact are common to the Class, including, among others, (i) whether defendants violated the 1934 Act; and (ii) whether defendants will irreparably harm plaintiff and the other members of the Class if defendants' conduct complained of herein continues.

29. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

30. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications that would establish incompatible standards of conduct for defendants, or adjudications that would, as a practical matter, be dispositive of the interests of individual members of the Class who are not parties to the adjudications or would substantially impair or impede those non-party Class members' ability to protect their interests.

31. Defendants have acted, or refused to act, on grounds generally applicable to the Class as a whole, and are causing injury to the entire Class. Therefore, final injunctive relief on behalf of the Class is appropriate.

SUBSTANTIVE ALLEGATIONS

Background of the Company

32. SFR is an internally managed Maryland real estate investment trust that has elected to be taxed as a REIT under the Internal Revenue Code. The Company's operating partnership, SFR LP, was formed as a Delaware limited partnership in May 2012. SFR's wholly-

owned subsidiary is the sole general partner of SFR LP, and SFR conducts substantially all of its business through the operating partnership. SFR owned 95.6% of the outstanding SFR LP units as of June 30, 2017.

33. SFR commenced operations in March 2012 primarily to acquire, renovate, lease and manage residential assets in select markets throughout the United States. SFR's objective is to generate attractive risk-adjusted returns for its shareholders over the long term through dividends and capital appreciation. SFR's primary strategy is to acquire single-family rental properties through a variety of channels, renovate these properties to the extent necessary and lease them to qualified residents. SFR seeks to take advantage of macroeconomic trends in favor of leasing properties by acquiring, owning, renovating and managing properties that it believes will generate substantial current rental revenue, which it expects to grow over time. As of June 30, 2017, SFR's portfolio consisted of 34,379 owned properties, including 33,571 rental properties and 808 properties that SFR does not intend to hold for the long term.

34. As of December 31, 2016, the Company maintained 24 regional offices and resident service centers. The regional offices house SFR's regional managers and construction teams, and, if applicable, its local acquisition, marketing and leasing, property management, and repairs and maintenance teams. The resident service centers serve as localized customer-facing offices aimed at ensuring resident satisfaction and retention, as well as to integrate all local operations.

35. On September 21, 2015, SFR and Colony American Homes, Inc. ("CAH") announced the signing of a merger agreement to combine the two companies in a stock-for-stock transaction. In connection with the transaction, SFR internalized its former external manager, SWAY Management LLC. The merger and the manager internalization were completed on

January 5, 2016. Under the merger agreement, CAH shareholders received an aggregate of 64,869,526 of SFR's common shares in exchange for all shares of CAH. Upon completion of the transaction, SFR's existing shareholders and the former owner of its manager owned approximately 41% of SFR's common shares, while former CAH shareholders owned approximately 59% of SFR's common shares.

The Registration Statement Omits Material Information, Rendering It False and Misleading

36. Defendants filed the Registration Statement with the SEC in connection with the Proposed Transaction.

37. The Registration Statement omits material information with respect to the Proposed Transaction, which renders the Registration Statement false and misleading.

38. First, the Registration Statement omits material information regarding SFR's and INVH's financial projections, as well as the valuation analyses performed by one of the Company's and INVH's financial advisors, Evercore Group L.L.C. ("Evercore") and Deutsche Bank Securities Inc. ("Deutsche Bank"), respectively.

39. The disclosure of projected financial information is material because it provides stockholders with a basis to project the future financial performance of a company, and allows stockholders to better understand the financial analyses performed by the company's financial advisor in support of its fairness opinion. Moreover, when a banker's endorsement of the fairness of a transaction is touted to shareholders, the valuation methods used to arrive at that opinion as well as the key inputs and range of ultimate values generated by those analyses must also be fairly disclosed.

40. With respect to SFR's financial projections, the Registration Statement discloses only Company projections for non-GAAP (generally accepted accounting principles) metrics,

including net operating income (“NOI”), adjusted EBITDA, core funds from operations (“Core FFO”), adjusted core funds from operations (“Core AFFO”), and unlevered free cash flows, for years 2017 through 2021, but it fails to provide stockholders with the necessary line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures.

41. Similarly, with respect to INVH’s financial projections, the Registration Statement discloses only INVH projections for non-GAAP metrics, including NOI, adjusted EBITDA, Core FFO, adjusted funds from operations (“AFFO”), and unlevered free cash flows, for years 2017 through 2021, but it fails to provide stockholders with the necessary line item projections for the metrics used to calculate these non-GAAP measures or otherwise reconcile the non-GAAP projections to the most comparable GAAP measures.

42. To avoid misleading stockholders with non-GAAP financial measures in business combinations such as the Proposed Transaction, publicly traded companies must provide a reconciliation of the differences between the non-GAAP financial measures with the most comparable financial measures calculated and presented in accordance with GAAP. Indeed, defendants acknowledge in the Registration Statement that the non-GAAP projections disclosed to stockholders are “not used as a measure of liquidity and should not be considered as an alternative to net income or loss or any other measure of financial performance presented in accordance with GAAP.” In SFR’s most recent annual report filed on Form 10-K, moreover, SFR disclosed the necessary reconciliation of non-GAAP measures, including Core FFO. As such, stockholders are entitled to the line item projections used to calculate the Company’s and INVH’s non-GAAP projections or a reconciliation of the non-GAAP projections to the most comparable GAAP measures.

43. With respect to Evercore's Discounted Cash Flow Analyses of SFR and INVH, the Registration Statement fails to disclose: (i) the line item projections of SFR's and INVH's expected unlevered, after-tax free cash flows for years 2018 through 2021 as used by Evercore in its analyses; and (ii) the actual inputs and assumptions underlying the discount rate ranges selected by Evercore in its analyses.

44. With respect to Deutsche Bank's Discounted Cash Flow Analyses of SFR and INVH, the Registration Statement fails to disclose: (i) the line item projections of SFR's and INVH's expected unlevered, after-tax free cash flows for years 2018 through 2021 as used by Deutsche Bank in its analyses; (ii) the estimated 2022 NOI of SFR and INVH used by Deutsche Bank in its analyses; and (iii) the actual inputs and assumptions underlying the discount rate ranges selected by Deutsche Bank in its analyses.

45. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) "Opinion of INVH's Financial Advisor;" (ii) "Opinion of SFR's Financial Advisor;" (iii) "Certain INVH Unaudited Prospective Financial Information;" and (iv) "Certain SFR Unaudited Prospective Financial Information."

46. Second, the Registration Statement omits material information relating to potential conflicts of interest of SFR's and INVH's financial advisors. Full disclosure of investment banker compensation and all potential conflicts is required due to the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives.

47. The Registration Statement fails to disclose accurately the amount of compensation that Evercore is expected to earn in connection with the Proposed Transaction.

Specifically, the Registration Statement states that, pursuant to its engagement letter: “Evercore is entitled to receive an opinion fee of \$2.0 million, which Evercore earned upon delivery of its fairness opinion to the SFR Board. Such opinion fee is fully creditable against a success fee of \$2.0 million, which Evercore will earn upon the consummation of the Mergers.” This must be an incorrect disclosure, because if the \$2 million opinion fee was creditable against a \$2 million success fee, Evercore would be entitled to no compensation upon the successful completion of the Proposed Transaction (and therefore obviating the need for a success fee). Accordingly, defendants must correct this disclosure regarding Evercore’s expected compensation in connection with the Proposed Transaction.

48. Further, the Registration Statement indicates that the Board engaged Morgan Stanley & Co. LLC (“Morgan Stanley”) in connection with the Proposed Transaction, and that Morgan Stanley interfaced and negotiated with INVH and its representatives. The Registration Statement, however, fails to disclose the terms of the engagement letter that the Company entered into with Morgan Stanley, including the amount of compensation that Morgan Stanley earned in connection with its services.

49. The Registration Statement also fails to disclose the nature and timing of the services that Morgan Stanley has provided to each of INVH and SFR or their affiliates in the past three years, as well as the amount of compensation earned by Morgan Stanley or its affiliates in connection with those services.

50. The Registration Statement fails to disclose the reason the Board determined it was necessary to engage Evercore as a second financial advisor to provide a fairness opinion, including whether Evercore was hired as a result of a perceived conflict of interest on the part of Morgan Stanley.

51. Similarly, the Registration Statement indicates that the INVH board of directors engaged J.P. Morgan Securities LLC (“J.P. Morgan”) in connection with the Proposed Transaction, and that J.P. Morgan interfaced and negotiated with SFR and its representatives. The Registration Statement, however, fails to disclose the terms of the engagement letter that the INVH entered into with J.P. Morgan, including the amount of compensation that J.P. Morgan earned in connection with its services.

52. The Registration Statement also fails to disclose the nature and timing of the services that J.P. Morgan has provided to each of INVH and SFR or their affiliates in the past three years, as well as the amount of compensation earned by J.P. Morgan or its affiliates in connection with those services.

53. The Registration Statement fails to disclose the reason the INVH board of directors determined it was necessary to engage J.P. Morgan as a second financial advisor to negotiate with SFR, including whether J.P. Morgan was hired as a result of a perceived conflict of interest on the part of Deutsche Bank.

54. The omission of this material information renders the Registration Statement false and misleading, including, *inter alia*, the following sections of the Registration Statement: (i) “Background of the Mergers;” (ii) “Opinion of INVH’s Financial Advisor;” and (iii) “Opinion of SFR’s Financial Advisor.”

55. The above-referenced omitted information, if disclosed, would significantly alter the total mix of information available to SFR’s stockholders.

COUNT I

Claim for Violation of Section 14(a) of the 1934 Act and Rule 14a-9 Promulgated Thereunder Against the Individual Defendants and Starwood

56. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

57. The Individual Defendants disseminated the false and misleading Registration Statement, which contained statements that, in violation of Section 14(a) of the 1934 Act and Rule 14a-9, in light of the circumstances under which they were made, omitted to state material facts necessary to make the statements therein not materially false or misleading. Starwood is liable as the issuer of these statements.

58. The Registration Statement was prepared, reviewed, and/or disseminated by the Individual Defendants. By virtue of their positions within the Company, the Individual Defendants were aware of this information and their duty to disclose this information in the Registration Statement.

59. The Individual Defendants were at least negligent in filing the Registration Statement with these materially false and misleading statements.

60. The omissions and false and misleading statements in the Registration Statement are material in that a reasonable stockholder will consider them important in deciding how to vote on the Proposed Transaction. In addition, a reasonable investor will view a full and accurate disclosure as significantly altering the total mix of information made available in the Registration Statement and in other information reasonably available to stockholders.

61. The Registration Statement is an essential link in causing plaintiff and the Company's stockholders to approve the Proposed Transaction.

62. By reason of the foregoing, defendants violated Section 14(a) of the 1934 Act and Rule 14a-9 promulgated thereunder.

63. Because of the false and misleading statements in the Registration Statement, plaintiff and the Class are threatened with irreparable harm.

COUNT II

**Claim for Violation of Section 20(a) of the 1934 Act
Against the Individual Defendants and Invitation Homes**

64. Plaintiff repeats and realleges the preceding allegations as if fully set forth herein.

65. The Individual Defendants and Invitation Homes acted as controlling persons of Starwood within the meaning of Section 20(a) of the 1934 Act as alleged herein. By virtue of their positions as officers and/or directors of Starwood and participation in and/or awareness of the Company's operations and/or intimate knowledge of the false statements contained in the Registration Statement, they had the power to influence and control and did influence and control, directly or indirectly, the decision making of the Company, including the content and dissemination of the various statements that plaintiff contends are false and misleading.

66. Each of the Individual Defendants and Invitation Homes was provided with or had unlimited access to copies of the Registration Statement alleged by plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause them to be corrected.

67. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control and influence the particular transactions giving rise to the violations as alleged herein, and exercised the same. The Registration Statement contains the unanimous recommendation of the Individual Defendants to approve the Proposed Transaction. They were thus directly in the making of the Registration Statement.

68. Invitation Homes also had direct supervisory control over the composition of the Registration Statement and the information disclosed therein, as well as the information that was omitted and/or misrepresented in the Registration Statement.

69. By virtue of the foregoing, the Individual Defendants and Invitation Homes violated Section 20(a) of the 1934 Act.

70. As set forth above, the Individual Defendants and Invitation Homes had the ability to exercise control over and did control a person or persons who have each violated Section 14(a) of the 1934 Act and Rule 14a-9, by their acts and omissions as alleged herein. By virtue of their positions as controlling persons, these defendants are liable pursuant to Section 20(a) of the 1934 Act. As a direct and proximate result of defendants' conduct, plaintiff and the Class are threatened with irreparable harm.

PRAYER FOR RELIEF

WHEREFORE, plaintiff prays for judgment and relief as follows:

- A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;
- B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages;
- C. Directing the Individual Defendants to disseminate a Registration Statement that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;
- D. Declaring that defendants violated Sections 14(a) and/or 20(a) of the 1934 Act, as well as Rule 14a-9 promulgated thereunder;
- E. Awarding plaintiff the costs of this action, including reasonable allowance for plaintiff's attorneys' and experts' fees; and
- F. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all issues so triable.

Dated: September 29, 2017

LEVI & KORSINSKY LLP

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