

Exhibit 99.12

Consisting of the following:

- Annex A - Complaint for Declaratory Relief and Injunction
- Annex B - Motion for Preliminary Injunction
- Annex C - Declaration of Charles R.T. O'Kelley in Support of Motion for Preliminary Injunction and Declaratory Relief
- Annex D - Declaration of Charles W. Griege, Jr. in Support of Motion for Preliminary Injunction and Declaratory Relief
- Annex E - Declaration of Paul J. Miller, Jr. in Support of Motion for Preliminary Injunction and Declaratory Relief

Annex A

Complaint for Declaratory Relief and Injunction,
filed in the Superior Court of Washington
in and for King County on March 13, 2018

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BLUE LION OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

v.

HOMESTREET, INC.,

Defendant.

No. 18-2-06791-0 SEA

COMPLAINT FOR DECLARATORY
RELIEF AND INJUNCTION

Blue Lion Opportunity Master Fund, L.P. (“Blue Lion”), by and through undersigned counsel, states and alleges as follows as a claim for a declaration of rights under RCW 7.24.010 and seeks a preliminary and permanent injunction. This case is about whether an incumbent group of corporate directors can use their control of the corporate machinery to block the nomination of alternative directors – their would-be replacements – on non-substantive grounds. No meaningful election can take place when one of the election contestants has authority to reject the nomination of his opponents, especially on specious grounds. Blue Lion, one of the largest investors in the defendant HomeStreet, is intending to nominate directors at this year’s meeting of HomeStreet shareholders. Defendant, through the actions of the incumbent directors, are claiming the authority to block that action and preserve for themselves the lucrative and prestigious HomeStreet directorships. Plaintiff believes meaningful elections involve choice and seeks an order to enable its fellow shareholders to have a choice of nominees at this year’s annual meeting of shareholders.

I. PARTIES

1. Blue Lion has its principal place of business in Dallas, Texas. Affiliates of Blue Lion include Charles W. Griege, Jr., Roaring Blue Lion, LLC, Roaring Blue Lion Capital Management, L.P., and Blue Lion Opportunity Master Fund, L.P. (collectively, the “Blue Lion Entities”). These affiliates are not parties.

2. HomeStreet, Inc. (the “Company” or “HomeStreet”), is the parent company of HomeStreet Bank (the “Bank”). HomeStreet is a public company whose stock trades on the NASDAQ exchange. It is a financial services company headquartered in Seattle, Washington, serving consumers and businesses in the State of Washington as well as the Western United States and Hawaii through its various operating subsidiaries. The Company operates two primary business segments: Mortgage Banking, which originates and purchases single family residential mortgage loans, primarily for sale into secondary markets; and Commercial & Consumer Banking, including commercial real estate, commercial lending, residential construction lending, retail banking, private banking, investment, and insurance services.

3. The Board of Directors of HomeStreet is comprised of Mark K. Mason, David A. Ederer, Scott M. Boggs, Victor H. Indiek, Thomas E. King, George “Judd” Kirk, Mark R. Patterson, Douglas I. Smith, and Donald R. Voss.

4. Because the ability to vote, especially on the question of who will make up the board of directors, is the key factor that legitimates the directors’ control over property that is not their own (because the company is owned by the shareholders), corporate actions that are designed to or have the effect of thwarting the free exercise of the shareholders’ franchise are subject to close scrutiny in the courts. This is just such an action. HomeStreet has improperly thwarted the fundamental rights of Blue Lion to nominate for election as directors two experienced professionals. Blue Lion also intends to present two substantive proposals at the annual meeting and to seek shareholder support for those proposals. Both of those proposals seek to implement at HomeStreet good corporate governance practices – annual elections for

1 directors and an independent Chairman. Both proposals directly impact the roles and prestige
2 of the existing directors, and threaten their continued compensation from the corporation. The
3 Board and the Chairman have acted improperly, and in their own self-interest, to block the
4 proposals from even being voted upon.

5 5. This case presents the question of whether incumbent elected representatives
6 of the shareholders can unilaterally and arbitrarily disqualify the only potential challengers to
7 their own reelection and thwart action by a shareholder with their aim being their continued
8 grip on corporate power. The Board has determined, on its own, that only the incumbent
9 directors are permitted to run in the upcoming election and that shareholders should be
10 deprived of their right to limit their roles or tenure. Blue Lion submits that any such
11 determination by the Board should be strictly scrutinized for total fairness, in light of the
12 inherent conflict of interest involved in disqualifying one's only challenger and preserving
13 one's own privileged position atop the corporate pyramid.

14 **II. JURISDICTION AND VENUE**

15 6. This Court has jurisdiction under Wash. Const. art. IV § 6, RCW 2.08.010, and
16 RCW 7.24.010.

17 7. Venue is proper in this Court under RCW 4.12.025 as HomeStreet's principal
18 place of business is in King County, Washington.

19 8. The action is not subject to removal because HomeStreet is a citizen of the
20 State of Washington and is a party defendant.

21 **III. BACKGROUND**

22 9. It is only through shareholder votes that shareholders get to have a say in how
23 their company is being run by management and its Board of Directors. Every day across
24 America shareholders of public companies ask for changes in corporate operations and
25 culture. Oftentimes, shareholder engagement with management and eventually, shareholder
26 nominations to the Board and shareholder votes are how those changes comes about.

1 **A. Blue Lion Is a Significant Shareholder Trying to Exercise Its Fundamental**
2 **Shareholder Rights.**

3 10. Blue Lion and its affiliates manage funds that beneficially or in record name
4 own approximately 6.0 percent of the stock of HomeStreet, Inc., making it the fourth largest
5 shareholder, owning almost four (4) times more shares than the current Board combined.
6 Blue Lion informed HomeStreet on February 23, 2018, that it would nominate two highly
7 qualified candidates for election to the HomeStreet Board of Directors (the “Board”) and
8 made two substantive corporate governance proposals to be voted on at the Company’s 2018
9 Annual Meeting of Shareholders.

10 11. The Annual Meeting (Annual Meeting”) is set to take place in Seattle,
11 Washington on May 24, 2018.

12 12. Blue Lion sent to the Company a Nomination Submission (the “Nomination
13 Submission” or “Submission” or “Notice”) of the type called for by the Company’s Bylaws
14 (“Advance Notice Provision”). A copy of those bylaws, filed with the SEC, are attached
15 hereto as Exhibit A (“bylaws” or “Bylaws”).

16 13. The Submission provided 133 pages of information. A copy of the Submission
17 is attached as Exhibit B. An earlier press release was sent out by Blue Lion affiliates
18 regarding the intent to nominate. A copy of the release is attached hereto as Exhibit C. The
19 press release describes the Blue Lion affiliates intention to solicit proxies and votes. These
20 releases are routinely received and reviewed by HomeStreet when they are released.

21 14. Despite the fact that the Nomination Submission provided sufficient
22 “Background and Qualification” information as required by the Bylaws to nominate the two
23 candidates and support the proposals, the Company announced in a public press release on
24 March 1, 2018 (1) that the Nomination Submission in the unilateral view of the Company was
25 deficient, and (2) that the period for nomination was now expired and that it would not
26 entertain Blue Lion’s nominations or proposals at the 2018 Annual Meeting.

1 15. In a second letter dated March 9, 2018 the Company reaffirmed its rejection of
2 the Notice but also suggested that the Company's Chairman/CEO, Mark Mason, may have
3 independently made this decision.

4 16. In either case, the Company's actions deny Blue Lion its fundamental right to
5 nominate and elect directors to the board and put business before a vote of the shareholders.
6 The Company's actions violate the Bylaws of the Company, violate Washington law, and
7 violate fundamental tenets of corporate governance. The Company is denying all
8 shareholders, including Blue Lion, their right to choose whom to elect as directors to the
9 board by denying access to the slate up for election.

10 17. Declaratory judgment is needed on an expedited basis so that the two
11 nominated candidates and the three proposals can be recognized for potential
12 election/approval at the upcoming Annual meeting. In other words, this case is about the right
13 to "enter" the race; the shareholders get to decide who will win the race. But a race with no
14 other contestant is simply no race at all.

15 **B. Blue Lion Has Never Initiated a Proxy Contest.**

16 18. The Blue Lion Entities, of which Plaintiff is a part, were founded in 2005 and
17 invest in undervalued securities with asymmetric risk/reward profiles. In its 12-year history,
18 Blue Lion has never publicly campaigned for change at any of its portfolio investments. Blue
19 Lion is neither an activist investor nor a shareholder with a short-term orientation. To the
20 contrary, Blue Lion is a committed, long-standing investor that first invested in HomeStreet
21 during the Bank's initial public offering in 2012 because of the Company's business
22 opportunities.

23 19. Blue Lion has been a shareholder of HomeStreet for most of the time that
24 HomeStreet has been a public company – since 2012.

1 20. Between 2012 and 2017, Blue Lion communicated regularly with management
2 at HomeStreet. In fact, those communications were almost on a quarterly basis. The
3 communications were cordial and constructive.

4 21. Over the course of time, under performance became the norm, personnel
5 departures became alarming and the Bank's stated strategic plan was causing the Company's
6 stock price to significantly underperform its peers to the point where Blue Lion eventually
7 concluded it needed to try a different approach in its communications and interactions with
8 HomeStreet.

9 **C. Blue Lion Engagement With HomeStreet.**

10 22. On November 20, 2017, Blue Lion wrote a letter to the CEO/Chairman of
11 HomeStreet, the first paragraph of which began as follows:

12 I am writing this letter reluctantly but feel I have no choice. I
13 do not consider myself an activist nor have I ever written a
14 letter of this kind. But, I feel compelled to explain why I
15 believe it is time for changes to be made in the way
HomeStreet, Inc. ("HMST" or the "Company") is being
managed.

16 23. After laying out in great detail Blue Lion's concerns, Blue Lion, as the fourth
17 largest shareholder of HomeStreet at the time, asked for a board seat. In the absence of
18 working "amicably [to] reach an agreement on [their] request," Blue Lion asked for an
19 opportunity to meet with the full Board of Directors.

20 24. On December 21, 2017, Blue Lion met with the Board of Directors providing a
21 presentation on its views of the Company's strategy and offered various alternative views on
22 changes that might be made moving forward that could increase the value for all shareholders
23 of the Company.

24 25. After that meeting, Blue Lion's representative was invited to meet with the
25 CEO/Chairman, the lead independent Director and the Human Resource and Corporate
26

1 Governance Committee of the Board, ostensibly to consider him as a possible candidate to be
2 invited onto this Board. That meeting took place on January 8, 2018.

3 26. Just three days later on January 11, 2018, HomeStreet issued a press release
4 attaching a letter to all shareholders announcing that following a unanimous recommendation
5 of the Human Resource and Corporate Governance Committee, the full Board of Directors
6 unanimously voted to decline Blue Lion's request to place a nominee on its Board. In that
7 open letter to all shareholders, the CEO/Chairman wrote:

8 [T]he Board concluded the issues of greatest concern regarding
9 the operating efficiency of our Bank are best addressed with the
10 Company's current strategic plan....

11 In other words, the Company did not believe it was necessary to have individuals with
12 different ideas and ones that were not consistent with all current Board members in the
13 Boardroom. The Board did not offer to Blue Lion that it would consider any other nominee.

14 27. Just two weeks later on January 25, 2018, HomeStreet publicly announced the
15 appointment of a new Director to its Board. That Director, who like the Blue Lion nominee
16 had experience as an institutional bank stock investor, owned less than 1/20th of the stock that
17 Blue Lion owned as HomeStreet's fourth largest investor.

18 28. The timing of the Blue Lion rejection and the new Director appointment
19 suggests that HomeStreet's Board of Directors never intended to invite the Blue Lion nominee
20 onto its Board of Directors at the time they agreed to interview him in January 2018.

21 29. Having unanimously rejected Blue Lion's nominee, not offered to entertain
22 other Blue Lion candidates and then, adding a new member to its Board of Directors just two
23 weeks later that had a similar background as Blue Lion's nominee, the Board made clear its
24 desire to keep anyone out of the Boardroom that was nominated by Blue Lion and anyone that
25 might objectively evaluate the performance of HomeStreet.
26

1 30. That state of mind was what each Board member (including its
2 CEO/Chairman) brought to the process of exercising its applicable duties in considering to
3 accept or reject Blue Lion's Nomination Submission on February 23, 2018.

4 **D. Blue Lion's Nominees and Proposals.**

5 31. Blue Lion believes that HomeStreet will continue on its poor strategic path
6 unless there is improved Board oversight and significant participation from independent board
7 members acting as strong advocates for shareholders.

8 32. Accordingly, in advance of the nomination period expiring and in compliance
9 with the Bylaws, Blue Lion nominated two independent director candidates who would bring
10 the fresh perspective needed to help generate long term sustainable value for all shareholders
11 and submitted three proposals.

12 33. On February 23, 2018, Blue Lion delivered its 133 pages Nomination
13 Submission to HomeStreet.

14 34. Among the proposals, Blue Lion proposed a binding change to the Company's
15 bylaws that would require that the roles of Chairman and CEO be separate. Today,
16 HomeStreet's bylaws permit one person to serve in both capacities. Blue Lion believes that
17 one person with the combined role of Chairman and CEO diminishes the CEO's
18 accountability to the Board and the ability of the Board to independently oversee
19 management.

20 35. Blue Lion also proposed that the Board take the steps necessary to declassify
21 the Board, so that all directors are elected each year. Blue Lion believes that one-year
22 director terms increase the Board's accountability to shareholders. This proposal puts at risk
23 each director's three-year term. A contested election in general gives rise to negative scrutiny
24 of their past performance.

25 36. The two Blue Lion nominees are Ronald Tanemura and Paul Miller.
26

1 37. Mr. Tanemura is presently a private investor. He is a highly qualified
2 candidate. Since March 2012, Mr. Tanemura has served as a director of post-reorganization
3 Lehman Brothers Holdings Inc. and, since March 2011, as a director of TPG Specialty
4 Lending, Inc., an investment company registered under the Investment Company Act. Also,
5 since November 2012, he has served as a non-executive director of ICE Clear Credit in
6 Chicago and, since 2009, he has served as a non-executive director of ICE Clear Europe in
7 London, both wholly owned subsidiaries of Intercontinental Exchange, Inc. Prior to that, Mr.
8 Tanemura was an Advisory Director at Goldman Sachs. From 2000 to 2004, Mr. Tanemura
9 was a Partner at Goldman Sachs and the Global Co-Head of Credit Derivatives and a member
10 of the Fixed Income, Currency and Commodities Risk Committee and Firmwide Credit
11 Policy Committee. In addition, Mr. Tanemura has led a variety of fixed income businesses,
12 working at Deutsche Bank from 1996 to 2000 and at Salomon Brothers from 1985 to 1996.
13 Mr. Tanemura holds an A.B. in Computer Science from the University of California,
14 Berkeley. He is a resident of Seattle and is actively involved in the community.

15 38. Mr. Miller is a Chartered Financial Analyst and a private investor. He was the
16 Managing Director and Head of the Financial Institutions Group of FBR Capital Markets
17 from December 2005 to March 2017, where he oversaw and produced research on large cap
18 banks, regional banks and mortgage banks. Mr. Miller provided research coverage of
19 HomeStreet for approximately five years from February 2012 to February 2017. Prior to
20 becoming the Head of the Financial Institutions Group, Mr. Miller was an investment analyst
21 covering mortgage banks and thrifts for several years. In 2010, Mr. Miller was named the top
22 overall stock analyst among 2,700 analysts by Forbes.com. He also received the Forbes.com
23 Blue Chip Analyst Award as the leading analyst covering banks and thrifts in 2008, 2009, and
24 2010; he received the same award for coverage of finance companies in 2009. Mr. Miller was
25 recognized by the Financial Times/StarMine in 2008 and 2009 as the leading earnings
26 estimator in thrifts and mortgage finance. Mr. Miller is a former bank examiner for the

1 Federal Reserve Bank of Philadelphia, where he worked for five years. As a bank examiner,
2 Mr. Miller conducted financial analysis for more than 30 community banking institutions in
3 the Philadelphia and Harrisburg market areas. Mr. Miller served in the Navy from 1979 to
4 1985. Mr. Miller holds a Master of Science, Economics, from the University of Delaware,
5 and a Bachelor of Science, Economics, and Bachelor of Arts, International Relations, from the
6 University of Delaware.

7 **E. HomeStreet Rejects Blue Lion's Notice.**

8 39. On February 26, 2018 the Company issued a press release saying that it was in
9 receipt of Blue Lion's notice of nominations and proposals and that it would "carefully
10 evaluate the notice." The Board made its negative views toward Blue Lion known when
11 stating: "it is unfortunate that Blue Lion has chosen to initiate a proxy contest." *See* Ex. D.

12 40. Three days later on March 1, 2018 the Company sent Blue Lion a five-page
13 letter rejecting the notice and describing "32 instances of failure." It issued a press release
14 simultaneously describing its decision. *See* Exs. E and F.

15 41. In a subsequent letter dated March 9, 2018, reaffirming the decision to reject
16 the nomination notice, HomeStreet explained that "it expects that the Company's Chairman
17 will declare that Blue Lion's nominees and proposals shall be disregarded at the [annual]
18 meeting." This second letter suggests that the CEO/Chairman may have unilaterally decided
19 to declare the Blue Lion notice invalid. *See* Ex. G.

20 **F. All Board Members Were Biased, Interested and Conflicted at the Time They**
21 **Decided to Reject the Notice.**

22 42. At the time that the CEO/Chairman may have unilaterally decided or
23 participated with the Board in deciding that Blue Lion's notice should be rejected, he and
24 HomeStreet were aware that one of the proposals that was part of Blue Lion's notice called
25 for the amendment of HomeStreet's Bylaws to require that the role of the CEO and Chairman
26 be separated, consistent with good corporate governance practices. The approval of such a

1 proposal by HomeStreet's shareholders would have substantially diminished the
2 CEO/Chairman's role within HomeStreet.

3 43. At the time the decision was made by the full Board to reject Blue Lion's
4 nomination notice, three directors were up for election at the annual meeting of shareholders.
5 Two of the three directors were members of HomeStreet's Audit Committee. Those two long
6 serving directors, on information and belief, understood they were and are extremely
7 vulnerable to an election contest. They sat on the audit committee when the Securities and
8 Exchange Commission ("SEC") found the Company had impeded an SEC investigation into
9 its accounting practices. And, both sat on the audit committee during part of the period in
10 which HomeStreet's accounting records and accounting controls were found to be unlawful.
11 At last year's board election, another audit committee member received a substantial rebuke
12 from shareholders – with an unusual number (40 percent) of shareholders casting a protest
13 vote (known as a "withhold vote") even though the election was not contested and no other
14 candidates were running for election.

15 44. On information and belief, the two long serving directors who are up for
16 election this year recognized that Blue Lion's desire for new perspectives on the Board would
17 likely be supported by many shareholders and their coveted positions on the Board were at risk
18 as evidenced by the 2017 election results.

19 45. As mentioned, all directors would be impacted by the proposal that jeopardized
20 their three year terms by going to annual elections.

21 46. Here, all nine members of the Board that participated in deciding to reject Blue
22 Lion's notice were directly "interested" parties in connection with Blue Lion's nomination
23 notice and proposals, raising serious conflicts of interests and likely bias in connection with
24 their discharge of their duties to the Company and its shareholders. Moreover, the entire
25 Board knew that a contested election would draw close scrutiny to the entire Board, with
26 publicity and independent research firms carefully evaluating the work all the Board members

1 had done as fiduciaries for shareholder. Given the findings of the SEC – and the levy of a
2 substantial fine for violations – the Board, on information and belief did not want such
3 scrutiny. The easiest way to avoid the publicity and attention of an election contest was for
4 the incumbent directors to simply refuse to accept Blue Lion’s Notice.

5 47. There is nothing in HomeStreet’s bylaws that requires or directs the Board of
6 Directors to reject a shareholder’s Nomination Notice if it is allegedly improperly presented.

7 48. While the Bylaws of the Company provide that the “Chairman of the meeting”
8 shall have the power and duty to determine whether a nomination may be brought before the
9 meeting, such authority is not unlimited, with the exception being “as otherwise provided by
10 law, the Articles of Incorporation, or [the] Bylaws.” The Bylaws otherwise make clear that
11 “all corporate powers shall be exercised by or under the authority of, . . . the Board.”

12 49. The decision by the same people who had unanimously rejected Blue Lion’s
13 efforts to gain Board representation through honest dialogue and cooperation, demonstrated
14 bias and a lack of good faith in discharging its duties when deciding the adequacy of Blue
15 Lion’s Notice.

16 50. Importantly, in its March 1, 2018 press release, HomeStreet suggests that
17 “[b]ecause Blue Lion failed to deliver a notice in accordance with the bylaw requirements
18 prior to the deadline . . . Blue Lion no longer has the right to bring any proposals . . . or
19 nominate any candidates for . . . the upcoming meeting.” This announcement, as approved by
20 the Board, suggests that the Company would have notified Blue Lion of any question it had or
21 perceived deficiencies that might exist in the Notice had there been more time, thus allowing
22 Blue Lion to clarify or correct any items in the Notice. If such is the case, the Board has that
23 same ability to have allowed the clarifications and corrections to have occurred with respect
24 to Blue Lion’s current Notice.
25
26

1 **G. Blue Lion Provides Clarifying Information.**

2 51. Blue Lion provided a detailed letter to HomeStreet on March 8, 2018 (*see* Ex.
3 H) providing clarifying information relating to its Notice and resubmitted on March 9, 2018,
4 out of an abundance of caution, a certification confirming and clarifying its prior Notice. *See*
5 Ex. I.

6 52. The action taken by HomeStreet's Board has no rational business purpose
7 other than to entrench itself and interfere with a shareholder's right to nominate directors to
8 the Board and interfere with all shareholders right to vote for a candidate of choice.

9 53. Blue Lion is not seeking to take control of the Company. The Company has
10 nine directors, and only three slots are open in 2018. Blue Lion is seeking only to exercise the
11 right that any shareholder of the Company has – the right to nominate a director and the right
12 to run candidates against the entrenched board. Blue Lion nominated just two candidates.
13 Once the candidates are nominated and recognized then it is up to all the shareholders to voice
14 their opinion by voting their shares in person or by proxy at the annual meeting. In other
15 words, this case is about the right to “enter” the race; the shareholder voters get to decide who
16 will win the race. But a race with no other contestant is simply no race at all.

17 **H. Background of a Proxy Contest.**

18 54. Proxy voting is an important and vital function in corporate meetings.
19 Shareholders, spread across the country, have the right to vote their shares in person or by
20 proxy at the Annual Meeting. In order to gain sufficient votes for any particular director or
21 proposal for the annual meeting, proxies are solicited by email, mail or other means approved
22 by the Securities and Exchange Commission. When there is more than one nominee or
23 candidate for a board position (management's nominee and a shareholder nominee) or a
24 proposal not favored by present management, these proxy solicitation efforts are called a
25 proxy contest. In other words, it is a contest between this Company's management team and
26 its Board against a shareholder who exercises their right to nominate, with two sides trying to

1 win the confidence and votes of shareholders in favor of their respective nominees or
2 positions. The Company runs a proxy solicitation effort and the nominating shareholder runs
3 another effort.

4 55. In a proxy contest, a corporation needs to know before it produces and files its
5 proxy statement whether any shareholder intends to submit an independent nomination for the
6 Board of Directors. Because of these practicalities, many corporations, but not all, have
7 adopted provisions in their bylaws to require a shareholder that intends to submit a
8 nomination to provide the corporation notice in advance of the nomination. The purpose of
9 these provisions should not be to put up barriers to shareholder participation in a core element
10 of share ownership – nominations and elections – but rather, to ensure the corporation knows
11 it will face a contested election.

12 56. Here, Blue Lion submitted a timely and valid notice, which HomeStreet
13 wrongfully rejected.

14 57. If the Company's erroneous position that the nominations made by Blue Lion
15 are not valid is promoted to other shareholders during the course of the proxy contest and the
16 nomination is not allowed to proceed at the Annual Meeting, a fair and meaningful proxy
17 contest cannot be had. Blue Lion will be denied its right to nominate and all shareholders will
18 be denied the right to choose between competing slates. As a result, Blue Lion will be
19 irreparably harmed.

20 **I. Blue Lion Is Experienced in Evaluating Performance of Banks and Bank Holding**
21 **Companies and HomeStreet Is Underperforming.**

22 58. Blue Lion believes that HomeStreet has tremendous potential to generate
23 significant value for shareholders and the communities it serves. Unfortunately, numerous
24 strategic missteps, inadequate corporate stewardship, and poor financial performance have
25 eroded shareholder confidence, destroyed shareholder value and hurt the Bank's ability to
26 serve its customers.

1 59. Blue Lion firmly believes that the Company, given the right leadership and
2 governance structure, can generate substantial and lasting value for shareholders.

3 60. Over the course of this past year, in a determined effort to encourage positive
4 changes, Blue Lion has initiated multiple conversations with the Company's management and
5 the Board with the hopes that a costly proxy contest could be avoided.

6 61. Despite Blue Lion's efforts to drive positive change through an engaged,
7 constructive dialogue with the Company over the course of the last several years, it has been
8 unsuccessful in getting a change in management views or a position on the Board of
9 Directors. Again, on January 11, 2018, the Company made clear that it did not want change
10 and wanted to stay the course with the Company's "current strategic plan." In other words,
11 shareholder input was not wanted.

12 62. The reasons Blue Lion nominated candidates for the Board is that Blue Lion
13 believes that the entrenched management and the current board is not appropriately managing
14 the Company. Simply put, management has become accepting of operating at a poor
15 performance level in comparison to peers and perhaps most surprisingly given the recent
16 history of banks in Seattle, Washington, is taking on too much loan risk without adequate loan
17 loss reserves.

18 63. Based on analytics it has run, Blue Lion believes that HomeStreet has the
19 lowest price-to-tangible book value multiple among its peers and regularly underperforms
20 those peers on virtually every key operating metric. Despite operating in some of the best
21 markets in the country, HomeStreet is failing relative to its peers and virtually every public
22 bank in the country in almost every way. Applying commonly used performance metrics to
23 compare HomeStreet with any bank peer group available, the bank is last or second to last on
24 every metric in Blue Lion's analysis.

25 64. This poor performance is not new: over the five years ending December 31,
26 2017, the total return for shareholders was 16 percent, significantly lower than the

1 performance of its banking peers, the relevant bank indices (121 percent total five-year return)
2 and the broader market as a whole.

3 65. HomeStreet released fourth quarter and full-year 2017 earnings which were
4 disappointing to shareholders, including Blue Lion. HomeStreet failed to execute on a
5 strategy that would enable the Bank to reach its full potential or generate earnings and cash
6 flow commensurate with its assets and opportunity.

7 66. The Company's mortgage segment was unprofitable for the fourth time in the
8 past five quarters. The commercial and consumer banking segment sold significantly more
9 commercial real estate loans than it originated during the quarter, generating a one-time boost
10 to earnings of more than 11 cents per share. This was designed to make the performance of
11 the company look better than it otherwise would. After adjusting for the high volume of sales
12 of commercial real estate loans during the quarter (and the 11 cents per share boost to
13 earnings from those sales) as well as a reasonable provision for loan losses (another five cents
14 per share), HomeStreet missed consensus earnings estimates by 15 cents per share or 35
15 percent based on Blue Lion's analysis.

16 67. Of tremendous concern to shareholders, who have seen banks struggle because
17 of inadequate controls and loan loss reserves, the Bank, despite significant new loan growth,
18 did not make a commensurate adjustment to its loan loss provision. In fact, in 2017, the
19 increase in the provision for loan losses was a mere \$750,000, despite \$680 million of net
20 loan growth and a \$4.1 million increase in the loan loss provision in 2016 based upon Blue
21 Lion's review.

22 68. During 2017, HomeStreet's commercial and consumer banking segment had
23 net loan growth of more than \$680 million. The Bank took a loan loss provision of \$750,000
24 or 11 basis points on those loans. HomeStreet's allowance for loan losses currently sits at 90
25 basis points of originated loans (down from 100 basis points a year ago) while its peers
26

1 average 123 basis points. In plain terms, Blue Lion believes the Bank's financial reporting is
2 not guarding sufficiently against the risk of loss in its loan business.

3 69. The Bank also is operating at too high an expense for operations. The Bank's
4 efficiency ratio as judged by Blue Lion was 1,000 basis points (10 percent) higher than its
5 peers in the Pacific Northwest and 1,800 basis points higher than its peers in California. Blue
6 Lion believes that other shareholders share its concern that management is not doing enough
7 to make the Bank more efficient.

8 70. Another significant concern is turnover of key operating personnel.
9 HomeStreet has had five CFOs or Chief Accounting Officers in its six-year public life.

10 71. Further, HomeStreet was subject to an SEC investigation into its accounting
11 practices. The SEC concluded in 2017 that HomeStreet violated various SEC statutes and
12 regulations and took affirmative steps to impede its investigation. HomeStreet was sanctioned
13 \$500,000 with a civil penalty and forced to enter into a cease and desist decree with the SEC.

14 72. Yet another area of shareholder concern is the acquisitions by HomeStreet of
15 other banks in other states, in particular California. Beginning in 2015, HomeStreet acquired
16 Simplicity Bancorp ("Simplicity"), which was based in Los Angeles, California. Since the
17 Simplicity deal, HomeStreet has opened numerous retail branches, loan production offices
18 and loan fulfillment centers throughout Southern California. In addition, in February 2016,
19 HomeStreet acquired Orange County Business Bank ("OCBB"). HomeStreet has continued
20 to open bank and mortgage offices as far south as San Diego and in Northern California in an
21 attempt to close the enormous gap between the southernmost tip of California and Seattle.
22 Blue Lion does not believe HomeStreet's management can effectively and efficiently manage
23 this geographic footprint and the results demonstrate such.

24 73. In short, absent meaningful change at the Bank that might follow from having
25 fresh voices in the Board Room, Blue Lion believes that HomeStreet's value and the value of
26 it to all shareholders will continue to deteriorate.

1 **J. Despite This Poor Performance, Existing Executives Are Enriching Themselves.**

2 74. Despite the under performance of its stock, HomeStreet's management
3 continues to be overpaid for its efforts. In fact, there seems to be little relationship between
4 compensation and true performance measures. So, in spite of HomeStreet performing at or
5 near the bottom on every metric when compared to peers, its named executive officers are
6 compensated near the top relative to all those peers. Further, the Board just recently
7 renegotiated the employment agreement of its Chairman and CEO as well as its Chief
8 Commercial Real Estate Lending Officer and rewarded both with handsome raises to their
9 annual compensation despite the dismal performance.

10 75. These are not the only concerns that shareholders have with the entrenched
11 management of HomeStreet and the resulting underwhelming performance. However, this
12 lawsuit is not about whose view of policy and management is right or wrong or who will
13 ultimately sway the most shareholder votes. Rather, it is only about whether the fundamental
14 right shareholders have to nominate candidates and compete against management for the
15 hearts and minds of shareholders should be disdainfully disregarded as was done by the
16 Company here on March 1, 2018.

17 **K. The Right to Nominate Candidates to the Board Is a Fundamental Right and**
18 **Cannot Be Thwarted by the Company.**

19 76. The board of directors and the shareholders' power to nominate and elect to, or
20 remove, directors from that board is the central feature of the traditional corporate model in
21 the United States. One of the most sacred rights of any shareholder is to participate in
22 corporate democracy. So sacred is this right that the business judgment rule does not apply to
23 actions that "foil the electoral process." Shareholders must by necessity also have the power
24 to nominate persons for positions on the board of directors.

25 77. Bylaws of a corporation that seek to restrict the power of a shareholder to
26 nominate are scrutinized under the law. The State of Washington recognizes certain

1 fundamental rights of shareholders. In *Washington State Labor Council v. Federated*
2 *American Insurance Company*, 78 Wn.2d 263, 271, 474 P.2d 98 (1970), the Supreme Court of
3 Washington stated that “[t]he right of a qualified shareholder in a corporation to vote, either
4 personally or by proxy, for the directors who are to manage the corporate affairs is a valuable
5 and vested property right. It is one of the most important rights incident to stock ownership
6 and should not be annulled for purely technical reasons.”

7
8 78. Washington also looks to Delaware law as influential in corporate governance
9 matters where Washington case law has yet to be developed. Under Delaware law, any
10 restriction on the right to nominate must be reasonable and not intended to or to have the
11 effect of entrenching the incumbent board. When advance notice bylaws unduly restrict the
12 stockholder franchise or are applied inequitably, they will be struck down.

13 79. A second approach is to hold that bylaw restrictions are ‘directory’ rather than
14 mandatory, i.e., aspirational. Under either standard, Blue Lion’s nomination was improperly
15 and wrongfully denied by the Company for what the Company unilaterally declared to be
16 non-compliance with the bylaws.

17 80. HomeStreet’s bylaws contain *over six pages* of hurdles to the nomination of a
18 director by a shareholder, which includes the requirement to have the nominee fill out a 52-
19 page questionnaire with 290 questions and subparts. Nevertheless, Blue Lion complied with
20 the bylaws and submitted a nomination package consisting of 133 pages of material on
21 February 23, 2018, during the 30 day window for nominations. The Company acknowledged
22 the timely submission on February 26, 2018. *See Ex. D.* Thus, this is not a case where no
23 timely nomination was made. Nor is this a case where no information about the “Background
24 and Qualifications” regarding the nominees or the nominating party was provided. Instead,
25 here the Company is simply being opportunistically picayune about a timely 133-page
26 submission. The Company is acting inequitably.

1 81. In addition to its March 1, 2018 press release (Ex. E), the Company wrote a
2 letter to Blue Lion stating that the Company had unilaterally decided the submission was
3 deficient and that the period for a timely submission was now closed because it was now after
4 the date of February 24 (Ex. F.).

5 82. As described above, the claimed deficiencies in counsel's letter were
6 unfounded, inaccurate and immaterial and, will lead shareholders to believe that they now
7 only have one choice in the upcoming annual elections for directors.

8 83. In fact, HomeStreet then made clear in its March 9, 2018 letter:

9
10 [I]f Blue Lion proceeds with soliciting proxies from
11 shareholders for its proposed nominees and proposals for the
12 Company's 2018 annual meeting of shareholders, the Company
13 will advise its shareholders that it expects that the Company's
14 Chairman will declare that Blue Lion's nominees and proposals
shall be disregarded at the meeting and that, as a result, no
proxies in favor of Blue Lion's nominees or proposals will be
recognized and no votes cast in favor of Blue Lion's nominees
or proposals will be tabulated.

15 Ex. G.

16 84. The Blue Lion submission was wholly compliant with HomeStreet's bylaws
17 and included every material piece of required information relating to Blue Lion, its nominees
18 and its governance proposals. Blue Lion believes there is no ambiguity whatsoever in the
19 submission and that it provides more than sufficient detail for HomeStreet to have advance
20 notice of Blue Lion's intentions and the background and qualifications of its nominees.

21 85. Nowhere in its objection to Blue Lion's submission does HomeStreet claim it
22 has insufficient knowledge of Blue Lion's intended actions. Instead, HomeStreet attempts to
23 invalidate the Notice with meaningless objections that are unreasonable and immaterial.

24 86. Notably, the bylaws contain fourteen references to the concepts of materiality,
25 reasonableness and reasonable. Indeed, those terms are used seven times just within the
26 advance notice provisions. Thus, contrary to the picayune approach taken by the Company,

1 the bylaws recognize that advance notice compliance should be judged by reasonableness and
2 materiality.

3 87. For example, 27 of the claimed deficiencies are assertions that Blue Lion (or
4 the Nominees, in the case of the Board of Directors Questionnaire) failed to respond, but the
5 items were affirmatively not applicable or there was no information to provide. There is no
6 requirement in the Bylaws or at law to respond when there is nothing to provide. When there
7 is no information to be provided, no response need to be given. In other words, an affirmative
8 statement referencing “Not applicable” or “No further information to provide” is not
9 necessary when an item is not relevant or does not apply. This is also a standard adopted by
10 the SEC in connection with the preparation of proxy related materials.

11 88. In another example, the March 1 letter (Ex. F) inaccurately suggests (in item
12 2(h)) that Blue Lion had not properly disclosed whether it was within the past year a party to
13 any contract, arrangements or understandings with any person with respect to any securities of
14 the Company. That is incorrect. The Notice Letter disclosed the applicable information:
15 “Except as otherwise set forth herein, the Shareholder is not, nor has the Shareholder been
16 within the past year, a party to any contract, arrangement or understanding with any person
17 with respect to any securities of the Company, including, but not limited to joint ventures,
18 loan or option arrangements, puts or calls, guarantees against loss or guarantees of profit,
19 division of losses or profits, or the giving or withholding of proxies or the right to vote any
20 shares of any security of the Company.” *See* Ex. B, Notice Letter at 10. Blue Lion also
21 disclosed the absence of any such contract or arrangement concerning the Blue Lion Parties.
22 *See* Notice Letter at 11.

23 89. These are not the only examples. Each asserted deficiency was addressed in
24 Blue Lion’s March 8, 2018 letter. *See* Ex. H.

25 90. HomeStreet has disingenuously claimed the submission is incomplete, misread
26 its own bylaws and is applying a double standard. Blue Lion believes HomeStreet is

1 intentionally using its control of the corporate machinery to manipulate the nomination
2 process to suppress the rights of Blue Lion to nominate and meaningfully vote in a proxy
3 solicitation contest in a manner directly adverse to the interests of its Board and individual
4 members up for election.

5 91. If Blue Lion's candidates are not recognized as nominated candidates by the
6 Company, or if the proposals are not part of the vote then Blue Lion's ability to conduct a
7 meaningful proxy soliciting contest will be greatly harmed. Shareholders may be reluctant to
8 cast votes in favor of Blue Lion's nominees when the Company is taking the position that
9 those votes will not count. In short, Blue Lion will be irreparably harmed.

10 **IV. CAUSES OF ACTION**

11 **Count 1 – Declaratory Judgment**

12 92. Plaintiff re-alleges the allegations in paragraphs 1 to 90 above as though fully
13 stated herein.

14 93. HomeStreet's bylaws, attached as Exhibit A hereto, contain several convoluted
15 and ambiguous definitions. For example, in Section 1.13(b)(i)(A) there are certain defining
16 phrases in the advance notice provision. Among them is a Noticing Shareholder. Here that
17 would be Plaintiff Blue Lion Opportunity Master Fund, L.P.

18 94. Because Blue Lion Opportunity Master Fund, L.P. is a record owner of
19 HomeStreet shares, and is not holding any HomeStreet shares for the benefit of any other
20 entity, it is not a beneficial owner who holds for the benefit of another. Thus, under
21 HomeStreet's bylaws, Plaintiff is not defined clearly therein as a Holder. Rather Plaintiff is a
22 Noticing Shareholder and a Record Holder only. Because of this ambiguity, Blue Lion under
23 a reading of Section 1.14 of the bylaws was not required to submit questionnaires. The bylaw
24 definition is very unusual and in undertaking to provide its advance notice, Blue Lion
25 undertook, where applicable, to attempt to respond as if the Holder requests applied to it given
26 this ambiguity, even though technically it may not.

1 95. Blue Lion is not a nominee.

2 96. HomeStreet's bylaws provide that a noticing shareholder such as Blue Lion is
3 to provide advance notice of an intent to bring a matter before a vote of the shareholders
4 including making a nomination of a director to the board in Section 1.13. On February 23,
5 2018, Blue Lion did just that. Ex. B.

6 97. Section 1.13 (a) provides when the notice should be provided, in essence
7 during a thirty day window 120 to 90 days ahead of the anniversary date of the prior year's
8 annual meeting. HomeStreet, acknowledged publicly on February 26, 2018, that Blue Lion's
9 submission was timely.

10 98. Blue Lion, on February 23, 2018, as part of its 133-page advance notice
11 submission complied with the requests of Section 1.13(b)(i)(A)-(K). It is noteworthy that just
12 below subsection (K), the bylaws anticipate and indeed require that the notice be
13 supplemented. "Such information shall be provided as of the date of the notice and shall be
14 supplemented by the Holder not later than 10 days after the record date for the meeting to
15 disclose such ownership as of the record date." The 2018 record date is March 20. This
16 paragraph contemplates that additional information from the shareholder nomination and the
17 nominees will be approved after the deadline but well in advance of when shareholders are
18 required to vote.

19 99. Section 1.13(b)(ii) relates to additional information that is requested if the
20 noticing shareholder is intending to present business at the annual meeting other than director
21 nominations. Blue Lion set out three proposals in addition to its two director nominees. Blue
22 Lion provided the information called for in Section 1.13(b)(ii) in its February 23, 2018,
23 submission.

24 100. Section 1.13(b)(iii) sets forth information requests to be answered by a
25 "Holder" for director nominees. While this does not address itself to Plaintiff, which under a
26

1 strict reading of the bylaws is not a Holder, Blue Lion nevertheless provided the information
2 called for in Section 1.13(b)(iii) in the same February 23, 2018, submission.

3 101. Blue Lion also provided the representation referenced in Section 1.13(b)(iv).
4 In addition to its 1,000 shares, Blue Lion gave notice that its affiliate shares amounting to
5 approximately six percent of the Company's stock would be backing the nominees and the
6 proposals.

7 102. Blue Lion's timely submission also included the questionnaires, completed and
8 signed by the nominees as requested in Section 1.13(b)(v). Here, again, the bylaws expressly
9 anticipate that supplementation of questionnaire material may happen and that the information
10 provided would be that which "reasonably" may be required.

11 103. Blue Lion also complied with the submission requirements of bylaw Section
12 1.14. Under HomeStreet's bylaws, Plaintiff is not defined clearly therein as a Holder. Rather
13 Plaintiff is a Noticing Shareholder and a Record Holder only. Because of this ambiguity,
14 Blue Lion under a reading of Section 1.14 of the bylaws was not required to submit
15 questionnaires. The bylaw definition is very unusual and in undertaking to provide its
16 advance notice, Blue Lion undertook, where applicable, to attempt to respond as if the Holder
17 requests applied to it given this ambiguity, even though technically it may not.

18 104. In all respects, the bylaws were followed by Blue Lion. If, in the alternative, it
19 is found that Blue Lion missed one or more technical requirements, then the same result
20 should be reached under the doctrine of substantial compliance. In the alternative, if the
21 doctrine of substantial compliance is found not applicable, then the bylaws should be struck
22 down, or deemed waived because such enforcement in the circumstances of this matter would
23 be inequitable.

24 105. Under the bylaws, the Company is to recognize the proposals and candidates
25 that are noticed by a noticing shareholder. *See* Ex. A, § 1.13(e). However, the company has
26 stated that it will not recognize the proposals and candidates as having been properly noted

1 under Section 1.13 and Section 1.14. The Company's statement is in violation and breach of
2 the bylaws, is inequitable and violates the shareholder rights of Blue Lion and all other
3 shareholders of HomeStreet.

4 106. On March 8, 2018, Blue Lion addressed the Company's March 1, 2018, letter.
5 In that response, Blue Lion set out that there were no material deficiencies that should impact
6 the validity of the three proposals or the two nominees. Ex. H.

7 107. The Company had notice of the proposals and nominees in advance of the
8 notice deadline by way of the 133-page submission made on February 23 and now has
9 additional supplemental clarification well in advance of when the Company reasonably needs
10 the information.

11 108. Relief is needed immediately because irreparable harm will befall Blue Lion
12 and indeed all shareholders because they will be denied a meaningful choice of director
13 candidates and lose the opportunity to vote on the proposals.

14 109. The timing of a proxy contest requires that it be confirmed that the nominees
15 and proposals will be recognized as valid by approximately March 21. At or around that date,
16 preliminary proxy materials will need to be submitted to the SEC for review. That review
17 process typically takes 10 to 21 days. By the second week of April, those competing proxy
18 materials will need to be sent out to initiate a timely proxy solicitation campaign. If there is a
19 cloud over the validity of the campaign, momentum for the shareholder movement will not be
20 created and the investment of time and money may be wasted.

21 **V. PRAYER FOR RELIEF**

22 WHEREFORE, Blue Lion hereby prays for the following relief:

23 A. A declaration of rights pursuant to RCW 7.24.010 stating that the Submission
24 of February 23, 2018 pursuant to the Company's bylaws, sufficiently nominated Messrs.
25 Tanemura and Miller for candidacy for the board of directors and sufficiently presented the
26 three management proposals also contained therein. The Company must recognize these

1 nominations and proposals as properly on the agenda for a vote at the annual meeting for
2 2018.

3 B. A preliminary and permanent injunction and judgment ordering and enforcing
4 that declaration of rights.

5 C. A preliminary injunction requiring the Company to disregard any proxies it
6 may have received under misimpressions created by the Company's actions in determining
7 the election results.

8 D. The Company must make a filing and press release to announce this Court's
9 ruling.

10 E. Awarding plaintiff its costs and attorneys' fees.

11 F. Such other and further relief as the Court may order in equity or law.

12 DATED this 13th day of March, 2018.

13 BYRNES KELLER CROMWELL LLP
14

15
16 By /s/ John A. Tondini

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25
26

Annex B

Motion for Preliminary Injunction,
filed in the Superior Court of Washington
in and for King County on March 13, 2018

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BLUE LION OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

v.

HOMESTREET, INC.,

Defendant.

No. 18-2-06791-0 SEA

MOTION FOR PRELIMINARY
INJUNCTION

I. INTRODUCTION & RELIEF REQUESTED

Imagine if a candidate could unilaterally declare that the candidates running against him or her were not eligible for the ballot and based solely on that unilateral decision, bar the candidates from the election process. That is the functional equivalent to what happened here when defendant HomeStreet, Inc. (“HomeStreet” or “Company”) prevented plaintiff from exercising its fundamental shareholder right to nominate candidates to run for election to become members of the Company’s Board of Directors. As set out below and in the Complaint, this case is about whether a CEO/Chairman and an entrenched board can manipulate the corporate electoral process to block on non-substantive grounds three corporate governance shareholder proposals and the nomination of two alternative directors. Even more surprising is that the Company engaged in “self-help” and did not seek prior Court permission before denying its owner-shareholders the fundamental right to nominate.

Plaintiff Blue Lion Opportunity Master Fund, L.P. (“Blue Lion”) and its affiliates are one of the largest shareholders in HomeStreet. Blue Lion now seeks a preliminary injunction

1 to enable it and its fellow shareholders to have a real and meaningful choice in the elections
2 that will occur at this year's annual shareholder meeting in May.

3 HomeStreet is a publicly traded company and almost all of its shareholders will vote
4 through a proxy process done by mail and on-line beginning in mid-April and continuing
5 through the dates leading up to the annual meeting. Given the short period of time until the
6 proxy statements need to be prepared for the upcoming annual meeting, time is of the essence
7 in granting injunctive relief.

8 The ability to vote, especially on the question of who will make up the board of
9 directors, is the key factor that legitimizes the directors' control over property that is not
10 their own (as the company is owned by the shareholders). Thus, corporate maneuverings that
11 are designed to, or have the effect of, thwarting the free exercise of the shareholders'
12 franchise are subject to close scrutiny in the courts.

13 This Court is not being asked to choose who should be a director. Nor is it being asked
14 to determine whether any or all of three corporate governance proposals should be adopted.
15 Those are questions that should be voted on by all shareholders. However, the Court is being
16 asked to stop HomeStreet's manipulation of the nominating process by preventing
17 shareholders from having any choice in director candidates and thereby preventing a
18 meaningful vote.

19 II. STATEMENT OF FACTS

20 A. A Significant Shareholder Concludes HomeStreet Is Underperforming.

21 The Blue Lion entities, of which Plaintiff is affiliated, were founded in 2005. Grieve
22 Decl. ¶ 12. In its 12-year history, Blue Lion has never publicly campaigned for change at any
23 of the companies it has invested in. Blue Lion is neither an activist investor nor a shareholder
24 with a short-term orientation. To the contrary, Blue Lion is a committed, long-standing
25 investor that first invested in HomeStreet during the Bank's initial public offering in 2012
26 because of the Company's business opportunities. *Id.*

1 Between 2012 and 2017, Blue Lion communicated regularly with management at
2 HomeStreet. In fact, those communications were almost on a quarterly basis. The
3 communications were cordial and constructive. *Id.* ¶ 14.

4 However, Blue Lion's concerns grew over time. HomeStreet's underperformance
5 became the norm, personnel departures became alarming and the Bank's stated strategic plan
6 was causing the Company's stock price to significantly underperform its peers to the point
7 where Blue Lion needed to try a different approach in its communications and interactions
8 with HomeStreet. *Id.* ¶ 15.

9 On November 20, 2017, Blue Lion wrote a letter to the CEO/Chairman of HomeStreet,
10 Mr. Mason, the first paragraph of which began as follows:

11 I am writing this letter reluctantly but feel I have no choice. I
12 do not consider myself an activist nor have I ever written a
13 letter of this kind. But, I feel compelled to explain why I
14 believe it is time for changes to be made in the way
15 HomeStreet, Inc. ("HMST" or the "Company") is being
16 managed.

17 After laying out in detail Blue Lion's concerns, Blue Lion, which was HomeStreet's
18 fourth largest shareholder at the time, asked for a board seat. *Id.* ¶¶ 16-17 & Ex. J.

19 On December 21, 2017, Blue Lion met with the HomeStreet board and provided a
20 presentation on its views of the Company's strategy and offered various alternative views on
21 changes that might be made moving forward that could increase the value for all shareholders
22 of the Company. *Id.* ¶ 18.

23 After that meeting, Blue Lion's representative was invited to meet with the
24 CEO/Chairman, the lead independent Director and the Human Resource and Corporate
25 Governance Committee of the Board, ostensibly to consider him as a possible candidate to be
26 invited onto this Board. That meeting took place on January 8, 2018. *Id.* ¶ 19.

 Just three days later, on January 11, 2018, HomeStreet issued a press release attaching
a letter to all shareholders announcing that the full board of directors unanimously voted to

1 decline Blue Lion's request to place a nominee on its board. In that open letter to all
2 shareholders, the CEO/Chairman wrote:

3 [T]he Board concluded the issues of greatest concern regarding
4 the operating efficiency of our Bank are best addressed with the
5 Company's current strategic plan....

6 *Id.* ¶ 20 & Ex. K. In other words, the Company did not believe it was necessary to have
7 individuals with different ideas or ideas that were not consistent with all current board
8 members in the boardroom. The board did not offer to Blue Lion that it was willing to
9 consider another nominee. *Id.*

10 However, just two weeks later, on January 25, 2018, HomeStreet publicly announced
11 the appointment of a new director. That director, who, like the Blue Lion nominee had
12 experience as an institutional bank stock investor, owned a small fraction of the stock that
13 Blue Lion owned. *Id.* ¶ 21 & Ex. L. The timing of the Blue Lion rejection and the new
14 director appointment shortly afterwards suggests that HomeStreet's board of directors never
15 intended to invite the Blue Lion nominee onto its board when they went through the motions
16 of interviewing him in January 2018.

17 By unanimously rejecting Blue Lion's nominee, not offering to entertain other Blue
18 Lion candidates and then adding a new member just two weeks later that had a similar
19 background as Blue Lion's nominee, the board made clear its desire to keep out of the
20 boardroom anyone nominated by Blue Lion.

21 That state of mind – the desire to keep any Blue Lion nominee off the Board – was
22 what each board member (including its CEO/Chairman) brought to its consideration of Blue
23 Lion's nomination submission a few weeks later, in February 2018.

24 **B. In February 2018, Blue Lion Proposed Two Board Candidates and Corporate**
25 **Governance Proposals Pursuant to the Bylaws.**

26 HomeStreet is a Washington Corporation, headquartered in Seattle. *Id.* ¶ 4. Like all
Washington corporations, HomeStreet must permit shareholders – the people and institutions

1 that actually own the company – to nominate directors for election and propose matters for
2 consideration by all shareholders at its annual shareholder meetings. HomeStreet’s bylaws
3 allow for these nominations. The bylaws also contain what are termed advance notice
4 provisions in Sections 1.13 and 1.14. A copy of the operative bylaws are attached as Ex. A to
5 the Griege Decl.

6 These advance notice provisions have grown in use over time. In his declaration
7 accompanying this motion, Professor Charles O’Kelley describes this process. O’Kelley
8 Decl. ¶¶ 17-22. However, these advance notice bylaw provisions are not to be used to block
9 or impede shareholder rights, as was done here by HomeStreet. *Id.* ¶¶ 13, 36-37.

10 The bylaws make clear that there is a narrow window for shareholders to exercise their
11 right to nominate. Here, that window opened January 25, 2018, and closed February 24,
12 2018. Prior to the expiration of the 30-day nomination period, and in compliance with the
13 bylaws, on February 23, 2018, Blue Lion nominated two independent director candidates to
14 run against the three Company-sponsored incumbent directors. Griege Decl. ¶¶ 22-23 & Ex.
15 B. Two of the Company-sponsored incumbents were members of the audit committee during
16 2017, when the Securities and Exchange Commission (“SEC”) imposed a \$500,000 civil
17 penalty against HomeStreet for improper accounting and for impeding the SEC investigation.
18 *Id.* ¶¶ 34, 50. Thus, unless this Court intervenes, the Company’s shareholders will be
19 deprived of an opportunity to determine whether these two company-sponsored audit
20 committee incumbents (should they be nominated) have performed adequately or whether
21 they should be replaced.

22 Blue Lion also set forth three proposals for a shareholder vote, two of which were
23 substantive and went to issues affecting all current board members. One proposal will make
24 the roles of CEO and Chairman of the Board of Directors separate. This proposal is designed
25 to enhance the CEO’s accountability to the Board and the Board’s independence. *Id.* ¶ 24.
26 This proposal thus directly affects HomeStreet’s current CEO/Chairman, Mr. Mason. Today,

1 HomeStreet's bylaws permit one person to serve in both capacities. Blue Lion believes that
2 one person with the combined role of Chairman and CEO diminishes the CEO's
3 accountability to the board and the ability of the board to independently oversee management.
4 *Id.*

5 Blue Lion also proposed that the board take the steps necessary to declassify the
6 board, so that all directors are elected each year rather than once every three years. Blue Lion
7 believes that one-year director terms will further increase the board's accountability to
8 shareholders. *Id.* ¶ 25.

9 HomeStreet's bylaws contain over six pages of hurdles to the nomination of a director
10 candidate by a shareholder. The myriad of procedural hurdles required to successfully make a
11 nomination is suspect in and of itself. O'Kelley Decl. ¶¶ 40-41. Nevertheless, Blue Lion
12 submitted a 133-page notice that contained all the material called for in the bylaws for a
13 Noticing Shareholder and its nominees, including the nominees' responses to a 290-question
14 form "Questionnaire" prepared by HomeStreet. Grieg Decl. Ex. B.; *see also*, O'Kelley Decl.
15 ¶ 31. In addition, prior to February 23, 2018, Blue Lion had filed with the SEC and made
16 publicly available five different Schedule 13Ds, each consisting of 8-10 pages of detailed
17 information about Blue Lion. Grieg Decl. Ex. M. Much of this same information was
18 redundantly called for in the bylaws. This information was known to HomeStreet prior to
19 February 24, 2018. *Id.* Other information about Blue Lion could be found in a press release
20 filed in January 2018 indicating that it would nominate persons for the board election. Grieg
21 Decl. Ex. C at 5.

22 The two Blue Lion nominees are Ronald Tanemura and Paul Miller. Mr. Tanemura is
23 a well-qualified candidate. Since March 2012, Mr. Tanemura has served as a director of post-
24 reorganization Lehman Brothers Holdings Inc. and, since March 2011, as a director of TPG
25 Specialty Lending, Inc. Also, since November 2012, he has served as a non-executive
26 director of ICE Clear Credit in Chicago and, since 2009, he has served as a non-executive

1 director of ICE Clear Europe in London, both wholly owned subsidiaries of Intercontinental
2 Exchange, Inc. Prior to that, Mr. Tanemura was an Advisory Director at Goldman Sachs, was
3 a Partner at Goldman Sachs. He is a resident of Seattle and is deeply involved in the
4 community. *See id.* Ex. B at 3, 24.

5 Mr. Miller is a Chartered Financial Analyst and a private investor. He was the
6 Managing Director and Head of the Financial Institutions Group of FBR Capital Markets
7 from December 2005 to March 2017, where he oversaw and produced research on large cap
8 banks, regional banks and mortgage banks. Mr. Miller provided investor research coverage of
9 HomeStreet for approximately five years from February 2012 to February 2017. Mr. Miller
10 also is a former bank examiner for the Federal Reserve Bank of Philadelphia, where he
11 worked for five years. As a bank examiner, Mr. Miller conducted financial analysis for more
12 than 30 community banking institutions in the Philadelphia and Harrisburg market areas. He
13 served in the Navy from 1979 to 1985. *See id.* at 3, 80.

14 **C. The Company Wrongfully Rejected the Nominations and Proposals.**

15 On February 26, 2018, the Company issued a press release saying that it was in receipt
16 of Blue Lion's notice of nominations and proposals and that it would "carefully evaluate the
17 notice" and that "it is unfortunate that Blue Lion has chosen to initiate a proxy contest." *See*
18 *Griege Decl.* ¶ 9 & Ex. D.

19 Three days later, on March 1, 2018, the Company sent Blue Lion a five-page letter
20 rejecting the notice and asserting what it contended were "32 instances of failure." It issued a
21 press release simultaneously describing its decision. *See id.* ¶ 10 & Exs. E-F.

22 In a subsequent letter dated March 9, 2018, reaffirming the decision to reject the
23 nomination notice, HomeStreet explained that "it expects that the Company's Chairman will
24 declare that Blue Lion's nominees and proposals shall be disregarded at the [annual]
25 meeting." *Id.* ¶ 11 & Ex. G. This second letter suggests that the CEO/Chairman may have
26 unilaterally decided to declare the Blue Lion notice invalid. *Id.*

1 At the time that the CEO/Chairman unilaterally decided or participated with the board
2 in deciding that Blue Lion’s notice should be rejected, he and HomeStreet were aware that
3 one of the corporate governance proposals called for the amendment of HomeStreet’s bylaws
4 to require that the role of the CEO and Chairman be separated. *Id.* ¶ 33.

5 Likewise, at the time the decision was made by the full board to reject Blue Lion’s
6 nomination notice, three directors were up for election at the annual meeting of shareholders.
7 Two of the three directors were members of HomeStreet’s Audit Committee. Those two long
8 serving directors, on information and belief, understood they were and continue to be
9 extremely vulnerable to an election contest as the directors that sat on the audit committee
10 when the SEC found the Company had impeded an SEC investigation into improper
11 accounting. And, these same directors sat on the audit committee during part of the period in
12 which HomeStreet’s accounting records and accounting controls were found to be unlawful.
13 At last year’s board election, another audit committee member received a substantial rebuke
14 from shareholders – with an unusual number (40 percent) of shareholders casting a protest
15 vote (known as a “withhold vote”) even though the election was not contested and no other
16 candidates were running for election. *Id.* ¶ 34.

17 Here, all nine members of the Board that participated in deciding to reject Blue Lion’s
18 notice were directly “interested” parties in connection with Blue Lion’s nomination notice and
19 proposals, raising serious conflicts of interests and likely bias in connection with the
20 discharge of their duties to the Company and its shareholders when receiving the notice.
21 Moreover, each Board member understood that a contested election would draw close
22 scrutiny to the entire Board, with publicity and independent research firms carefully
23 evaluating the work all the Board members had done as fiduciaries for shareholders. Given
24 the recent findings of the SEC and consistent underperformance of HomeStreet’s share price,
25 the Board, on information and belief, did not want such scrutiny. The easiest way to avoid the
26

1 publicity and attention of an election contest was for the incumbent directors to simply refuse
2 to accept Blue Lion's Notice.

3 There is nothing in HomeStreet's bylaws that requires or directs the board of directors
4 to reject a shareholder's Nomination Notice if it is allegedly improperly presented. While the
5 bylaws of the Company provide that the "Chairman of the meeting" shall have the power and
6 duty to determine whether a nomination *may* be brought before the meeting, such authority is
7 not unlimited, with the exception being "as otherwise provided by law the Articles of
8 Incorporation, or [the] Bylaws." Grieg Decl. Ex. A § 1.13(e). The bylaws otherwise make
9 clear, however, that "all corporate powers shall be exercised by or under the authority of, ...
10 the Board." Grieg Decl. Ex. A § 2.1. And, the board is to serve the interests of the
11 shareholders, not one another or themselves.

12 Instead of acting to promote shareholder franchise rights (O'Kelley Decl. ¶ 9), the
13 Company is opportunistically being picayune about a timely 133-page submission that
14 complied with the Company's bylaws in all material respects and supplied the background
15 information and qualifications for the nominees and Noticing Shareholder. The Company is
16 acting not in the shareholders' interests, but rather in the self-interests of its own
17 CEO/Chairman and board, inequitably and improperly. *See* O'Kelley Decl. ¶¶ 13, 36.

18 **D. The Claimed Deficiencies Were Pretextual and Specious.**

19 The claimed deficiencies referenced in the Company's March 1 letter are unfounded,
20 inaccurate and immaterial and will lead shareholders to mistakenly believe that they now only
21 have one choice in the upcoming annual elections for directors. In effect, HomeStreet has
22 hijacked the election by essentially ruling out of order the opposing candidates and
23 shareholder proposals. As things stand, given the Company's position, HomeStreet will
24 collect proxies in a solicitation campaign to rubber-stamp its nominees, but no opposition will
25 be permitted. That is wrong and inequitable, as will be explained in more detail below.
26

1 Nowhere in its objection to Blue Lion’s Submission does HomeStreet claim it has
2 insufficient knowledge of Blue Lion’s intended actions. Instead, HomeStreet attempts to
3 invalidate the Submission with unwarranted objections that are unreasonable and immaterial.

4 Notably, the bylaws contain fourteen references to the concepts of materiality and
5 reasonableness. Indeed, those terms are used seven times just within the advance notice
6 provisions of the bylaws. Examples can be found where the bylaws ask for a description of
7 “material monetary agreements” (1.13(b)(iii)(D)) and “any material interest of the Holder”
8 (1.13(b)(ii)(A)). They also ask for information “that could be material to a reasonable
9 shareholder’s understanding of the independence, or the lack thereof, of the nominee”
10 (1.13(b)(v)). Thus, contrary to the picayune approach taken by the Company, the bylaws
11 themselves contemplate that advance notice compliance should be judged by reasonableness
12 and materiality. O’Kelley Decl. ¶¶ 31, 41.

13 Blue Lion’s submission was wholly compliant with HomeStreet’s bylaws and
14 included all material information relating to Blue Lion, its nominees and its governance
15 proposals. Professor O’Kelley, an expert in corporate governance who has authored
16 governance text books and teaches at Seattle University, reviewed the Submission, the bylaws
17 and the Company’s March 1, 2018, letter and opines that Blue Lion’s Submission was wholly
18 sufficient and that the lawyer’s objections on behalf of the Company were “specious.” *Id.* ¶¶
19 33-37.

20 Blue Lion believes there is no ambiguity whatsoever in the Submission and that it
21 provides more than sufficient detail for HomeStreet to have advance notice of Blue Lion’s
22 intentions. To that end, on March 8, 2018, Blue Lion responded in a 10-page letter to the
23 Company’s lawyer, and provided line-by-line clarifications and objections to HomeStreet’s
24 position. Griege Decl Ex. H. On March 9, 2018, Blue Lion, in an abundance of caution,
25 provided a certified response. *Id.* Ex. I.
26

1 HomeStreet's claim that the Submission failed to meet the bylaw's requirements is
2 unfounded. O'Kelley Decl. ¶¶ 31, 35, 41. Indeed, in some respects, Blue Lion's Submission
3 exceeded what was required. The advance notice provision is ambiguous and convoluted.
4 While it is not clear that Blue Lion was even a "Holder" as defined in the bylaws, it still
5 nonetheless provided information and responded as though it were a "Holder." Many of the
6 so-called deficiencies are for items that are not asked for, or at least not clearly asked for.¹
7 Even if a discrete item or two is ultimately deemed to have been missing (that is not
8 conceded), Blue Lion's submission overwhelmingly substantially complied with the bylaws.
9 *Id.* ¶¶ 31, 35, 41.

10 **E. Alleged Deficiencies and the Reality of Timely Disclosure.**

11 The Company's March 1, 2018, letter sets forth seven enumerated sections where the
12 Company argues that Blue Lion's Notice was deficient. Griege Decl. Ex. F. While numerous
13 documents attached to this motion address these items in a very specific manner, we will
14 attempt to summarize them below.

15 **Item 1** asserts that Blue Lion failed to specify the number of shares beneficially
16 owned by the Plaintiff, Blue Lion Opportunity Master Fund, L.P. The Notice on page 1
17 reported that the Plaintiff was a record holder of 1,000 shares and did not disclose that it
18 owned shares beneficially because it does not own any shares beneficially. The Blue Lion
19 affiliates were reported as owning an additional 1,605,109 shares beneficially. Additionally,
20 this information was already known to HomeStreet by virtue of five Schedule 13D filings
21 made by Blue Lion prior to the date of the Notice being submitted. The 13Ds contained
22 detailed beneficial ownership information for the relevant Blue Lion parties (13D-Item 1,
23

24 ¹ Under HomeStreet's bylaws, Plaintiff is not defined clearly therein as a Holder. Rather
25 Plaintiff is a Noticing Shareholder and a Record Holder only. Because of this ambiguity,
26 Blue Lion under a reading of Section 1.14 of the bylaws was not required to submit
questionnaires. The bylaw definition is very unusual and in undertaking to provide its
advance notice, Blue Lion undertook, where applicable, to attempt to respond as if the Holder
requests applied to it given this ambiguity, even though technically it may not.

1 Item 2(a) and Item 5). The 13Ds explain the relationship of the Blue Lion parties to the
2 advisory clients and why certain Blue Lion parties (not this Plaintiff) were the only beneficial
3 holders based on these relationships (13D-Items 2(b)-(c) and 6). *See* Griege Decl. Ex. M.

4 **Item 2** of HomeStreet's letter suggests that there were 15 instances where information
5 was not provided under Rule 14a. The information which the Company suggests was not
6 provided in Item 2(a-e) was not provided because none existed as of the time the Notice was
7 sent. Under Rule 14a-5, if there is nothing to disclose, one need not say anything. Rule 14a-
8 5(a) states: "No statement need be made in response to any item or sub-item which is
9 inapplicable."

10 Item 2(f) suggests that Blue Lion did not provide information as to which Blue Lion
11 entities own shares of record. Not true. Plaintiff was identified as the only entity owning
12 shares of record. *Id.* Ex. B at 1.

13 Item 2(g) suggests that Blue Lion failed to indicate whether any funds were borrowed
14 to purchase securities of the Company. Not true. On page 5 of the Submission, Blue Lion
15 clearly indicated that it did not have any loans secured by shares of the Company. It referred
16 to margin accounts as being where the securities were held, but did not intend to suggest that
17 any financing had taken place with respect to those securities, which it had not, and this was
18 confirmed by letter dated March 8, 2018.

19 The list goes on and on and in each instance, there was either no information to
20 provide, or the information had already been provided. Nowhere in the Company's letter do
21 they suggest that information exists that they were aware of and that was not provided in the
22 Notice.

23 **Item 3** asserts that no description of the arrangements between the Noticing
24 Shareholder and the nominees was provided. This also is demonstrably incorrect. Blue Lion
25 provided precisely this information in its Submission. *Id.* Ex. B at 10-12. The Company has
26 not and cannot show that it is in possession of information that shows otherwise. Regarding

1 costs and engaged parties to the anticipated proxy solicitation campaign, those advisors and
2 parties had not been retained, nor had any such cost estimates been done, as of February 23.
3 Griege Decl. ¶ 28. No information about proxy advisors, proxy solicitors, or projected costs
4 was provided in the Submission for the simple reason that, at that time, there was no
5 information to provide.

6 **Item 4** asserts that Blue Lion needed to represent it was intending to “vote” for its
7 proposals and nominees. *Blue Lion’s entire Submission is this representation.* The Company
8 cannot seriously contend that it was not sure how Blue Lion intended to vote – and the fact
9 that it does speaks volumes that its intent here was to block Blue Lion’s candidates and
10 proposals, and not to get further information. At the top of page 2 of the Submission letter
11 (Griege Decl. Ex. B), Blue Lion expressly states that it and its affiliates will present at least its
12 percentage (almost six percent) of voting shares in support of its proposals and nominees and
13 in a prior press release stated that Blue Lion, “intends to solicit votes for the election of” its
14 candidates and “will send a definitive proxy statement, proxy card and related proxy materials
15 to shareholders ... seeking their support.” Griege Decl. Ex. C at 5.

16 **Item 5** relates to the Tanemura Questionnaire. The Company asserts that of the 290
17 questions (including all subparts) in the Questionnaire, one question, 2(d), needed
18 supplementation. However, Mr. Tanemura provided the information called for in 2(d) when
19 both his attached CV and the Notice Letter stated that “TPG ... [is] an investment company
20 registered under the Investment Company Act.” *See id.* Ex. B at 5-6, 24. The information,
21 thus, was provided. Subsequent to the March 1, letter the Company also indicated that Mr.
22 Tanemura had failed to provide information regarding his share ownership of the company.
23 Yet, at page 4 of the February 24 submission it could not be more clear. “Mr. Tanemura does
24 not own shares....” Also, there is no director ownership requirement in the bylaws.

25 **Item 6** relates to the Miller questionnaire. Although the HomeStreet rejection letter
26 identifies 10 questions which HomeStreet claims Miller did not respond to appropriately,

1 there are actually 15 items if you were to include subparts, but 13 of the items involve the
2 “absence of information.” In other words, there was no affirmative information to provide in
3 response, and the Company has no information to the contrary. *See* questionnaire paragraphs
4 5(n), 7(d)(1), 7(d)(2), 8(a), 8(b), 8(c), 8(f), 9, 10(d), 11(a), 11(b), 11(c) and 11(d). To the
5 extent these items resulted in boxes not being filled, Miller certified in his affidavit that his
6 foregoing answers to “each of the foregoing questions [were] accurate and complete.” Griege
7 Decl. Ex. B at 130. This certification made clear that if information was left blank, that meant
8 that there was no information to provide. Mr. Miller has since certified that there was no
9 information to provide. *Id.*

10 In question 2(b) of the questionnaire, where it asked for “any arrangement” between
11 Miller and other persons relating to his nomination, he appropriately answered “yes,” but he
12 did not describe the arrangement. However, Blue Lion’s letter already accurately described
13 the “arrangement” on pages 6 and 11 of that letter as it related to matters between Miller and
14 Blue Lion. That information was also redundantly clarified in Blue Lion’s responses on
15 March 8 and 9, 2018, by directing HomeStreet to those same pages 6 and 11 of the Notice.
16 Griege Decl. Exs. B & H.

17 Question 7(c)(10), regarding whether Miller held “financial or accounting related
18 professional certificates for licenses,” he did not list them, but that specific information was
19 provided by Miller when he attached his biography to the questionnaire which indicated that
20 he was a “Chartered Financial Analyst [since] 1998” and held “FINRA Series 7, 24 and 87”
21 licenses. *Id.* Ex. B at 80. The February 23 notice also describes on page 3 that “Mr. Miller is
22 a Chartered Financial Analyst.” All information was provided and it is absurd to suggest
23 otherwise.

24 With respect to Question 10(b), Miller misread the question to ask whether he had any
25 credit extended to him by the “Bank,” HomeStreet. By not providing any information, Miller
26 accurately disclosed that he had no such credit with the “Bank.” Question 10(a) asks about

1 the Company and Question 10(c) did as well, leading to Miller's confusion. Miller has since
2 provided information relating to his outstanding personal home mortgages to HomeStreet in
3 Blue Lion's March 9, 2018 letter. *Id.* Ex. I at 24. The query, in any event, is immaterial to
4 his qualifications and the Company's preparation of a proxy statement.

5 Other questions that Miller did not respond to because he had no such information,
6 were questions relating to information that, if applicable, would have already have been in the
7 possession of the Company. The following are a few examples: Question 7(d)(1) asks for any
8 fees Mr. Miller may have received from the Company or its subsidiaries. Question 8(a) asks
9 for information relating to any transaction between Mr. Miller and the Company; Question
10 8(f) asks for any arrangement Mr. Miller may be aware of relating to any director, officer or
11 controlling person of the Company. Question 9 asks for any information regarding loans or
12 indebtedness "supported by the Company." Question 11 asks in subparts (a-d) whether Mr.
13 Miller is aware of any payments by the Company to its officers, directors, employees or
14 agents.

15 All of the information Mr. Miller originally provided in the questionnaire that was
16 submitted on February 23, 2018, was accurate at the time. Other than the answer to question
17 10(b) which was misunderstood, all affirmative information was provided. *See also*, Mr.
18 Miller's declaration filed herewith.

19 **Item 7** asserts that the Company could not find affirmations of a negative regarding
20 other topics of inquiry of Blue Lion, i.e., affirmations that there was nothing further to
21 disclose. However, there is no requirement in the bylaws nor the proxy rules that requires an
22 affirmative statement like "not applicable" or "nothing to disclose" when there is nothing to
23 say or disclose. Thus, item 7, like the others, is an unfounded assertion. This also was
24 explained in Blue Lion's March 8, 2018, letter.

25 As can be seen from the above, there was no material omission in regard to the
26 advance notice submission.

1
2 **F. Blue Lion and All of HomeStreet's Shareholders Are Being Irreparably Harmed**
3 **by HomeStreet's Violations of Shareholder Rights.**

4 HomeStreet is intentionally using its control of the corporate electoral machinery to
5 manipulate the nomination process to suppress the rights of Blue Lion to nominate and
6 meaningfully vote in a proxy solicitation contest. O'Kelley Decl. ¶ 36; Griege Decl. ¶ 56. A
7 preliminary injunction is warranted to prevent the Company's blatant efforts to thwart
8 shareholder voting rights and entrench the incumbent board.

9 HomeStreet's annual meeting will be held on May 24, 2018. Griege Decl. ¶ 7. To
10 effectively run a candidate of its choosing in a contested directorship election, Blue Lion must
11 engage in a lengthy and detailed proxy process governed by SEC regulations. Specifically,
12 the Company and any opposing shareholder nominators typically issue their own separate
13 final proxy statements no less than 30-45 days prior to the date of the shareholder meeting –
14 in this case, by approximately the week of April 16, 2018. *See id.* ¶ 56. Before those proxy
15 statements can be issued, however, they must be approved by the SEC. The Company and
16 shareholder nominators must allow additional time for the SEC to review and comment upon
17 proposed proxy statements from each side in a contested directorship election. Thus, Blue
18 Lion needs to submit its "preliminary" proxy statements to the SEC for review and comment
19 no later than approximately March 26. *Id.* Accordingly, this dispute must be resolved no
20 later than approximately March 26, unless the court, as an alternative, orders the date of the
21 annual meeting to be moved into June.

22 If the Company does not recognize Blue Lion's candidates and proposals as matters
23 properly brought before the meeting, then Blue Lion's ability to conduct an effective proxy
24 soliciting contest will be severely impacted. O'Kelley Decl. ¶¶ 36-38; Griege Decl. ¶ 56. In
25 short, Blue Lion will be irreparably harmed. *Id.*

26 On March 9, the Company's lawyer confirmed that Blue Lion will be irreparably
harmed unless this Court acts immediately. In that letter, the Company makes clear that the

1 conflicted and self-interested CEO/Chairman (in HomeStreet's view) has the unilateral right
2 to declare anyone running against his positions and hand-picked candidates out of order at the
3 annual meeting and that Blue Lion's only recourse, in HomeStreet's view, is to try again in
4 2019. Griege Decl. Ex. G.

5 **III. STATEMENT OF ISSUES**

6 Whether the Court should grant a preliminary injunction declaring that Blue Lion's
7 Submission materially complied with the Company's advance notice bylaws and thus
8 properly nominated Messrs. Tanemura and Miller for candidacy for the directors' election and
9 submitted three management proposals; ordering that the board, Company and Chairman of
10 the meeting must recognize these nominations and proposals as properly on the agenda and
11 presented for a vote at the annual meeting for 2018; and requiring the Company to disregard
12 any proxies it may have received prior to the order in determining the election results.

13 **IV. EVIDENCE RELIED UPON**

14 This matter can be determined on declarations and written evidence and it is not
15 anticipated that the taking of testimony will be required. Oral argument is requested.

16 The evidence relied upon is: Declarations of Charles W. Griege, Jr.; Charles R.T.
17 O'Kelley; Paul J. Miller, Jr., the exhibits thereto, and the Complaint filed in this action.

18 **V. ARGUMENT**

19 **A. Blue Lion Presents an Archetypal Case for an Injunction.**

20 To obtain injunctive relief, a plaintiff must establish (1) it has a clear legal or equitable
21 right, (2) it has a well-grounded fear of immediate invasion of that right by the entity against
22 which he seeks the injunction, and (3) the acts about which it complains are either resulting or
23 will result in actual and substantial injury to it. *Tyler Pipe Indus., Inc. v. Dep't of Revenue*, 96
24 Wn.2d 785, 792, 638 P.2d 1213 (1982). Those elements easily are met here.

1 In addition, there is no adequate alternative remedy in money damages. HomeStreet's
2 March 9, 2018, letter recognizes this, saying that the only recourse is to try to submit the
3 matters again in 2019. Griage Decl. Ex. G.

4 In fact, HomeStreet made clear in its March 9, letter:

5 [I]f Blue Lion proceeds with soliciting proxies from
6 shareholders for its proposed nominees and proposals for the
7 Company's 2018 annual meeting of shareholders, the Company
8 will advise its shareholders that it expects that the Company's
9 Chairman will declare that Blue Lion's nominees and proposals
shall be disregarded at the meeting and that, as a result, no
proxies in favor of Blue Lion's nominees or proposals will be
recognized and no votes cast in favor of Blue Lion's nominees
or proposals will be tabulated.

10 *Id.* In essence, unless the injunction is granted, the Company will tell all the voters that a vote
11 for Blue Lion is a wasted vote.

12 This precise irreparable harm question has been addressed by similar cases in
13 Delaware. The prospect of having to wait a year to "try again" is irreparable harm to
14 shareholder rights:

15 [T]here is a sufficient possibility that the Plaintiffs will be
16 irreparably injured if enforcement of the Advance Notice Bylaw
17 is not enjoined. "Shareholder voting rights are sacrosanct," ...
18 stockholders, ... will be denied the opportunity to exercise their
voting rights at an arguably critical time – "Plaintiffs would be
irreparably harmed by having to wait 13 months to effectuate
change...."

19 *Icahn Partners LP v. Amylin Pharms., Inc.*, No. CIV.A. 7404-VCN, 2012 WL 1526814, at *3
20 (Del. Ch. Apr. 20, 2012) (citing *EMAK Worldwide, Inc. v. Kurz*, No. 512, 2011, 2012 WL
21 1319771, at *3 (Del. Apr. 17, 2012)).

22 In *EMAK*, the court observed: "Shareholder voting rights are sacrosanct. The
23 fundamental governance right possessed by shareholders is the ability to vote for the directors
24 the shareholder wants to oversee the firm. Without that right, a shareholder would more
25 closely resemble a creditor than an owner. Shareholders have limited opportunities to exercise
26 their right to vote." *Id.*

1 That right should not be cavalierly thwarted, as is being attempted here by
2 HomeStreet. Election contests and voting results cannot easily be quantified into money
3 damages. *King v. Riveland*, 125 Wn.2d 500, 517, 866 P.2d 160 (1994) (injunction needed
4 where money damages could not satisfy potential injury).

5
6 **B. There Is a Clear Legal Right Because the Right to Nominate Candidates to the
Board Is Fundamental and Cannot Be Thwarted by the Company.**

7 **1. Shareholder Rights Are Well-Established.**

8 “The board of directors and the shareholders’ power to nominate and elect to, or
9 remove, directors from that board is the central feature of the traditional corporate model in
10 the United States.” Douglas Branson, *Corporate Governance* at 1 (1993)². “[O]ne of the
11 most sacred rights of any shareholder is to participate in corporate democracy.” *ER Holdings,
12 Inc. v. Norton Co.*, 735 F. Supp. 1094, 1100 (D. Mass. 1990). So sacred is this right that the
13 business judgment rule does not apply to actions that “foil the electoral process.” *Corporate
14 Governance* at 3 (citing *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 659 (Del. Ch.
15 1988)). As Professor Branson writes, “shareholders must by necessity also have the power to
16 nominate persons for positions on the board of directors.” *Id.* at 5. “[N]omination is a critical
17 part of the election process-in the absence of other nominations, the stockholder constituency
18 has no electoral choice as between candidates; instead, the shareholders are left with only an
19 ‘up or down’ vote on the company sponsored candidates.” *Levitt Corp. v. Office Depot, Inc.*,
20 No. CIV.A. 3622-VCN, 2008 WL 1724244, at *6 (Del. Ch. Apr. 14, 2008).

21 **2. The Burden Shifts to the Company to Justify Restricting a Vote.**

22 Bylaws of a corporation that seek to restrict the power of a shareholder to nominate
23 are scrutinized under the law. The State of Washington recognizes certain fundamental rights
24 of shareholders. In *Washington State Labor Council v. Federated American Insurance*
25

26 ² Professor Branson was, at the time of authoring this treatise, a Professor at University of
Puget Sound Law School.

1 *Company*, 78 Wn.2d 263, 271, 474 P.2d 98 (1970), the Supreme Court stated that “[t]he right
2 of a qualified shareholder in a corporation to vote, either personally or by proxy, for the
3 directors who are to manage the corporate affairs is a valuable and vested property right. It is
4 one of the most important rights incident to stock ownership *and should not be annulled for*
5 *purely technical reasons.*” (Emphasis added). Yet, that is precisely what HomeStreet is
6 doing here – annulling the meaningful right to vote on what it itself has to admit are purely
7 technical reasons.

8 Washington law underscores the importance of shareholder rights in corporate
9 governance, holding that “[t]he right to participate in the election of the governing board of a
10 corporation is one of the most important rights incident to stock ownership.” *State ex rel.*
11 *Lidral v. Superior Court*, 198 Wash. 610, 615, 89 P.2d 501 (1939). *See also, State ex rel.*
12 *David v. Dailey*, 23 Wn.2d 25, 158 P.2d 330 (1945) (demonstrating Washington state’s policy
13 against disenfranchising shareholders).

14 Enhanced judicial scrutiny applies to situations where “a board of directors acts for the
15 primary purpose of interfering with or impeding the effective exercise of a shareholder vote”,
16 especially in the context of a contested election for directors. *MM Cos., Inc. v. Liquid Audio,*
17 *Inc.*, 813 A.2d 1118, 1128 (Del. 2003) (citing *Blasius Indus., Inc. v. Atlas Corp.*, 564 A.2d
18 651, 659-61 (Del. Ch. 1988)). Such enhanced scrutiny requires the board of directors to bear
19 “the heavy burden of demonstrating a compelling justification for such action.” *MM Cos.*,
20 813 A.2d at 1128 (quoting *Blasius*, 564 A.2d at 661). This standard recognizes “the inherent
21 conflicts of interest that arise when a board of directors acts to prevent shareholders from
22 effectively exercising their right to vote either contrary to the will of the incumbent board
23 members generally or to replace the incumbent board members in a contested election.” *Id.* at
24 1129 (holding that board of directors did not demonstrate a compelling justification for the
25 utilization of its “otherwise valid powers” to expand the size of its membership because the
26

1 primary purpose was to impede or interfere with the efforts of the stockholders' power to
2 effectively exercise their voting rights in a contested election for directors).³

3 “[W]hen facing an electoral contest, incumbent directors are not entitled to determine
4 the outcome for the stockholders. Stockholders elect directors, not the other way
5 around.” *Pell v. Kill*, 135 A.3d 764, 769 (Del. Ch. 2016). Enhanced scrutiny is not limited to
6 electoral contests where the entire board might be replaced – it also applies in other situations
7 where the law provides stockholders with a right to vote and the directors take action that
8 intrudes on the space allotted for stockholder decision-making. *Id.* at 786. When tailored for
9 reviewing director action that affects stockholder voting, enhanced scrutiny requires that the
10 **defendant fiduciaries bear the burden of proving** (i) that their motivations were proper and
11 not selfish, (ii) that they did not preclude stockholders from exercising their right to vote or
12 coerce them into voting a particular way, and (iii) that the directors' actions were reasonable
13 in relation to their legitimate objective. *Id.* at 787. If the fit between means and ends is not
14 reasonable, directors will also come up short. *Id.*

15 HomeStreet has clearly taken action impeding stockholder voting rights. Thus,
16 HomeStreet bears the heavy burden of demonstrating that some vital information was missing
17 or was not sufficiently timely supplied or known, in order to succeed in blocking the
18 nominations and proposals.

19
20 **3. The Board of Directors Cannot Delegate Authority Over the Nomination**
21 **Process to the Unilateral Decision of the CEO or Chairman.**

22 Washington statutory law prohibits the bylaws from delegating a board decision to
23 anyone other than the board, such as a CEO or chairman of a meeting. “The business and
24 affairs of the corporation shall be managed under the direction of its board of directors, which
25 shall have exclusive authority as to substantive decisions concerning management of the

26 ³ Washington looks to Delaware law as influential in corporate governance matters where
Washington case law has yet to be developed. *In re F5 Networks, Inc.*, 166 Wn.2d 229, 239-
40, 207 P.3d 433 (2009).

1 corporations' business." RCW 23B.08.010(2)(b). As stated in RCW 23B.02.060(4), "[t]he
2 bylaws of a corporation may contain any provision for managing the business and regulating
3 the affairs of the corporation *to the extent the provision does not infringe upon or limit the*
4 *exclusive authority of the board of directors under RCW 23B.08.010(2)(b)....*" (Emphasis
5 added).

6 Thus, the HomeStreet bylaws, as a matter of law, cannot place the *decision* for
7 recognizing nominations and conducting elections to anyone less than the entire board of
8 directors. It violates Washington law to attempt to place that *decision* onto a meeting
9 Chairman, CEO or Chairman of the Board. HomeStreet's letter of March 9, 2018, (Griege
10 Decl. Ex. G) stating to the contrary is outside the bounds of Washington law. *See also*,
11 O'Kelley Decl. at ¶¶ 39-41. HomeStreet's own bylaws, at Section 2.1, incorporate this
12 provision of law into its own rules: "All corporate powers shall be exercised by or under
13 authority of, and the business and affairs of the corporation shall be managed under the
14 direction of, the Board, except as may be otherwise provided by law or the Articles of
15 Incorporation." Grieger Decl. Ex. A § 2.1. Notably, the bylaws cannot alter this governance
16 rule.

17
18 **4. A Prior Court Has Struck Down the Same Ploy HomeStreet Is Attempting**
Here.

19 The most parallel case to the one presented to the Court here is from Ohio. In the
20 Ohio case, the company sought a declaration that the shareholder's nominations and proposals
21 did not comport with the bylaws such that it did not need to be recognized at the annual
22 meeting. Recognizing that to do so would be in derogation of important shareholder rights,
23 the company there sought permission from a court, as opposed to the "self-help" HomeStreet
24 seeks to engage in here. The Ohio company said the shareholder failed to provide sufficient
25 information in its nomination package. The Ohio court instead ruled the company's objection
26 was a "pretext" for avoiding a shareholder vote on rival candidates. *First Union Real Estate*

1 *Equity & Mortg. Invs. v. Gotham Partners, L.P.*, No. 347063 (Ct. of Common Pleas
2 Cuyahoga Cnty. Ohio Mar. 27, 1998).

3 The Ohio court properly rejected the company's attempt to take away meaningful
4 shareholder franchise rights. The court denied the company's motion for a preliminary
5 injunction, finding that the shareholder had made "reasonable attempts to comply with all of
6 First Union's demands for information," that the issue was "pretextual," and that
7 "management's efforts to disenfranchise Gotham do not appear to be designed to protect First
8 Union's REIT status but rather management." *Id.* at 13.

9 The same corporate maneuver attempted by First Union discussed in that case is being
10 attempted here by HomeStreet. The only difference is First Union *asked the Ohio court for*
11 *permission* to deny the shareholder rights; here HomeStreet just unilaterally did it by way of
12 its March 1, 2018, letter, knowing that its action was not supported in law.

13
14 **5. Delaware Would Reject HomeStreet's Maneuvers.**

15 If the Ohio case is not guidance enough, then under Delaware law, any restriction on
16 the right to nominate must not have the effect of entrenching the incumbent board and
17 requires a showing of compelling justification. "The theory of our corporation law confers
18 power upon directors as the agents of the shareholders" only. The board should not act in a
19 way that thwart's shareholder's right to voice their concerns via a nomination or vote. *Blasius*
20 *Indus., Inc. v. Atlas Corp.*, 564 A.2d 651, 663 (Del. Ch. 1988).⁴

21 Thus, the Delaware Chancery Court in *Hubbard v. Hollywood Park Realty*
22 *Enterprises*, No. CIV.A. 11779, 1991 WL 3151, at *11, (Del. Ch. Jan.14, 1991) ruled that the

23 ⁴ A second approach is to hold that bylaw restrictions are 'directory' rather than mandatory,
24 i.e., aspirational. *Commonwealth ex rel. Grabert v. Markey*, 190 A. 892, 893 (Pa. 1937)
25 (bylaws would not be enforced to prevent shareholders from electing a candidate who had not
26 been nominated since the court was "[l]oath to limit the fundamental right of shareholders to
vote for whomsoever they please"). Under either standard, Blue Lion's nomination should
not be denied by the Company.

1 corporation would have to waive its bylaw restrictions so as to provide a fair opportunity for
2 the nomination of an opposing slate of potential directors. As a Delaware court bluntly put it,
3 “when advance notice bylaws unduly restrict the stockholder franchise or are applied
4 inequitably, they will be struck down.” *Jana Master Fund, Ltd. v. CNET Networks, Inc.*, 954
5 A.2d 335, 344 (Del. Ch. 2008).

6 In *Jana*, the court struck down an advance notice provision because it was construed
7 in context as only applicable to a nomination that would be run via the company and not the
8 shareholder’s own proxy contest. *Id.* In the circumstance of a separately-run campaign, the
9 court recognized that the company did not need all the details called for in Rule 14a and thus,
10 the detailed information called for in the advance notice provision should not apply to a
11 challenger.

12 Here, Blue Lion, like the shareholder in *Jana*, will be running its own proxy
13 solicitation effort. Grieve Decl. ¶¶ 27, 56. In particular, the bulk of HomeStreet’s objection
14 was that Blue Lion in its unilateral view did not provide sufficient information under Rule 14a
15 (HomeStreet’s “Item 1”) as laid out under its bylaws in Section 1.13(b)(iii)(C). Grieve Decl.
16 Ex. A. *Jana* held that bylaws based on Rule 14a serve no legitimate purpose and need not be
17 followed when there is a proxy contest that will be run separate from the company’s, which is
18 the case here.

19 “[W]hen advance notice bylaws unduly restrict the stockholder franchise or are
20 applied inequitably, they will be struck down.” *Jana*, 954 A.2d at 344. “The ‘rule of
21 construction in favor of franchise rights’ buttresses this conclusion. Delaware courts have
22 long recognized that the ‘right of shareholders to participate in the voting process includes the
23 right to nominate an opposing slate.” *Id.* at 345.

24 Delaware courts also will, in equity, rule that the notice provision cannot be enforced
25 if it would hinder shareholder voting. *See, e.g., Lerman v. Diagnostic Data, Inc.*, 421 A.2d
26 906 (Del. Ch.1980) (invalidating as inequitable an advance nomination bylaw intended to

1 preclude a dissident shareholder from carrying out his announced plan to conduct a proxy
2 contest at the annual meeting); *Icahn Partner LP v. Amylin Pharms., Inc.*, 2012 WL 1526814
3 (granting motion for expedited hearing finding a colorable claim of irreparable injury if
4 company was allowed to enforce its advance notice bylaws); *Levitt Corp. v. Office Depot,*
5 *Inc.*, 2008 WL 1724244 (finding that nominations could be brought forward at Office Depot's
6 annual meeting despite objection by Office Depot as to timing of nomination).

7 Another important rule of law from Delaware is that corporate bylaws are to be
8 construed like contracts. *Harrah's Ent., Inc. v. JCC Holding Co.*, 802 A.2d 294, 310-11 (Del.
9 Ch. 2002). If there are ambiguities, the provision is to be construed against the company. *Id.*
10 And most importantly:

11
12 When a corporate charter is alleged to contain a restriction on the
13 fundamental electoral rights of stockholders ... it has been said that the
14 restriction must be "clear and unambiguous" to be enforceable. The
15 policy basis for this rule of construction rests in the "belief that '[t]he
shareholder franchise is the ideological underpinning upon which the
legitimacy of directorial power rests.'"

16 *Id.* at 310.

17 Further, while Delaware courts will enforce advance notice requirements if there is *no*
18 *attempt* at compliance,⁵ here, Blue Lion submitted 133 pages of materials in a timely manner.

19 Delaware law is clear:

20 [T]he "right of shareholders to participate in the voting process
21 includes the right to nominate an opposing slate." ... As the nominating
22 process circumscribes the range of choice to be made, it is a
fundamental and outcome-determinative step in the election of
officeholders.

23 *Harrah's*, 802 A.2d at 310-11. The result in *Harrah's* was that the provision at issue was
24 construed such that it would not restrict the right of the shareholder to nominate directors.

25
26 ⁵ *Openwave Sys., Inc. v. Harbinger Capital Partners Master Fund I, Ltd.*, 924 A.2d 228 (Del.
Ch. 2007) (shareholder made no effort to timely submit nomination).

1 *Jana* and *Harrah's* are significant cases in this body of law and they set out the rules
2 to be applied to the Company's actions here should this court decide to follow Delaware's
3 case law. A Delaware court would reach the same result as in the Ohio case.

4 A recent Delaware law article also poses the essential question framed by this case. It
5 finds that substantial compliance with the bylaws suffices to nominate directors:

6 In one situation, a nominee (or her nominator) may inadvertently fail
7 to provide the required verification, and may not supply it until after
8 the bylaw deadline for submission of the information and the
9 verification. One can reasonably suspect that **a court would decline**
10 **to support exclusion** of a shareholder nominee in that situation, on the
11 theory that **such literal enforcement would operate inequitably**
because it would not advance any salutary purpose of the verification
requirement.

12 Lawrence A. Hamermesh, Director Nominations, 39 Del. J. Corp. L. 117, 144 (2014)
13 (emphases added).

14 **C. Blue Lion's Rights Were Trampled Because Its Submission Met the**
15 **Requirements of the Bylaws and Should Not Be Set Aside by the Company.**

16 Blue Lion complied with the bylaws and timely submitted a nomination package
17 consisting of 133 pages of material on February 23, 2018. Thus, this is not a case where no
18 nomination was made. Nor is this a case where no information regarding the nominees or the
19 nominating party was provided. As Professor O'Kelley has opined, Blue Lion's submission
20 met the requirements of the bylaws and should not be set aside by the Company. O'Kelley
21 Decl. ¶ 40.

22 **1. If Not Fully Complying, Blue Lion Certainly Substantially Complied.**

23 HomeStreet is pursuing a very novel and draconian argument; that even an
24 immaterially allegedly incomplete nomination submission should bar a nomination.
25 HomeStreet's argument is not supported by the law. *See Capobianco v. First Nat'l Bank of*
26 *Palmerton*, 380 F. Supp. 155 (M.D. Pa. 1974) (holding that plaintiff's notice of number of
shares to be voted for proposed nominees substantially complied with bylaw and rejecting

1 hypertechnical evaluation of proxies by bank management to exclude shareholder
2 representation). This is not a case where no timely nomination was made at all. *See, e.g.,*
3 *Openwave Sys., Inc.*, 924 A.2d 228 (shareholder made no effort to timely submit nomination).
4 That is a circumstance very different from the case here.

5 In this regard, Washington would not need to borrow from Delaware because
6 Washington has myriad areas in the law where substantial compliance is all that is required.
7 These are just some examples:

8 ► **Judicial Procedure** *Sammamish Pointe Homeowners Ass'n v. Sammamish Pointe LLC*,
9 116 Wn. App. 117, 64 P.3d 656 (2003) (substantial compliance is sufficient in format of
10 summons); *In re Saltis*, 94 Wn.2d 889, 621 P.2d 716 (1980) (lawsuits should not be delayed
11 or lost by unnecessarily complex procedural technicalities).

12 ► **Statutes** *In re Application of Santore*, 28 Wn. App. 319, 326-27, 623 P.2d 702 (1981)
13 (There need not be strict compliance with each and every provision of the adoption statutes,
14 even though such provisions may be couched in mandatory language); *Murphy v. Campbell*
15 *Inv. Co.*, 79 Wn.2d 417, 421, 486 P.2d 1080 (1971) (contractor had substantially complied
16 with the requirements crucial to the contractor's registration act); *Williamson, Inc. v. Calibre*
17 *Homes, Inc.*, 106 Wn. App. 558, 569, 23 P.3d 1118 (2001) (to hold otherwise would place
18 form over substance) *aff'd*, 147 Wn.2d 394, 54 P.3d 1186 (2002).

19 ► **Contract** *DC Farms, LLC v. Conagra Foods Lamb Weston, Inc.*, 179 Wn. App. 205,
20 220, 317 P.3d 543 (2014) ("The general rule with respect to compliance with the terms of a
21 bilateral contract is not strict compliance, but substantial compliance. Rights should not be
22 forfeited by "inadvertent omissions or defects.").

23 Here, HomeStreet's bylaws provide expressly for supplementation after the initial
24 notice deadline. *See, e.g.,* Section 1.13(b)(i) last paragraph that states: "Such information
25 shall be provided as of the date of the notice and shall be supplemented by the Holder not
26

1 later than 10 days after the record date....” Grieg Decl. Ex. A at 6 (emphasis added). The
2 record date for HomeStreet’s upcoming annual meeting will be March 20, 2018. *Id.* ¶ 7.

3 Further, the bylaws must be read such that only reasonable and material information
4 needed to be provided. The bylaws contain fourteen references to the concepts of materiality,
5 reasonableness and reasonable. Those terms are used seven times just within the advance
6 notice provisions of Sections 1.13 and 1.14.⁶ Thus, even by the bylaws’ own terms, Blue
7 Lion complied and certainly at the least substantially complied with the notice requirements.
8 O’Kelley Decl. ¶ 40. Blue Lion’s Submission was wholly compliant with HomeStreet’s
9 bylaws and included every material piece of required information relating to Blue Lion, its
10 nominees and its governance proposals – information “that could be material to a reasonable
11 shareholder’s understanding of the independence, or the lack thereof, of the nominee.” Grieg
12 Decl. Ex. A at 7 (1.13(b)(v)).

13
14 **2. There Is Every Indication of Conflict of Interest and Self-Interest on the Part of HomeStreet.**

15 Blue Lion believes HomeStreet’s CEO/Chairman, Mr. Mason, and all the board is
16 intentionally using control of the corporate machinery to manipulate the nomination process
17 to suppress the rights of Blue Lion to nominate and meaningfully vote in the proxy
18 solicitation contest by disingenuously claiming the submission is incomplete. Mr. Mason
19 unilaterally decided that the shareholder proposal to alter his role as CEO and Chairman is not
20 to be considered. But, neither he, nor the board, can in good conscious or in faithful duty, do
21 that.

22 Officers and directors breach their fiduciary duty to the corporation when their actions
23 benefit them, rather than the corporations they serve and the shareholders. *See Interlake*
24 *Porsche & Audi, Inc. v. Bucholz*, 45 Wn. App. 502, 508-09, 728 P.2d 597 (1986); *Hayes*

25
26 ⁶ E.g., “material monetary agreements” (1.13(b)(iii)(D)); “any material interest of the Holder”
(1.13(b)(ii)(A)); information “that could be material to a reasonable shareholder’s
understanding of the independence, or the lack thereof, of the nominee” (1.13(b)(v)).

1 *Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 381, 391 P.2d 979 (1964) (corporate
2 directors occupy a fiduciary relation to a corporation and the shareholders akin to that of a
3 trustee, and owe undivided loyalty).

4 “As a board would likely never concede that its primary purpose was to entrench
5 itself, [a] [c]ourt must look to circumstantial evidence to determine the primary purpose of
6 [the company’s] action touching upon issues of control.” *Hilton Hotels Corp. v. ITT Corp.*,
7 978 F. Supp. 1342, 1349 (D. Nev. 1997) (viewing circumstantial evidence surrounding
8 board’s defensive measures in the face of a proxy contest and tender offer and holding that
9 primary purpose of company’s actions were to disenfranchise shareholders). The evidence
10 surrounding the actions of the CEO/Chairman and the board lead to such a conclusion here.

11
12 **D. Without Injunctive Relief, Blue Lion and All Shareholders Will Be
Irreparably Harmed.**

13 If Blue Lion’s candidates are not recognized as nominated candidates by the
14 Company, or if the proposals are not part of the vote, then Blue Lion’s ability to conduct a
15 proxy soliciting contest will be severely impaired. O’Kelley Decl. ¶¶ 24-26; Griege Decl.
16 ¶ 56. The Company has announced that it will tell all shareholders the effort is futile. In
17 short, Blue Lion will be irreparably harmed. Griege Decl. Ex. G.

18 The harm in question is irreparable, in that Blue Lion’s only recourse is to wait an
19 entire calendar year to resubmit its nomination package, denying it and other shareholders the
20 right to choose between competitive slates of candidates. *See Aprahamian v. HBO & Co.*,
21 531 A.2d 1204, 1208 (Del. Ch. 1987) (stockholders and corporation could face considerable
22 hardship if their will was thwarted); *see also, In re MONY Grp. Inc. S’holder Litig.*, 852 A.2d
23 9, 32 (Del. Ch. 2004). Moreover, Blue Lion’s vested right to participate in the election
24 process is starkly contrasted with the fact that the incumbent directors do not have any vested
25 or preemptory right to continue to serve as directors. *Aprahamian*, 531 A.2d at 1208.

1 **E. The Amount of Security Should Be Extremely Modest.**

2 The amount of security appropriate under CR 65 for the injunction should be minimal
3 – \$5,000 – deposited to the registry of the Court. HomeStreet, because it is putting three
4 candidates up for election, will have to run a proxy campaign regardless of whether Blue Lion
5 also is doing so. O’Kelley Decl. ¶¶ 24-26.

6 There is no provision in the bylaws for the Company to charge a shareholder for
7 nominating a candidate or for proposing a matter for vote. HomeStreet should not be able to
8 use the security device of CR 65 to create some sort of expense shifting where no statute or
9 bylaw provides for cost shifting in a corporate election.

10 **VI. CONCLUSION**

11 Blue Lion requires immediate injunctive relief. It has met all the requirements for
12 such relief. Fairness and common sense tell one that if HomeStreet legitimately had a
13 concern about boxes left blank *and was not self-interested*, it would have simply inquired if a
14 blank meant there was nothing to disclose, just like rule 14a-5 says. Blue Lion is no stranger
15 to HomeStreet. HomeStreet could have worked in good faith for a few days of asking
16 questions if it truly was missing something material from what was submitted. It was not
17 prejudiced.

18 However, HomeStreet’s reaction tells all. It *never* was going to find the Submission
19 compliant, no matter what was provided. And one can predict the same thing will happen
20 again in 2019.

21 The Court is the only recourse that shareholders have to course-correct aberrant board-
22 room behavior. This is one such case. The motion should be granted.

1 DATED this 13th day of March, 2018.

2
3 BYRNES KELLER CROMWELL LLP

4
5 By /s/ John A. Tondini

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13 *Attorneys for Plaintiff*

14 **CERTIFICATION:** The above signature also certifies that this memorandum
15 contains 9,867 words. A motion for over length brief has been filed.
16
17
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Annex C

Declaration of Charles R.T. O'Kelley in Support of
Motion for Preliminary Injunction and Declaratory Relief,
filed in the Superior Court of Washington
in and for King County on March 13, 2018

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BLUE LION OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

v.

HOMESTREET, INC.,

Defendant.

No. 18-2-06791-0 SEA

DECLARATION OF CHARLES R.T.
O’KELLEY IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION
AND DECLARATORY RELIEF

Charles R. T. O’Kelley declares as follows:

1. I am over the age of 18, and have personal knowledge of and am competent to testify to the matters stated herein.
2. I have been retained as corporate governance expert by counsel for plaintiff. My curriculum vitae is attached as Exhibit A.
3. Currently I am a Professor and the Director of the Adolf A. Berle Center on Corporations, Law and Society at Seattle University. I am a member, currently inactive, of the state bars of Georgia and Oregon. I am also a member of the Corporate Act Revision Committee of the Washington State Bar Association, Section on Business. During my career in teaching, which now spans 41 years, I have taught corporate governance courses at Seattle University, the University of Georgia, the University of Virginia, the University of

Oregon, the University of Alabama, and Tulane University School of Law.

4. I am the author, with Robert B. Thompson, of a casebook entitled Corporations and Other Business Association (hereinafter called "O'Kelley and Thompson"). First published in 1992, O'Kelley and Thompson is now in its eighth edition. I am also the author, with Robert B. Thompson, of Corporations and Other Business Associations: Selected Statutes, Rules, and Forms (hereinafter called "Statutes"). Statutes, over 1100 pages in length, is an annotated selection of statutory materials drawn from a variety of state business association statutes, the Model Business Corporation Act, the American Law Institute's Principles of Corporate Governance, and federal securities law, including the Securities Act of 1933 and the Securities Exchange Act of 1934. Statutes was first published in 1992, and is reedited and republished annually.

5. O'Kelley and Thompson and Statutes are used at a substantial number of American law schools to teach Corporate Governance related courses. Over the past 25 years, O'Kelley and Thompson and Statutes have been adopted for use at one time or another at almost every major American law school, including Columbia, Harvard and the University of Washington, and is currently the second most widely adopted corporate governance related casebook. O'Kelley and Thompson and Statutes also have been and are used by instructors in numerous other countries, including notably both Cambridge and Oxford Universities in the United Kingdom.

6. In preparing this declaration, I have reviewed the following:

- a. Plaintiff's Notice of Shareholder Proposals, dated March 1, 2018, and attachments to that Notice;
- b. HomeStreet's Amended & Restated Bylaws, dated July 28, 2016;

- c. Charles W. Griege, Jr., Roaring Blue Lion Capital Management, L.P. Section 13D, dated November 17, 2017;
- d. Blue Lion Capital, Presentation to HomeStreet Board of Directors, dated December 21, 2017;
- e. HomeStreet Notice of Annual Shareholders Meeting for Years 2012-2017;
- f. Correspondence between Charles Griege and Mark Mason, dated November 20, 2017, November 29, 2017;
- g. HomeStreet letter to shareholders, dated January 11, 2018;
- h. Letter from Charles Griege to HomeStreet Board of Directors, dated January 27, 2018;
- i. Letter from Kai Haakon E. Liekefett to Blue Lion Opportunity Master Fund, L.P., dated March 1, 2018;
- j. Letter from Phillip Goldberg to Kai Haakon E. Liekefett, dated March 8, 2018;
- k. Letter from Charles Griege, Jr. to the Company, dated March 9, 2018;
- l. Letter from Kai Haakon E. Liekefett to Phillip Goldberg, dated March 9, 2018; and
- m. Publicly filed press releases made by each party.

7. American corporation governance norms and principles support and enable the efficient ownership and operation of complex business organizations vital to the well-being of American society. Shareholders are the owners of American corporations, while responsibility for management is delegated to the corporation's board of directors. The board of directors in turn delegates the conduct of day-to-day business affairs to the CEO and other

1 officers of the corporation, while retaining overall management authority, including
2 supervision and monitoring of officer's conduct. American corporation corporate governance
3 norms and principles recognize that a corporation's directors and officers exercise their
4 authority as agents of the shareholders, and for the shareholders ultimate benefit, and serve at
5 the pleasure of the shareholders, who are in effect the principals in this quasi principal-agent
6 relationship. Put in layman's terms, shareholders own the company, and directors manage the
7 company and its property for the exclusive benefit of the shareholders.
8

9
10 8. Consistent with its recognition that shareholders own the corporation and that
11 directors and officers act on shareholders' behalf and for shareholders' ultimate benefit,
12 American corporate governance principles uniformly recognized that shareholders, as the
13 corporation's owners, have the exclusive authority to elect the directors (which exclusive right
14 is often called "the shareholder franchise").

15
16 9. So important is the shareholder franchise that American corporation law
17 uniformly requires corporations to hold an annual meeting of shareholders for the purpose of
18 electing the directors, and provides summary judicial procedures whereby shareholders can
19 quickly obtain judicial enforcement of this annual meeting requirement.

20
21 10. Indeed, as William Allen, then Chancellor of the Delaware Court of Chancery,
22 famously noted, "[t]he shareholder franchise is the ideological underpinning upon which the
23 legitimacy of directorial power rests."

24
25 11. Thus, under American corporate governance principles, maintaining a proper
26 balance in the allocation of power between the stockholders' right to elect directors and the

1 board of directors' right to manage the corporation is dependent upon the stockholders being
2 afforded an unimpeded right to vote effectively in the election of directors.

3
4 12. In managing the corporation's business, which is in reality managing the
5 shareholder's property, corporate governance principles expect that the directors will act in
6 the best interest of their shareholders and this corporate governance principle is reflected in
7 the so-called "business judgment rule" – a rebuttable evidentiary presumption that if sued for
8 a business decision gone bad, the directors acted in an informed manner, in good faith, and in
9 the honest belief that their actions were in the best interests of the corporation.

10
11 13. But in the context of an election contest between the nominees preferred by
12 incumbent managers and one or more nominees proposed by a non-management shareholder,
13 the directors have no power or authority to take action intended to frustrate the shareholder's
14 legitimate right to nominate and solicit proxies for its own preferred director candidates. In
15 such circumstance, they are not using their power to manage the shareholder's property.
16 Instead, they are using their power inconsistently with American corporate governance norms
17 to perpetuate themselves in office. Again, the shareholders own the company, and it is for the
18 shareholders, not the directors, to decide who will serve as the shareholders' agents. In short,
19 the business judgment rule does not apply.

20
21 14. Thus, under uniformly understood principals of American corporate
22 governance, the board of directors may not use their management powers and the corporate
23 machinery for the purpose of obstructing the legitimate efforts of non-management
24 stockholders in the exercise of their rights to undertake a proxy contest against management.
25 The bylaws are a central part of corporate machinery. American corporate governance
26

1 principles universally condemn any attempt by directors to use that machinery for the self-
2 interested purpose of maintaining themselves in office.

3
4 15. Yet, that is exactly what HomeStreet's board of directors appears to be doing
5 by allowing employees and attorneys of the corporation to interpret the HomeStreet advance
6 notice bylaw provisions so as to bar plaintiff both from nominating two candidates for
7 election and from presenting three related bylaw proposals, at HomeStreet's upcoming annual
8 meeting.

9
10 16. How seriously HomeStreet's actions fail to comply with American corporate
11 governance norms and principles becomes crystal clear when viewed in the context of how
12 the election of directors is supposed to be conducted.

13
14 17. In publicly-traded corporations, the annual meeting of shareholders takes place
15 primarily via proxy rather than by shareholders attending and voting in person. In a well-
16 managed corporation where shareholders are content with how the directors are managing the
17 corporation on the shareholders' behalf, such annual meetings will not involve controversy as
18 to the election of directors. Consistent with corporate law norms, the directors will nominate
19 a slate of proposed candidate for election or reelection as the case may be. The shareholders
20 will be asked to agree with those choices and to submit proxies authorizing management to
21 vote the shares in favor of the board-nominated candidates and in favor of other matters that
22 management may choose to present to the shareholders for their consideration.

23
24 18. Importantly, this annual meeting process will be conducted in accordance with
25 the federal proxy rules that establish rules governing the form and content of the corporation's
26 proxy solicitation process. These federal proxy rules were designed and are implemented by

1 the Securities and Exchange Commission (the “SEC”) so that shareholders are able to
2 participate in the annual meeting by proxy in a manner similar to how they would participate
3 in person at an archetypal New England town meeting.
4

5 19. Under American corporate governance principles, a corporation must give
6 shareholders notice of the annual meeting and its purpose, but generally can do so no sooner
7 than 60 days before the annual meeting date. The shareholders entitled to receive a notice of
8 meeting and to participate in the annual meeting are the shareholder of record on the record
9 date. Accordingly, the record date can be expected to be around 45 to 60 days before the
10 annual meeting, perhaps a week before the annual meeting notice is to be sent. In the weeks
11 before and after the record date, management will be working on preparing its proxy
12 statement, the document which it will use to solicit proxies, and determining how it will carry
13 out the process of soliciting proxies. Among other things, management must decide what
14 professional proxy solicitors will management hire, and when will it reach out to proxy
15 advisory firms to be sure they are on board and supportive of management’s plans.
16

17 20. This important governance process goes on every year in every publicly-traded
18 corporation. While it is an expensive process, it is an expense borne by the corporation and
19 therefore effectively shared among its owners, who make up the electorate at the annual
20 meeting.
21

22 21. A contested annual election adds some additional complications and
23 responsibilities. A corporation involved in a contested election must file a preliminary proxy
24 statement to be reviewed by the SEC before it is printed and mailed to shareholders or used
25 for solicitation activities. There are also specific disclosures that are required in that
26 document. Accordingly, corporations need to know before they produce and file their proxy

1 statement whether any shareholder intends to submit an independent nomination for the Board
2 of Directors. Because of these practicalities, many corporations, but certainly not all
3 corporations, have adopted provisions in their bylaws to require a shareholder that intends to
4 submit a name for nomination to provide the corporation notice in advance of the nomination.
5 Over the last decade, these provisions have become more elaborate, seeking from the
6 shareholder information about the shareholder, its investment and background as well as
7 information about the nominees, even though most of that information is not required for the
8 corporation to fulfill its obligations under the proxy rules. The purpose of these provisions, in
9 our system of governance, should not be to put up barriers to shareholder participation in a
10 core element of share ownership — nominations and elections — but rather to ensure the
11 corporation knows it will face a contested election so that it can align its proxy statement and
12 filings with the requirements of the proxy rules.

13
14 22. In a contested election, a non-management shareholder-nominator, like the
15 plaintiff in this case, will incur cost running into the hundreds of thousands of dollars to solicit
16 votes from other shareholders of the corporation. The shareholder-nominator will have no
17 certainty of winning the contest or of being reimbursed for its expenses. If its participation in
18 corporate governance results in positive changes in the corporation's management and
19 profitability, the nominator-shareholder will receive the same pro rata benefit from an
20 increased share price as other shareholders will receive. Thus, the self-interest of the non-
21 management shareholder is simply to see that the corporation and its shares become more
22 valuable, a goal that management should embrace. Effectively, the plaintiff is acting as a
23 proverbial Good Samaritan, seeking to assume the yoke of the shareholder franchise for itself
24 and other shareholders when the corporation is not performing optimally in the view of the
25 shareholder.
26

1
2
3 23. But there are lengths to which even the best of Good Samaritans will not go. If
4 the roadblocks thrown its way make success near impossible, even the best of Good
5 Samaritans may never seek to make a difference.

6
7 24. In order to compete effectively in the election contest, plaintiff must soon incur
8 not only the expense of this litigation, but also the cost of retaining proxy solicitors and
9 preparing preliminary proxy material for submission to the SEC. If the plaintiff delays these
10 expenditures, it will also delay its ability to effectively solicit proxies, making ultimate
11 success in the contest substantially less likely.

12
13
14 25. Additionally, HomeStreet's management's actions in seeking to prevent
15 plaintiff from participating in the upcoming annual meeting have a chilling effect on the
16 willingness of other shareholders to grant plaintiff the proxy it will seek. HomeStreet has
17 many sophisticated institutional owners who might be willing to join with plaintiff if the odds
18 of success seem reasonable, but who might choose to defer alienating management at this
19 time if it is not even clear that plaintiff will be allowed to use proxies that it is granted.

20
21 26. Thus, by interpreting its advance notice bylaw provisions so as to delay and
22 cast a chill on plaintiff prospects, HomeStreet management could cause plaintiff to abandon
23 its efforts to participate in this year's annual meeting, even it is determined at some later date
24 that plaintiff should have been allowed to proceed. I have reviewed the relevant documents in
25 this case with that concern in mind.
26

1 27. And, that is why American corporate governance principles and norms assume
2 that courts will step in to afford summary equitable relief via injunction or otherwise to
3 prevent directors from accomplishing via delaying tactics the disenfranchisement of a non-
4 management shareholder.

5
6 28. On February 23, 2018, plaintiff delivered a Notice of Intent to Present
7 Proposals and Nominate Directors to HomeStreet's Corporate Secretary as required by
8 HomeStreet's advance bylaw provisions.

9
10 29. The Notice of Intent is composed of a covering 13-page letter in which the
11 plaintiff provides required information about the three proposals it plans to make at the annual
12 meeting and the two individuals – Ronald Tanemura and Paul Miller – that plaintiff plans to
13 nominate. Attached to the letter as Appendix A is a listing of every purchase or sale of
14 HomeStreet's stock that plaintiff has made during the past two years. Further attachments to
15 the letter are: (1) the signed consents of Tanemura and Miller to be nominated by plaintiff and
16 to serve if elected; (2) the signed certificates of Tanemura and Miller affirming that they are
17 and will be independent directors and will comply with all of the corporation's corporate
18 governance, conflict of interest, confidentiality and stock ownership provisions; (3) a detailed
19 description of the proposal to be made at the meeting; (4) the CV of each nominee; and (5) a
20 completed and signed "HomeStreet, Inc. Director Questionnaire" of each nominee.

21
22 30. I have carefully reviewed the Notice of Intent to Present Proposal and
23 Nominate Directors.

24
25 31. In my professional expert opinion, properly interpreted, the letter certainly
26 provides actual notice that the election for directors will be contested – all that the corporation

1 needs so that it can comport its proxy statement to the strictures of the proxy rules – and
2 provides in full detail the information sought by the bylaws, including the information
3 requested in the Director’s Questionnaire. In my opinion, the Company received on a timely
4 basis the background information and qualifications the bylaws call for. Additionally, the
5 submission materials on February 23, 2018, were sufficient for the needs of a reasonable
6 company and a reasonable board of directors in my opinion.
7

8
9 32. Plaintiff’s Notice of Intent to Present Proposals and Nominate Directors, dated
10 and delivered February 23, 2018, concluded with this request: “If the Company believes this
11 Notice is incomplete or otherwise deficient in any respect, please contact the Shareholder
12 immediately so that the Shareholder may promptly cure any alleged deficiencies.”
13

14 33. On March 1, 2018, plaintiff received a letter from Kai Haakon E. Liekefett, an
15 attorney with Sidley Austin LLP’s New York office, purporting to be acting for HomeStreet.
16 Attorney Liekfett’s letter detailed alleged deficiencies in Plaintiff’s Notice, and stated (1) that
17 because of those deficiencies the Plaintiff’s Notice does not satisfy the requirements of
18 HomeStreet’s advance notice bylaw provision, and (2) since the February 24 deadline for
19 submitting a non-deficient Notice has now passed, the plaintiff will not be allowed to make
20 proposals or nominate candidates for election as directors in the upcoming annual meeting.
21

22 34. I have carefully reviewed attorney Liekefett’s letter dated March 1, 2018.
23

24 35. In my professional expert opinion, attorney Liekefett’s explanations of why the
25 Plaintiff’s Notice is deficient are both entirely specious and inconsistent with the
26 corporation’s and the board of director’s obligations and the purpose of the advance notice
bylaw. Essentially attorney Liekefett concludes that leaving a space for an answer on the

1 Director's Questionnaire blank, or failing in the covering letter to specifically state that some
2 items that need to be disclosed if they exist are not being disclosed because they do not exist,
3 means that the Notice or Questionnaire is incomplete. Relevant to preparation of proxy
4 related materials, leaving a section or space blank should be interpreted as indicating that
5 there is nothing to be disclosed. In my professional expert opinion as a corporate governance
6 expert, I would interpret Plaintiff's Notice in that manner. If a question asks have you
7 anything to declare, leaving the accompanying space for an answer blank would reasonably
8 be interpreted to indicate that there is nothing to declare. Leaving the matter blank *is* the
9 disclosure.
10

11 36. There is, however, an additional and far more troubling aspect of the purported
12 HomeStreet response to plaintiff's Notice. It is HomeStreet's board of director's
13 responsibility to supervise the Annual Meeting process, and to monitor the actions of
14 corporate officers who assist in the carrying out of that responsibility. It is the responsibility
15 of the board of directors to ensure that the corporate machinery, of which the bylaws are an
16 integral part, not be used to disenfranchise shareholders. The advance notice bylaw (whose
17 narrow purpose is to provide actual notice of a shareholder's intent to nominate) should not be
18 used, in our system of corporate governance, and is not used, under the norms of conduct in
19 our system, to thwart shareholder nominations or to throw road blocks in front of
20 shareholders.
21

22 37. To the contrary, as the shareholders' agents, American corporate governance
23 norms and principles require that the directors facilitate legitimate shareholder efforts to
24 contest the incumbent directors' views of how best to manage the corporation, by attempting
25 to elect one or more directors who may bring a fresh and helpful perspective to board
26 decision-making. The incumbent directors have every right to advocate for the election of

1 directors they prefer. But they have an equal responsibility to ensure that shareholders
2 wishing to finance at their own expense a competing slate of director candidates are not
3 prevented from doing so by specious interpretations of advance notice bylaws.
4

5 38. Given the shareholders' ownership of the corporation and exclusive authority
6 to elect the directors, the board of directors, and officers, employees and agents of the
7 corporation have no power or authority to interpret the advance notice bylaw provisions as
8 intended to provide the incumbent managers with a weapon or tool to ward off non-
9 management shareholder efforts to nominate and elect new directors. Rather, they must
10 interpret and apply those advance notice bylaws to facilitate the ability of any non-
11 management shareholder who is willing to spend personal resources to participate in
12 corporate democracy.
13

14 39. Moreover, the directors cannot avoid this responsibility by delegating it to a
15 corporate employee, even if it is the CEO or an attorney employed by the corporation, and
16 then deferring to that employee or attorney's decision. The directors cannot delegate
17 authority which they do not have – i.e., authority to use corporate machinery to frustrate non-
18 management shareholder electoral rights – and they must exercise their oversight powers and
19 responsibilities to countermand delegated authority that is misused to interfere with
20 shareholder electoral rights.
21

22 40. The HomeStreet bylaws specifically provide in section 1.13 that the Chairman
23 of the Annual Shareholders Meeting “may refuse to acknowledge the nomination of any
24 person or the proposal of any business not made in compliance with [the advance notice
25 provisions].” In my expert opinion, this provision shows that compliance or non-compliance
26 with the advance notice provisions is not intended and cannot in good faith be interpreted as

1 intended to enable the corporation, or the board, or the board chair to require that a
2 Shareholder Notice be “perfect” by the last date for filing such notice, here February 24,
3 2018. Thus, even if one were to interpret plaintiff’s Notice as incomplete in some material
4 way, or ambiguous in some respect, there can be no doubt that the Notice constitutes
5 substantial and good faith compliance with the advance notice requirements.
6

7
8 41. The fact that the bylaws contemplate the Chairman of the Annual Meeting
9 making a determination at an unspecified date, presumably even on the date of and at the
10 actual physical meeting, indicates that the process of determining whether a shareholder may
11 nominate candidates for director and submit shareholder proposals is not to be made
12 ministerially, but must be interpreted as requiring that the filing of a Notice that substantially
13 complies with the advance notice provisions will initiate a good faith response by company
14 officers or agents, acting on behalf of the board of directors, to ensure that the prospective
15 nominator is able to cure any perceived material deficiencies. Of course, in this case, in my
16 expert opinion there were no material deficiencies. The Chairman of the meeting should only
17 act on behalf of the entire board’s direction.

18
19 42. In summary, in my expert opinion, plaintiff has fully complied with the letter
20 and spirit of the advance notice obligations under American corporate governance norms, and
21 under any conceivable standard has substantially complied with the HomeStreet advance
22 notice bylaws. Moreover, the directors are not authorized under American corporate
23 governance principles or powers granted to them to interpret or apply the bylaws other than in
24 manner which facilitates and allows the plaintiff’s good faith effort to comply with the letter
25 and spirit of the advance notice provision so as to exercise its shareholder franchise rights.
26 The directors exercise their powers as agent of and for the shareholders. Those powers cannot

1 lawfully or equitably be exercised to take away from shareholders the right to nominate and
2 elect directors of their own choosing.

3 I declare under penalty of perjury under the laws of the state of Washington that this
4 declaration is true and correct.
5

6 DATED in Seattle, Washington, this 15th day of March, 2018.

7
8 
9 Charles R. T. O'Kelley

EXHIBIT A

CHARLES R.T. O'KELLEY
1616 Nob Hill Avenue, North
Seattle, Washington, 98109

Cell - (706) 424-2772 · Home - (206) 588.1938 · Email - okelleyc@seattleu.edu

EDUCATION

- LL.M., Harvard University, 1977
- J.D., University of Texas at Austin, 1972
- B.A., University of the South, 1970

FACULTY APPOINTMENTS

- Seattle University School of Law, 2008 - Present
Professor and Director, Adolf A. Berle, Jr., Center on Corporations, Law and Society
- University of Georgia School of Law, 1997 – Present (Emeritus since 2009)
Martin E. Kilpatrick Chair of Corporate Finance and Securities Law
- University of Oregon School of Law, 1982 - 1997
Loran L. Stewart Professor of Business Law, 1993 - 1997
- University of Virginia, Visiting Professor, Fall 1990
- University of Alabama School of Law, 1979 - 1982
- Tulane University School of Law, 1978 - 1979

ADMINISTRATIVE APPOINTMENTS

- Director, Adolf Berle Center, Seattle University School of Law, 2009-present
Established Adolf Berle Center
Implemented Annual Berle Symposia
Implement Annual Berle Colloquia series
- Interim Dean, University of Oregon School of Law, 1994-1997
Established Law and Entrepreneurship Center
Established Appropriate Dispute Resolution Program
Implemented Building Renovation and Expansion Program
 - Obtained legislative approval for \$9.4 million project (phase I of \$18 million project)
 - Obtained legislative approval for \$4.7 million in state funding, conditional on private match

Converted Renovation Project to New Building Project

- Obtained University approval of \$25,000,000 new building
 - Traded current building to University for \$5,700,000.
 - Organized and participated in successful solicitation of \$10,000,000 gift to name new Law School building.
 - Obtained two \$500,000 lead gifts for new building project
- Associate Dean, University of Oregon School of Law, 1993-1994
 - Director, Law and Entrepreneurship Center, University of Oregon School of Law, 1994-1997

PUBLICATIONS AND OTHER ACADEMIC SCHOLARSHIP

- **Books**
 - Corporations and Other Business Associations (1992) (2d ed. 1996) (3rd ed. 1999)(4th ed. 2003)(5th ed. 2006)(6th ed. 2010)(7th ed. 2014)(8th ed. 2017)(with Robert Thompson).
 - Corporations and Other Business Associations: Selected Statutes, Rules and Forms (1992, 1994-2017) (annually edited) (with Robert Thompson).
 - Surrey, Warren, McDaniel and Ault's Federal Income Taxation, Vol. II (1987 Supp.), (1988 Supp.)(With McDaniel, Ault, and McMahon)
- **Articles**
 - *The Evolution of the Modern Corporation: Corporate Governance Reform in Context*, 2013 U. Ill. L. Rev. 1001 (2013).
 - *Coase, Knight, and the Nexus-of-Contracts Theory of the Firm: A Reflection on Reification, Reality, and the Corporation as Entrepreneur Surrogate*, 35 Seattle U. L. Rev. 1247 (2012).
 - *The Theory of the Firm: The Corporation as Sole-Proprietor-Surrogate* (June 6, 2011) (working paper series). Available at SSRN: <http://ssrn.com/abstract=1858936> or doi:10.2139/ssrn.1858936.
 - *Berle and Veblen; An Intellectual Connection*, 34 Seattle U. L. Rev. 1317 (2011).
 - *Berle and the Entrepreneur*, 33 Seattle U. L. Rev. 1141 (2010).
 - *In Berle's Footsteps*, 33 Seattle U. L. Rev. 777 (2010).
 - *The Entrepreneur and the Theory of the Modern Corporation*, 31 J. Corp. Law 753 (2006)
 - *Delaware Law and Transaction-Cost Engineering*, 34 Ga. L. Rev. 929 (2000).
 - *Foreword, The Many Futures of Teaching Corporations*, 34 Ga. L. Rev. 423 (2000).

- *Understanding the Place of Limited Liability Companies in the Spectrum of Business Forms*, 73 Or. L. Rev. 1 (1994).
- *Filling Gaps in the Close Corporation Contract: A Transaction Cost Analysis*, 87 NW. U. L. Rev. 216 (1992).
- *Opting In and Out of Fiduciary Duties in Cooperative Ventures: Refining the So-Called Coasean Contract Theory*, 70 Wash. U. L.Q. 353 (1992).
- *The Parenting Tax Penalty: A Framework for Income Tax Reform*, 64 Or. L. Rev. 375 (1986).
- *Tax Policy for Post-Liberal Society: A Flat Tax Inspired Redefinition of the Purpose and Ideal Structure of a Progressive Income Tax*, 58 S. Cal. L. Rev. 727 (1985).
- *Rawls, Justice, and the Income Tax*, 16 Ga. L. Rev. 1 (1981).
- *Corporate Distributions and the Income Tax: A Consideration of the Inconsistency Between Subchapter C and Its Underlying Policy*, 34 Vand. L. Rev. 1 (1981). Republished as lead article in The Monthly Digest of Tax Articles (November 1981).
- *A Different Look at the Taxation of Corporate Distribution and Shareholder Gain*, 13 N. Eng. L. Rev. 89 (1977).

ACADEMIC CONFERENCES ORGANIZED

- *Berle V*, Sydney, Australia, May, 2013. Seattle L. Rev. (Fall, 2013).
- *Berle IV*, London, June, 2012. Seattle L. Rev. (January, 2013).
- *Berle III*, Seattle, January, 2012. Seattle L. Rev. (Spring 2012).
- *Berle II*, Seattle, January, 2011. Seattle L. Rev. (Spring 2011).
- *Berle I: In Berle' Footsteps*, Seattle, November, 2009. Seattle L. Rev. (Spring 2010).
- *Teaching Corporate Law*, Athens, Georgia, October 1999, Georgia L. Rev. (Spring 2000).
- *Value-Creation and Business Lawyering*, November 1994, Oregon L. Rev. (Spring 1995).

SERVICE

- **Faculty Leadership**
Chair, Faculty Appointments Committee (Oregon, 1986-1987; Seattle, 2010-2011)
Chair, Admissions Committee (Georgia, 1998-2003)
 Entering class GPA median increased from 3.51 to 3.65

Entering class LSAT median increased from 160 to 163

African-American student enrollment increased substantially

Chair, Admissions Committee (Oregon, 1989-1994)

Entering class GPA median increased from 3.11 to 3.51

African-American student enrollment increased from 2 to 18 students

Female student enrollment in entering class increased from 29% to 51%

Chair, Curriculum Committee (Oregon, 1987-1988)

Chair, Academic Standing Committee (Oregon, 1986-1987)

Chair, Library Committee (Alabama, 1981-1982)

Chair, Honor Code Revision Committee (Tulane, 1978-1979)

- **University-Wide Service**

Vice Chair, Living Wage Assessment Committee (2006-2007)

University Council (Georgia, 1999-2005) (Statutes and By-Laws, 2003-2004)

University Council Executive Committee (Georgia, 1999-2005)

Continuing Education Task Force (Oregon, 1994-1997)

Chair, Wayne Morse Chair Committee (Oregon, 1994-1997)

Council of Deans (Oregon, 1994-1997)

Graduate Council (Oregon, 1993-1994)

Provost's Budget Committee (Oregon, 1992-1994)

Institutional Animal Care and Use Committee (Oregon, 1988-1990)

Research Grants Committee (Oregon, 1986-1987)

Law School Representative, University Senate (Oregon, 1984-1986)

Parliamentarian (Oregon, 1985-1986)

- **Law School Service**

Placement Committee (Georgia, 2001-2002)

Strategic Planning Committee (Georgia, 1999-2000)

Admissions Committee (Seattle, 2009-present) (Georgia, 1997-2004) (Oregon, 1988-1994)

Appointments Committee (Seattle, 2009-present) (Georgia, 1997-2001) (Oregon, 1992-1994)
(Alabama, 1979-1982) (Tulane, 1978-1979)

Dean's Advisory Committee (Georgia, 1998-1999, 2000-2001) (Oregon, 1986-1987, 1992-1994)

Tenure Committee (Oregon, 1984-1985)

Curriculum Committee (Oregon, 1983-1984) (Alabama, 1980-1981) (Georgia, 2003-2005)

Dean Search Committee (Alabama, 1980-1981)

Honor Code Revisions Committee, (Tulane, 1978-1979)

Founding Faculty Mentor OutLaws (formerly Gay and Lesbian Legal Network) (student group)
(Georgia, 1998-2009)

- **Washington State Bar Association**

Member, Corporation Act Revision Committee, 2009-Present

- **Oregon State Bar Association**

Member, Executive Committee, Business Law Section, 1990-93

Member, Model Business Corporation Task Force, 1990-96

Member, Oregon Senate Judiciary Committee Joint Task Force on the Professional
Corporation Act, 1992-93

Member, Uniform Partnership Act Task Force, 1995-96

- **Georgia State Bar Association**

Member (currently inactive), 1973-present

- **American Law Institute**

Member, 2000-present

- **American Bar Association**

Corporation Banking and Business Law Section

Legal Education Section

Committee on Closely-Held Corporations, 1977-1982

Committee on Corporate-Shareholder Relations, 1977-1979

Subcommittee on Integration, 1977-1978

Liaison between Oregon State Bar and Committee on Corporate Law, 1994-1998

- **Association of American Law Schools**

Executive Council, Section on Business Associations, 1994-1998

Community

Member, Advisory Board, Northwest Chapter, NACD, 2009-2011.

Director, Tuscaloosa Montessori, Inc., 1979-81

Director, Druid City Historic District Association, 1979-81

Director, Kidsports, Inc., 1987-1994

Director, Town Club of Eugene, Inc., 1994-96.

Co-plaintiff, O'Kelley v. Cox and O'Kelley v. Perdue (Lawsuits by ACLU/ Lambda Legal seeking to overturn Georgia's so-called "marriage amendment").

Director, Georgia Chapter, ACLU, 2007-2008

Member, Clarke County Democratic Committee, 2005-2008 (Executive Committee member and Chair, fund-raising, 2007-2008).

COURSES

- Business Courses: Corporations; Corporate Law Appellate Litigation; Mergers and Acquisitions; Corporate Governance; Business Planning; Non-Publicly-Traded Business Associations; Securities Regulation; International Business Transactions (in Verona, Italy); Corporations, Law and Society.
- Tax Courses: Federal Income Taxation (Individual and Corporate); Tax Policy.

SEMINARS

- Economics Institute for Law Professors, summer 1985, Hanover, New Hampshire.
- NEH Summer Humanities Seminar, "Liberty, Equality and Justice," Summer 1980.

LAW PRACTICE

- Dodd, Driver, Connell and Hughes, Atlanta, Georgia
Associate Attorney, 1977-1978
- Jones, Bird and Howell, Atlanta, Georgia
Associate Attorney, 1973-1977

Annex D

Declaration of Charles W. Griege, Jr. in Support of
Motion for Preliminary Injunction and Declaratory Relief,
filed in the Superior Court of Washington
in and for King County on March 13, 2018

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BLUE LION OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

v.

HOMESTREET, INC.,

Defendant.

No. 18-2-06791-0 SEA

DECLARATION OF CHARLES W.
GRIEGE, JR. IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION
AND DECLARATORY RELIEF

Charles W. Griege, Jr. declares as follows:

1. I am over the age of 18, and have personal knowledge of and am competent to testify to the matters stated herein.

2. I have over twenty-five years of experience in the capital markets. I founded and have managed Blue Lion Capital since October 2005. Prior to that, I was a Partner of Atlas Capital Management from 2001 to 2005. Prior to 2001, I had seven years of investment banking experience at Soundview Technology Group, Lehman Brothers and A.G. Edwards and was Vice President of Sanford Bernstein. I graduated with honors from Columbia Business School in 1990 and, prior to that, worked at the Federal Home Loan Bank of Dallas from 1985 to 1988. I graduated from Vanderbilt University in 1985.

3. Blue Lion has its principal place of business in Dallas, Texas. Affiliates of Blue Lion include, myself, Roaring Blue Lion, LLC, Roaring Blue Lion Capital Management, L.P., and Blue Lion Opportunity Master Fund, L.P. (collectively, "Blue Lion" or "T" on behalf of Blue Lion). These affiliates are not parties.

1 4. HomeStreet, Inc. (the “Company” or “HomeStreet”), is the parent company of
2 HomeStreet Bank (the “Bank”). HomeStreet, Inc. is a public company whose stock trades on
3 the NASDAQ exchange. It is a diversified financial services company headquartered in Seattle,
4 Washington, serving consumers and businesses in the State of Washington as well as the
5 Western United States and Hawaii through its various operating subsidiaries.

6 5. The Board of Directors of HomeStreet is comprised of Mark K. Mason,
7 David A. Ederer, Scott M. Boggs, Victor H. Indiek, Thomas E. King, George “Judd” Kirk,
8 Mark R. Patterson, Douglas I. Smith, and Donald R. Voss.

9 6. Blue Lion and its affiliates manage funds that beneficially or in record name
10 own approximately 6.0 percent of the stock of HomeStreet, Inc., making it the fourth largest
11 shareholder, owning almost four (4) times more shares than the current HomeStreet Board of
12 Directors (the “Board”) combined. Blue Lion informed HomeStreet on February 23, 2018,
13 that it would nominate two highly qualified candidates for election to the Board and made two
14 substantive corporate governance proposals for inclusion in shareholder votes at the
15 Company’s 2018 Annual Meeting of Shareholders.

16 7. The Annual Meeting (Annual Meeting”) is set to take place in Seattle,
17 Washington on May 24, 2018, and the Record Date is set for March 20, 2018.

18 8. Blue Lion sent to the Company a Nomination Submission (the “Nomination
19 Submission” or “Submission” or “Notice”) of the type called for by the Company’s Bylaws
20 (“Advance Notice Provision”). A true copy of those bylaws, as filed with the SEC, are
21 attached hereto as Ex. A (“bylaws” or “Bylaws”).

22 9. The Submission provided 133 pages of information. A true and correct copy
23 of the Submission is attached as Ex. B. The Company acknowledged publicly that
24 submission. Attached hereto as Ex. D is a February 26, 2018 HomeStreet press release.

25 10. Despite the fact that the Nomination Submission provided sufficient
26 “Background and Qualification” information as required by the Bylaws to nominate the two

1 candidates and support the proposals, the Company announced in a public press release and a
2 letter on March 1, 2018, (1) that the Nomination Submission in the unilateral view of the
3 Company was deficient, and (2) that the period for nomination was now expired and that it
4 would not entertain Blue Lion's nominations or proposals at the 2018 Annual Meeting. A
5 true and correct copy of the March 1, 2018 press release and March 1, 2018 letter are attached
6 hereto as Exhibits E and F.

7
8 11. In a second letter dated March 9, 2018, the Company reaffirmed its rejection of
9 the Notice, but also suggested that the Company's Chairman/CEO, Mark Mason, may have
10 independently made this decision. A true and correct copy of that letter is attached as Ex. G
11 hereto.

12 12. The Blue Lion Entities, of which I am a part, were founded in 2005 and invest
13 in undervalued securities with asymmetric risk/reward profiles. In its 12-year history, Blue
14 Lion has never publicly campaigned for change at any of its portfolio investments. Blue Lion
15 is neither an activist investor nor a shareholder with a short-term orientation. To the contrary,
16 Blue Lion is a committed, long-standing investor that first invested in HomeStreet during the
17 Bank's initial public offering in 2012 because of the Company's business opportunities.

18 13. Blue Lion has been a shareholder of HomeStreet for most of the time that
19 HomeStreet has been a public company – since 2012.

20 14. Between 2012 and 2017, Blue Lion communicated regularly with management
21 at HomeStreet. In fact, those communications were almost on a quarterly basis. The
22 communications were cordial and constructive.

23 15. Over the course of time, underperformance became the norm, personnel
24 departures became alarming and the Bank's stated strategic plan was causing the Company's
25 stock price to significantly underperform its peers to the point where Blue Lion needed to try
26 a different approach in its communications and interactions with HomeStreet.

1 16. On November 20, 2017, Blue Lion wrote a letter to the CEO/Chairman of
2 HomeStreet, the first paragraph of which began as follows:

3 “I am writing this letter reluctantly but feel I have no choice. I
4 do not consider myself an activist nor have I ever written a
5 letter of this kind. But, I feel compelled to explain why I
6 believe it is time for changes to be made in the way
HomeStreet, Inc. (“HMST” or the “Company”) is being
managed.”

7 A true and correct copy of this letter is attached hereto as Ex. J.

8 17. After laying out in great detail Blue Lion’s concerns, Blue Lion as the fourth
9 largest shareholder of HomeStreet at the time, asked for a board seat. In the absence of
10 working “amicably [to] reach an agreement on [their] request,” Blue Lion asked for an
11 opportunity to meet with the full Board of Directors. Ex. J.

12 18. On December 21, 2017, I, along with a Blue Lion colleague, met with the
13 Board of Directors to provide a presentation on our views of the Company’s strategy and
14 offered various alternative views on changes that might be made moving forward that could
15 increase the value for all shareholders of the Company.

16 19. After that meeting, I was invited to meet with the CEO/Chairman, the lead
17 independent Director and the Human Resource and Corporate Governance Committee of the
18 Board, ostensibly to consider me as a possible candidate to be invited onto this Board. That
19 meeting took place on January 8, 2018.

20 20. Just three days later on January 11, 2018, HomeStreet issued a press release
21 attaching a letter to all shareholders announcing that following a unanimous recommendation
22 of the Human Resource and Corporate Governance Committee, the full Board of Directors
23 unanimously voted to decline Blue Lion’s request to place a nominee on its Board. In that
24 open letter to all shareholders, the CEO/Chairman wrote:

25 “The Board concluded the issues of greatest concern regarding
26 the operating efficiency of our Bank are best addressed with the
Company’s current strategic plan...”

1 A true and correct copy of this release is attached hereto as Ex. K. I interpreted the release to
2 mean that the Company did not believe it was necessary to have individuals with different
3 ideas and ones that were not consistent with all current Board members in the Boardroom.
4 The Board did not offer to Blue Lion that it would consider any other nominee.

5 21. Just two weeks later, on January 25, 2018, HomeStreet publicly announced the
6 appointment of a new Director to its Board. That Director, who, like me, had experience as
7 an institutional bank stock investor, owned less than 1/20th of the stock that Blue Lion owned
8 as HomeStreet's fourth largest investor. A true and correct copy of that press release is
9 attached hereto as Ex. L.

10 22. In advance of the nomination period expiring and in compliance with the
11 Bylaws, Blue Lion nominated two independent director candidates and submitted three
12 proposals.

13 23. On February 23, 2017, Blue Lion delivered its 133 pages Nomination
14 Submission to HomeStreet.

15 24. Among the proposals, Blue Lion proposed a binding change to the Company's
16 bylaws that would require that the roles of Chairman and CEO be separate. HomeStreet's
17 bylaws permit one person to serve in both capacities. Blue Lion believes that one person with
18 the combined role of Chairman and CEO diminishes the CEO's accountability to the Board
19 and the ability of the Board to independently oversee management.

20 25. Blue Lion also proposed that the Board take the steps necessary to declassify
21 the Board, so that all directors are elected each year. Blue Lion believes that one-year
22 director terms increase the Board's accountability to shareholders. This proposal puts at risk
23 each director's three year term.

24 26. The two Blue Lion's nominees are Ronald Tanemura and Paul Miller.

25 27. Attached is an earlier press release that described that the Blue Lion entities
26 intended to make nominations and vote in favor of them for the upcoming annual meeting

1 board seat election. A true and correct copy of that press release is attached hereto as Ex. C.
2 The various press releases filed since January 17, 2018, including the above, detail Blue
3 Lion's intentions to solicit proxies and votes. These releases are routinely received and
4 reviewed by HomeStreet when they are filed and released.

5 28. At the time of providing the Submission on February 23, Blue Lion had not
6 engaged a proxy solicitation firm, nor had costs for such a campaign been estimated.

7 29. On February 26, 2018, the Company issued a press release saying that it was in
8 receipt of Blue Lion's notice of nominations and proposals and that it would "carefully
9 evaluate the notice." It went on to state in part that, "it is unfortunate that Blue Lion has
10 chosen to initiate a proxy contest..." A true and correct copy is attached hereto as Ex. D.

11 30. On March 1, 2018, the Company sent Blue Lion an eight page letter rejecting the
12 notice and describing "32 instances of failure." It issued a press release simultaneously
13 describing its decision. A true and correct copy of both are attached hereto as Exhibits E and F.

14 31. Blue Lion provided a detailed letter to HomeStreet on March 8, 2018,
15 providing clarifying information relating to its notice and resubmitted on March 9, 2018, out
16 of an abundance of caution, a certification confirming and clarifying its prior notice. True and
17 correct copies of these two letters are attached hereto as Exhibits H and I.

18 32. In a subsequent letter dated March 9, 2018, reaffirming the decision to reject
19 the nomination notice, HomeStreet explained that "it expects that the Company's Chairman
20 will declare that Blue Lion's nominees and proposals shall be disregarded at the [annual]
21 meeting..." This second letter suggests to me that the CEO/Chairman may have unilaterally
22 decided to declare the Blue Lion notice invalid. A true and correct copy is attached hereto as
23 Ex. G.

24 33. At the time that the CEO/Chairman may have unilaterally decided or
25 participated with the Board in deciding that Blue Lion's notice should be rejected, he and
26 HomeStreet were aware that one of the proposals that was part of Blue Lion's notice called

1 for the amendment of HomeStreet's Bylaws to require that the role of the CEO and Chairman
2 be separated. The approval of such a proposal by HomeStreet's shareholders would have
3 substantially diminished the CEO/Chairman's role within HomeStreet.

4 34. At the time the decision was made by the full Board to reject Blue Lion's
5 nomination notice, three directors were up for election at the annual meeting of shareholders.
6 Two of the three directors were members of HomeStreet's Audit Committee. Those two long
7 serving directors, on information and belief, understood they were and are extremely
8 vulnerable to an election contest. They sat on the audit committee when the SEC found the
9 Company had impeded an SEC investigation into improper accounting. And, both sat on the
10 audit committee during part of the period in which HomeStreet's accounting records and
11 accounting controls were found to be unlawful. At last year's board election, another audit
12 committee member received a substantial rebuke from shareholders – with an unusual number
13 (40 percent) of shareholders casting a protest vote (known as a "withhold vote") even though
14 the election was not contested and no other candidates were running for election. I reviewed
15 the Institutional Shareholder Services Report from last year and the election results for this
16 information. Attached hereto as Ex. N is a true and correct excerpt from the Institutional
17 Shareholder Services Report for last year relating to HomeStreet. Also attached as Ex. O is a
18 true and correct excerpt from HomeStreet's 8K filing announcing the 2017 election results.

19 35. All directors would be impacted by Blue Lion's proposal that jeopardized their
20 three year terms by going to annual elections.

21 36. The Company has nine directors, and only three slots are open in 2018. Blue
22 Lion is seeking only to exercise the right that any shareholder of the Company has – the right
23 to nominate a director and the right to run that candidate against the entrenched board. Blue
24 Lion nominated just two candidates.

25 37. Blue Lion believes that HomeStreet has tremendous potential to generate
26 significant value for shareholders and the communities it serves. Unfortunately, numerous

1 strategic missteps, inadequate corporate stewardship, and poor financial performance have
2 eroded shareholder confidence, destroyed shareholder value and hurt the Bank's ability to
3 serve its customers.

4 38. Blue Lion firmly believes that the Company, given the right leadership and
5 governance structure, can generate substantial and lasting value for shareholders.

6 39. Over the course of this past year, in a determined effort to encourage positive
7 changes, Blue Lion has initiated multiple conversations with the Company's management and
8 the Board with the hopes that a costly proxy contest could be avoided.

9 40. Despite Blue Lion's efforts to drive positive change through an engaged,
10 constructive dialogue with the Company over the course of the last several years, it has been
11 unsuccessful in getting a change in management views or a position on the Board of
12 Directors. Again, on January 11, 2018, the Company made clear that it did not want change
13 and wanted to stay the course with the Company's "current strategic plan."

14 41. Blue Lion nominated candidates for the Board because Blue Lion believes that
15 the entrenched management and the current board are not appropriately managing the
16 Company. Simply put, management has become accepting of operating at a poor
17 performance level in comparison to peers.

18 42. Based on analytics it has run, and in reliance on available research and data,
19 Blue Lion believes that HomeStreet has the lowest price-to-tangible book value multiple
20 among its peers and regularly underperforms those peers on virtually every key operating
21 metric. Despite operating in some of the best markets in the country, HomeStreet is failing
22 relative to its peers and virtually every public bank in the country in almost every way.
23 Applying commonly used performance metrics to compare HomeStreet with any bank peer
24 group available, the bank is last or second to last on every metric in Blue Lion's analysis.

25 43. Over the five years ending December 31, 2017, the total return for
26 shareholders was 16 percent, significantly lower than the performance of its banking peers,

1 the relevant bank indices (121 percent total five-year return) and the broader market as a
2 whole.

3 44. HomeStreet released fourth quarter and full-year 2017 earnings which were
4 disappointing to Blue Lion. HomeStreet failed to execute on a strategy that would enable the
5 Bank to reach its full potential or generate earnings and cash flow commensurate with its
6 assets and opportunity.

7 45. The Company's mortgage segment was unprofitable for the fourth time in the
8 past five quarters. The commercial and consumer banking segment sold significantly more
9 commercial real estate loans than it originated during the quarter, generating a one-time boost
10 to earnings of more than 11 cents per share. This was designed to make the performance of
11 the company look better than it otherwise would have. After adjusting for the high volume of
12 sales of commercial real estate loans during the quarter (and the 11 cents per share boost to
13 earnings from those sales), as well as a reasonable provision for loan losses (another 5 cents
14 per share), HomeStreet missed consensus earnings estimates by 15 cents per share or 35
15 percent based on Blue Lion's analysis.

16 46. Of tremendous concern to us, who have seen banks struggle because of
17 inadequate controls and loan loss reserves, the Bank, despite significant new loan growth, did
18 not make a commensurate adjustment to its loan loss provision. In fact, in 2017, the increase
19 in the provision for loan losses was a mere \$750,000, despite \$680 million of net loan growth
20 and a \$4.1 million increase in the loan loss provision in 2016 based upon Blue Lion's review.

21 47. During 2017, HomeStreet's commercial and consumer banking segment had
22 net loan growth of more than \$680 million. The Bank took a loan loss provision of \$750,000
23 or 11 basis points on those loans. HomeStreet's allowance for loan losses currently sits at 90
24 basis points of originated loans (down from 100 basis points a year ago) while its Peers
25 average 123 basis points. In plain terms, Blue Lion believes the Bank is not guarding
26 sufficiently against the risk of loss in its loan business.

1 48. The Bank also is operating at too high an expense for operations. The Bank's
2 efficiency ratio as judged by Blue Lion was 1,000 basis points higher than its peers in the
3 Pacific Northwest and 1,800 basis points higher than its peers in California. Blue Lion
4 believes that other shareholders share its concern that management is not doing enough to
5 make the Bank more efficient.

6 49. Another significant concern is turnover of key operating personnel.
7 HomeStreet has had five CFOs or Chief Accounting Officers in its six-year public life.

8 50. Further, HomeStreet was subject to an SEC investigation into its accounting
9 practices where the SEC concluded in 2017 that HomeStreet violated various SEC statutes
10 and regulations and took affirmative steps to impede its investigation. HomeStreet was
11 sanctioned \$500,000 with a civil penalty and forced to enter into a cease and desist decree
12 with the SEC. Attached hereto as Ex. P is a true and correct copy of that decree.

13 51. Yet another area of shareholder concern is HomeStreet's acquisitions of other
14 banks in other states, in particular California. Beginning in 2015, HomeStreet acquired
15 Simplicity Bancorp ("Simplicity"), which was based in Los Angeles, California. Since the
16 Simplicity deal, HomeStreet has opened numerous retail branches, loan production offices
17 and loan fulfillment centers throughout Southern California. In addition, in February 2016,
18 HomeStreet acquired Orange County Business Bank ("OCBB"). HomeStreet has continued
19 to open bank and mortgage offices as far south as San Diego and in Northern California in an
20 attempt to close the enormous gap between the southernmost tip of California and Seattle.
21 Blue Lion does not believe HomeStreet's management can effectively and efficiently manage
22 this geographic footprint and the results demonstrate such.

23 52. In Blue Lion's view, HomeStreet's management continues to be overpaid for
24 its efforts. In fact, there seems to be little relevance between compensation and true
25 performance measures. So, in spite of HomeStreet performing at or near the bottom on every
26 metric when compared to peers, its named executive officers are compensated near the top

1 relative to all those peers. Further, the Board just recently renegotiated the employment
2 agreement of its Chairman and CEO, as well as its Chief Commercial Real Estate Lending
3 Officer, and rewarded both with handsome raises to their annual compensation despite the
4 dismal performance.

5 53. Blue Lion believes based on its years of experience investing in companies that
6 the claimed deficiencies in the Company's letter were unfounded, inaccurate and immaterial
7 and will lead shareholders to believe that they now only have one choice in the upcoming
8 annual elections for directors.

9 54. In fact, HomeStreet made clear in its March 9, 2018 letter:

10 "If Blue Lion proceeds with soliciting proxies from
11 shareholders for its proposed nominees and proposals for the
12 Company's 2018 annual meeting of shareholders, the Company
13 will advise its shareholders that it expects that the Company's
14 Chairman will declare that Blue Lion's nominees and proposals
15 shall be disregarded at the meeting and that, as a result, no
proxies in favor of Blue Lion's nominees or proposals will be
recognized and no votes cast in favor of Blue Lion's nominees
or proposals will be tabulated." Ex. G.

16 55. Blue Lion publicly filed with the Securities and Exchange Commission a
17 Schedule 13D when it became an owner of over five percent of HomeStreet's stock in
18 November 2017. It filed four amendments prior to the Notice deadline. In each Schedule
19 13D, Blue Lion describes in great detail the parties and affiliates that filed, their relationships
20 to one another, their shareholdings, whether shares were purchased with borrowed funds, any
21 arrangements and agreements with respect to the securities of the Company and more. All of
22 this information was known by, and available to, HomeStreet at the time we submitted our
23 notice. A collection of these 13Ds is attached hereto as Ex. M.

24 56. The Record Date for the HomeStreet Annual Meeting has been set for
25 March 20, 2018, and the Annual Meeting Date for May 24, 2018. To effectively solicit
26 proxies from shareholders (and have time to convince them to vote for Blue Lion's candidates
and proposals), we will need to file our Preliminary Proxy Statement with the SEC by no later

1 than the week of March 26, 2018. In a contested election, it normally takes two to three
2 weeks to get final approval from the SEC before being able to print and mail the Proxy
3 Statement to shareholders. Five to six weeks is a necessary amount of time to mail and solicit
4 proxies in a contested election. As things now stand, shareholders will learn from publicly-
5 filed letters, press releases or, likely, through HomeStreet's Proxy Statement that:

6 " . . . Blue Lion's nominees and proposals shall be disregarded at
7 the meeting and that, as a result, no proxies in favor of Blue
8 Lion's nominees or proposals will be recognized . . . "

9 This communication with all shareholders will raise doubts whether a Shareholder who votes
10 for Blue Lion will be wasting their vote and will likely effect the voter participation and
11 support for Blue Lion. If HomeStreet's rejection of our notice remains unchanged,
12 HomeStreet guarantees the incumbent directors' chances of winning by promising to reject
13 our notice at the meeting. Moreover, if such a cloud is lifted too late in the solicitation
14 process, they could effectively have already scared away enough voters to make a difference.
15 Our right as a Shareholder to nominate and solicit proxies will be permanently impaired if we
16 cannot have this decided immediately.

17 I declare under penalty of perjury under the laws of the state of Washington that this
18 declaration is true and correct.

19 DATED in Key Largo, Florida, this 13th day of March, 2018.

20 
21 Charles W Griege, Jr.

Annex E

Declaration of Paul J. Miller in Support of
Motion for Preliminary Injunction and Declaratory Relief,
filed in the Superior Court of Washington
in and for King County on March 13, 2018

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

BLUE LION OPPORTUNITY MASTER
FUND, L.P.,

Plaintiff,

v.

HOMESTREET, INC.,

Defendant.

No. 18-2-06791-0 SEA

DECLARATION OF PAUL J. MILLER,
JR. IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION AND
DECLARATORY RELIEF

Paul J. Miller, Jr., declares as follows:

1. I am over the age of 18, and have personal knowledge of and am competent to testify to the matters stated herein.

2. I have reviewed HomeStreet's letter dated March 1, 2018 from its counsel to Blue Lion and the items in paragraph 6 of that letter as it relates to my questionnaire submitted by Blue Lion on February 23, 2018. Although the letter identifies 10 questions which HomeStreet claims I did not properly respond to, there are actually 15 items if you were to include subparts.

3. I resubmitted the pages of my questionnaire that relate specifically to these 15 items on March 8, 2018 initialing and dating each clarifying response. I also signed again and dated the certification provided as part of the questionnaire. See attached Paul J. Miller, Jr., Board of Directors Questionnaire – clarifying pages.

4. Out of the 15 items complained of, 13 of the items involved the “absence” of information requested. In other words, there was no affirmative information to provide in

1 response. See Questionnaire paragraphs 5n, 7(d)(1), 7(d)(2), 8(a), 8(b), 8(c), 8(f), 9, 10(d)
2 11(a), 11(b), 11(c) and 11(d).

3 5. In question 2b, were I answered “yes” to whether there was “any arrangement”
4 between me and other persons relating to my nomination, I did not describe the arrangement.
5 I have reviewed Blue Lion’s February 23, 2018 letter and can confirm that Blue Lion
6 accurately described that “arrangement” on pages 6 and 11 of that letter where they
7 specifically described the arrangement between myself and Blue Lion. My clarifying
8 response on March 8, 2018, directed HomeStreet to those same pages for such an
9 arrangement.

10 6. Question 7(c)(10), after answering “yes” to whether I held “any financial or
11 accounting-related professional certificates or licenses”, I did not spell out those licenses and
12 certifications because I had already attached my biography to the questionnaire where I
13 indicated that I was a “chartered financial analyst, [since] 1998” and held “FINRA Series 7,
14 24 and 87” licenses. I reviewed the Blue Lion’s February 23, 2018 letter, where they describe
15 on page 3 that “Mr. Miller is a chartered financial analyst.” All requested information was
16 provided.

17 7. With respect to question 10(b), I misread the question to ask whether I had any
18 credit extended to me by the “Bank,” HomeStreet. In not responding, I was accurately
19 disclosing that I had no such credit with the “Bank”. Question 10(a) asked about the
20 “Company” and 10(c) did as well, leading in part, to my confusion. I have since responded
21 on March 8, 2018 to 10b by providing my outstanding personal mortgage information in
22 detail to HomeStreet.

23 8. I also found the questionnaire confusing at times based on the following
24 example of the instructions. Question 7(d)1 says “to be answered only by members or
25 proposed member of the Compensation Committee” where I did not answer but the answer
26 was no anyway.

9. Other questions that I did not respond to were questions that relate to information for which I had no information to provide because there was none; and if there had been such information would have been already in the possession of the Company, examples being:

- a. Question 7(d)(1) asks for any fees I may have received from the Company or its subsidiaries.
- b. Question 8(a) asks for information relating to any transaction between me and the Company.
- c. Question 8(f) asks for any arrangement I am aware of relating to any director, officer or controlling person of the Company.
- d. Question 9 asks for any information regarding loans or indebtedness I have with the Company.
- e. Question 10(d) asks for a description of any position I hold with the Company.
- f. Question 11 asks in subparts (a-d) whether I am aware of any payments by the Company to its officers, directors, employees or agents.

10. All of the information I originally provided in my questionnaire that was submitted on February 23, 2018, was accurate at the time. Other than the answer to question 10(b) which I misunderstood, all affirmative information was provided.

I declare under penalty of perjury under the laws of the State of Washington that this declaration is true and correct.

DATED in MARCH, Virginia, this 12 day of March, 2018.

Paul J. Miller, Jr.