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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **-- against --** **MICHAEL A. CARROLL, MICHAEL V. PAPPAGALLO, STEVEN A. SPLAIN, and MICHAEL MORTIMER,** **Defendants.**	**19 Civ. ____ ( )** **ECF Case** **COMPLAINT AND JURY DEMAND**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against Defendants Michael A. Carroll ("Carroll"), Michael V. Pappagallo ("Pappagallo"), Steven A. Splain ("Splain"), and Michael Mortimer ("Mortimer") (together, "Defendants"), alleges:

SUMMARY OF ALLEGATIONS

1. This case concerns a fraudulent scheme to manipulate and falsely report a key financial measure at Brixmor Property Group Inc. ("Brixmor" or the "Company"), a publicly-traded real estate investment trust ("REIT") that is one of the nation's largest owners and

operators of open-air shopping centers. Carroll, Pappagallo, Splain, and Mortimer, Brixmor's then Chief Executive Officer, Chief Financial Officer, Chief Accounting Officer, and Senior Vice President of Accounting, respectively, each played a critical role in orchestrating the scheme.

2. In every quarter, except one, from the third quarter of 2013 through the third quarter of 2015 (the "Relevant Period"), Brixmor publicly announced that its "Same Property Net Operating Income Growth Rate," or "SP NOI Growth Rate" – a key non-GAAP measure relied on by investors and analysts to measure a REIT's financial performance – had met the targets that the Company had set, reflecting management's success in achieving a steady and predictable growth in income from its real estate holdings.

3. In reality, however, in each of those quarters, Brixmor's actual SP NOI Growth Rate was both volatile and unpredictable, and was – sometimes dramatically – above or below the guidance that the Company had announced for the year.

4. Faced with announced guidance they could not achieve, Carroll, Pappagallo, Splain and Mortimer engaged in a two year campaign to engineer the numbers they needed – which they described as "making the sausage" – by ignoring established accounting principles, flouting accounting methodology they had told the market they were using, and falsifying accounting entries to produce results that comported with the expectations Brixmor had set for investors.

5. By virtue of the conduct alleged herein, Defendants Carroll, Pappagallo, and Splain violated, and unless restrained and enjoined, will continue violating, Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rules 10b-5(a), (b) and (c) thereunder, 17 C.F.R.§ 240.10b-5(a), (b) and (c), and Rule 100(a) of Regulation G, 17

C.F.R. § 244.100; Defendants Carroll and Pappagallo violated, and unless restrained and enjoined, will continue violating, Rule 13a-14, 17 C.F.R. § 240.13a-14, promulgated under Section 13(a) of the Exchange Act; and Defendant Mortimer violated, and unless restrained and enjoined, will continue violating, Section 10(b) of the Exchange Act, 5 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R.§ 240.10b-5(a) and (c), and aided and abetted, and unless restrained and enjoined, will continue aiding and abetting, Carroll's, Pappagallo's and Splain's violations of Section 10(b) of the Exchange Act, 5 U.S.C. § 78j(b), and Rules 10b-5(a), (b) and (c) thereunder, 17 C.F.R.§ 240.10b-5(a), (b) and (c).

NATURE OF THE PROCEEDING AND RELIEF SOUGHT

6. The Commission brings this action pursuant to the authority conferred on it by Sections 21(d)(1), (2), (3), and (5) of the Exchange Act, 15 U.S.C. §§ 78u(d)(1), 78u(d)(2), 78u(d)(3), and 78u(d)(5), seeking a final judgment: (a) permanently restraining and enjoining Carroll, Pappagallo, Splain and Mortimer from engaging in the acts, practices and courses of business alleged herein; (b) permanently restraining and enjoining Carroll, Pappagallo, Splain and Mortimer from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act, 15 U.S.C. § 781, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d); (c) requiring Carroll, Pappagallo, Splain and Mortimer to disgorge ill-gotten gains and to pay prejudgment interest thereon; and (d) imposing civil money penalties on Carroll, Pappagallo, Splain and Mortimer pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3) .

JURISDICTION AND VENUE

7. This Court has subject matter jurisdiction over this action pursuant to Sections 21(d) and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d) and 78aa.

8. Venue is proper in the Southern District of New York pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa. Defendants, directly or indirectly, have made use of the means or instruments of transportation or communication in interstate commerce, or of the mails, or of a facility of a national securities exchange in connection with the transactions, acts, practices and courses of business alleged in this Complaint. Certain of these transactions, acts, practices and courses of business occurred in the Southern District of New York, including, among other things, preparation of the financial statements containing the misstatements and omissions regarding SP NOI and SP NOI Growth Rates and calls and meetings in which the Defendants discussed the methods by which SP NOI and SP NOI Growth Rates would be falsified. Certain of the Defendants also made misstatements and omissions regarding SP NOI and SP NOI Growth Rates while physically located in the Southern District of New York through press releases, and during earnings calls, investor presentations, and industry conferences.

THE DEFENDANTS

9. **Carroll**, age 51, resides in New York, New York. Carroll served as Chief Executive Officer of Brixmor and its predecessor entities from February 2009 until his resignation on February 8, 2016.

10. **Pappagallo**, age 60, resides in Trumbull, Connecticut. Pappagallo served as the President and Chief Financial Officer of Brixmor from May 2013 until his resignation on February 8, 2016. He is a CPA licensed in New York.

11. **Splain**, age 57, resides in Cheshire, Connecticut. Splain served as the Chief Accounting Officer of Brixmor and its predecessor entities from July 2008 until his resignation on February 8, 2016. He is a CPA licensed in Connecticut.

12. **Mortimer**, age 49, resides in Yardley, Pennsylvania. Mortimer served as the Senior Vice President of Accounting at Brixmor from October 2013 until his resignation on February 8, 2016.

THE RELEVANT ENTITY

13. **Brixmor** was at all relevant times a REIT traded on the New York Stock Exchange under the ticker symbol "BRX." Brixmor was incorporated in Maryland with headquarters in New York, New York during the Relevant Period. At various points during the Relevant Period, Brixmor owned between 518 and 522 shopping centers across the country and reported total assets of between approximately $9.4 and $10.1 billion.

FACTS

A. SP NOI and SP NOI Growth Rate

14. REIT stands for real estate investment trust. A REIT is a company that owns – and typically operates – income-producing real estate or real estate-related assets. REITs can be privately held, or like Brixmor, publicly traded on a stock exchange. Most of a REIT's profits are derived by leasing space and collecting rent on its properties. REITs distribute their profits to shareholders in the form of dividends.

15. For financial reporting purposes, publicly traded issuers in the United States must follow accounting rules established by the Financial Accounting Standards Board and rules adopted by the Commission, which are commonly referred to as generally accepted accounting principles, or GAAP. Additionally, many REITs, including Brixmor, report supplemental non-GAAP financial measures utilized by investors and others in understanding and assessing the companies' operating results. One of the most important non-GAAP measures that REITs typically report is same property net operating income ("SP NOI"), which is an "adjusted"

version of net operating income ("NOI"). Brixmor, like many REITs, defined NOI as rental income less rental operating expenses such as property operating expenses, real estate taxes, and bad debt expense.

16. SP NOI, in turn, represents the NOI of the "Same Property Pool," or the pool of properties owned by the REIT as of the end of both the current reporting period and the same reporting period in the prior year, i.e., the "Comparison Period," for the entirety of both periods. SP NOI therefore excluded any NOI attributable to properties that were acquired, constructed, or disposed of between the current reporting period and the Comparison Period. Brixmor publicly stated that, in addition, it excluded corporate level income (including transaction and other fees), lease termination income and straight-line rent amortization of above/below market leases from its calculation of SP NOI.

17. REITs like Brixmor not only report SP NOI as a dollar amount but also the percentage by which SP NOI has grown between the current reporting period and the Comparison Period, also known as the SP NOI Growth Rate. Because the SP NOI Growth Rate reflects the growth in the NOI of a static pool of properties, REIT management, including Brixmor's, as well as REIT investors and analysts considered it a valuable measure of a REIT's ability to generate growth from its existing properties over the course of a year, as opposed to growth through the acquisition or construction of new properties. Since the SP NOI Growth Rate reflects a change in percentages, relatively insignificant dollar amount changes to SP NOI have a magnified impact on the SP NOI Growth Rate.

B. Brixmor Publicly Reported Consistent and Predictable SP NOI Growth Rates from Third Quarter 2013 to Third Quarter 2015 and Touted This Metric to Investors

18. SP NOI and SP NOI Growth Rate were two of the most important performance metrics to Brixmor's management, including the Defendants, because of their importance to analysts and investors.

19. Each of Brixmor's Forms 10-Q and 10-K during the Relevant Period reflected that importance. For example, each filing stated, in identical or substantially similar form, that SP NOI was "utilized to evaluate the operating performance of real estate companies and is frequently used by securities analysts, investors and other interested parties in understanding business and operating results regarding the underlying economics of our business operations," and that it "provides a more consistent metric for comparing the performance of properties."

20. From its inception as a public company, Brixmor touted its steady and consistent SP NOI growth. In an initial public offering ("IPO") roadshow presentation before the Company went public in October 2013, Brixmor told investors that it would achieve strong and consistent SP NOI growth over the next few years despite difficulties in the industry by "redeveloping and repositioning" its existing portfolio of properties, rather than by acquiring or constructing new properties. To accomplish this, Brixmor would capitalize on a significant number of expiring below-market rate leases that could soon be brought to market levels and upgrade its anchor tenants to "best-in-class" grocery stores and other marquee tenants, which in turn would drive small shop occupancy and rent gains. Over the next two years, Brixmor consistently pointed to its SP NOI Growth Rate as evidence that these business strategies were successful.

21. Brixmor issued guidance for its SP NOI Growth Rate to the market in the form of a range of projected full-year growth rates. In December 2013, shortly after completing its IPO,

the Company issued SP NOI Growth Rate guidance of 3.9% to 4.0% for 2013 and 3.7% to 4.1% for 2014; in October of 2014, it narrowed the guidance to 3.8% to 4.0% for 2014. In February 2015, the Company issued SP NOI Growth Rate guidance of 3.0% to 3.7% for 2015, which it narrowed to 3.5% to 3.7% in October 2015.

22. Against this guidance, Brixmor, like most REITs, publically reported its actual SP NOI and SP NOI Growth Rate on a quarterly and year to date basis in each of its Form 10-Qs and 10-Ks as well as on a full-year basis in each of its Form 10-Ks, and on a quarterly basis in related Form 8-Ks.

23. In every quarter but one during the Relevant Period, Brixmor reported SP NOI Growth Rate results that landed squarely within the guidance range it had issued for the year, and often directly in the middle of the range.

24. In addition, in public statements in earnings calls, investor presentations, industry conferences, and shareholder letters, Defendants Carroll and Pappagallo touted the Company's consistent and predictable organic growth—as demonstrated by its SP NOI Growth Rate results—as proof that their business strategies were succeeding and that Brixmor was accomplishing the goals set forth during its IPO.

25. For example, at an industry conference in March 2014, Carroll claimed that the consistency of Brixmor's SP NOI Growth Rate was part of the Company's "secret sauce" that was "unlike a lot of other people in this space." In an August 2014 earnings call, he stated, "[t]he guidance range we provided for same-property NOI and FFO were the narrowest in the sector…We don't believe in an under-promise and over-deliver approach… We have a steady state portfolio with a large same property pool that is delivering consistent organic growth. We

have now achieved same property NOI growth in excess of 3.5% for the eighth consecutive quarter."

26. Similarly, at an industry conference in September 2014, Pappagallo touted "12 consecutive quarters of positive same property NOI growth, 3.8% in the second quarter of the year as well as year to date. And we've been averaging between 3.8% and 4% the last two years, one of the highest in the sectors." After Brixmor released its results for the first quarter of 2015, Pappagallo boasted to investors in a quarterly earnings call that Brixmor's SP NOI Growth Rate of 3.4% for the quarter was "right down the middle of our full year guidance range" of 3.0% to 3.7%.

27. Following Brixmor's first year as a public company, Carroll declared in a quarterly earnings call, "[w]e have met or exceeded the financial and operational expectations conveyed during the road show process… Our success thus far is evident in the results we have reported since becoming a public company. We delivered strong same property NOI growth of 3.9% in the quarter. Importantly, this is off strong comps in third quarter 2013 when we reported 3.5% growth. We have now achieved same property NOI growth in excess of 3.5% for the ninth consecutive quarter."

28. Market analysts and ratings agencies also watched Brixmor's SP NOI Growth Rate results closely, regularly emphasizing the measure in their reports and factoring it into their ratings of the Company's stock. Echoing Brixmor's management, analysts noted that the Company's SP NOI Growth Rate was consistent from quarter to quarter and continually hitting the Company's guidance.

29. For example, on August 5, 2014, after Brixmor reported its results for the second quarter of 2014, one analyst noted, "[s]ince the completion of the Company's IPO on November

4, 2013, management has executed well and is on its way to establishing a solid track record of producing predictable results, in our opinion. During the quarter, [SP NOI Growth Rate] was steady at 3.8%, alongside positive leasing results that are leading to higher occupancy rates and higher operating margins."

30. In another example, on October 27, 2014, after Brixmor reported its results for the period ending September 30, 2014, one analyst noted: "Most operating metrics were in solid footing this quarter. Cash S[P] NOI of 3.8% remained within guidance and elevated vs. peers."

C. Defendants Made Improper Adjustments to Brixmor's Actual SP NOI to Achieve SP NOI Growth Rate Targets

31. Contrary to its public disclosures, however, Brixmor's actual SP NOI Growth Rate frequently fell above or below the Company's publicly issued guidance range during the Relevant Period. In order to conceal the volatility of Brixmor's SP NOI Growth Rate, Defendants engaged in a multi-year effort to manipulate Brixmor's accounting to achieve the appearance of stable and predictable growth rates that fell within its guidance.

32. During each quarter, Carroll and Pappagallo set an internal specific quarterly target, typically right down the middle of Brixmor's publically issued guidance range, for the company's SP NOI Growth Rate. Throughout each quarter, Defendants closely monitored and received regular updates from Brixmor's financial planning and analysis staff about how Brixmor's actual SP NOI Growth Rate was tracking against the target that Carroll and Pappagallo had set. Pappagallo tasked Splain and Mortimer, who oversaw the property accounting department, with making adjustments to Brixmor's actual SP NOI that all four Defendants knew or were reckless in not knowing were improper in order to achieve the desired results.

33. Splain and Mortimer, and in some instances, Carroll and Pappagallo, devised a variety of fraudulent accounting methods to "adjust" Brixmor's actual SP NOI in order to achieve the target SP NOI Growth Rate set by Carroll and Pappagallo. In devising the specific ways in which to manipulate income, Splain and/or Mortimer consulted, sought approval from, or received direction from Pappagallo and/or Carroll.

34. Defendants manipulated Brixmor's SP NOI Growth Rate using three methods, all of which lacked any proper accounting justification: (i) using an account referred to internally as a "cookie jar" to improperly time the recognition of revenue; (ii) incorporating lease termination income into SP NOI, contrary to the Company's public representation that it excluded lease termination income from its calculation of SP NOI; and (iii) reducing the SP NOI for the Comparison Period in order to make the current quarter's SP NOI Growth Rate appear higher.

(1) Improper Timing of Revenue Recognition Using the "Cookie Jar" Account

35. Defendants used an internal books and records account, the "2617 Account," which Splain, Mortimer and others referred to internally as a "cookie jar," to improperly alter the timing of revenue recognition.

36. Among other things, the purported purpose of the 2617 Account was to hold deferred revenue items whose status was uncertain until it could be determined whether, and when, the revenue should be properly recognized as income. For example, if the amount of a tenant's common area maintenance payment or real estate tax payment was in dispute, Brixmor should have held the payment in the 2617 Account until it could determine whether it was properly entitled to recognize the item as income, at which point it should have recognized the revenue as income in the quarter that it was earned and collected, in accordance with GAAP.

37. On numerous occasions, however, Splain and Mortimer, with Carroll and Pappagallo's knowledge and approval, disregarded GAAP and improperly held amounts in the 2617 Account, or selectively recognized such amounts, for the sole purpose of meeting the SP NOI Growth Rate targets that had been set by Carroll and Pappagallo. Pappagallo and Splain reassured Mortimer that adjustments to income using the 2617 Account would fall below the thresholds for review by Brixmor's outside auditors.

38. In one example of Defendants' concerted and knowing efforts to manage the Company's reported SP NOI Growth Rate, as the Company was preparing its first quarter of 2015 financial filings, Pappagallo called a meeting with Splain, Mortimer, and others to "make some decisions on 1Q number—push a little or squirrel away stuff for 2Q and 3Q."

39. Similarly, in February 2015, after the Company received a tenant common area maintenance fee reconciliation payment, Mortimer was asked by his accounting staff whether to recognize all of the payment as income that month. Although the income should have been recognized when it was received under GAAP, Mortimer directed the staff member to leave it in the 2617 Account because it was only midway through the quarter, writing: "We were going to see where results shake out and take it in if we have to."

40. Brixmor improperly held the payment in the 2617 Account until the fourth quarter of 2015. In early October 2015, in discussing 3Q 2015 results, Splain relayed to Pappagallo that Carroll "wants to show a 40 bp increase (3.8%) next qtr [the fourth quarter of 2015]." As the fourth quarter of 2015 progressed, Mortimer reported to Splain the total amount of revenue that was available in the 2617 Account to boost the SP NOI Growth Rate for that quarter, which included the tenant payment that had been received in February of that year. Splain later acknowledged in an email to Mortimer that "we are emptying the cookie jar to get to the [SP

NOI Growth Rate] for this qtr [the fourth quarter of 2015]," consistent with Carroll's earlier directive.

41. In other instances, Mortimer dispensed with any justification for moving funds into and out of the 2617 Account, directing staff to move specific dollar amounts that were untied to any revenue event or property, for the sole purpose of achieving SP NOI Growth Rate targets. For example, in May 2015, Mortimer emailed his direct reports, "[g]ang – please reclass the following from [the 2617 Account] (it doesn't matter which property or properties: North - $35K, South - $50K, West - $20K)." In August of that year, Mortimer again directed his team, "I also need to bring in $100K per region from [the 2617 Account] – whatever properties you want is fine with me." In a June 2015 email, referring to Mortimer's directive to move a specific amount from the 2617 Account to "Other Income," one of Mortimer's accounting staff told his direct reports, "[t]alked to [Mortimer] on Friday and he doesn't really care where it comes from."

(2) Improperly Incorporating Lease Termination Income into SP NOI

42. Lease termination income, also referred to internally at Brixmor as lease settlement income or "LSI," is a negotiated lump sum fee that a tenant pays Brixmor for exiting its lease early. Under GAAP, LSI should be recognized in full when the lease is terminated and the payment is received, thus becoming a part of reported GAAP income for that quarter.

43. However, many REITs, including Brixmor, exclude LSI from their calculation of SP NOI because it represents a one-time payment that would otherwise skew the SP NOI Growth Rate as a comparative measure of the growth in SP NOI between the current period and the Comparison Period.

44. In keeping with that industry practice, Brixmor told investors that LSI was excluded from its SP NOI calculation in each of its Forms 10-Q and 10-K during the Relevant Period. It stated: "Same Property NOI **excludes** corporate level income (including transaction

and other fees), **lease termination income**, straight-line rent and amortization of above- and below-market leases of the same property pool from the prior year reporting period to the current year reporting period." (emphasis added)

45. In reality, however, and unbeknownst to investors, Defendants incorporated LSI into SP NOI during the Relevant Period in two ways that were intended to smooth its impact on Brixmor's reported quarter-to-quarter SP NOI Growth Rate and help the Company achieve its SP NOI Growth Rate targets. While Splain and Mortimer directed the accounting maneuvers required to achieve this, Carroll and Pappagallo approved the decisions concerning recognizing LSI in SP NOI each quarter.

46. First, Defendants amortized each LSI payment over the period of the remaining term of the terminated lease, and then incorporated those amortized amounts into SP NOI each quarter, until Brixmor secured a new tenant for the vacant space. Defendants knew that if Brixmor had included the entire amount of an LSI payment in SP NOI in the quarter that the lease was terminated and the payment was received, it would have caused a "spike" in SP NOI in that quarter, as Splain and Pappagallo discussed in an April 2014 email. Instead, by amortizing LSI over the remaining term of the lease, Defendants made it appear that Brixmor was continuing to receive rental income as if the lease had never been terminated. If, however, Brixmor secured a new tenant for the vacant space, the company no longer had to maintain the appearance of a continuing lease because rental income would soon be coming in from the new tenant.

47. Second, on a number of occasions when additional income was needed to bridge the gap between the company's actual SP NOI Growth Rate and the Growth Rate target, Defendants improperly reclassified portions of LSI as "Other Income," which would

immediately be recognized as income. For example, in a July 2014 email, Mortimer explained that a $1.3 million LSI payment had been classified as $850,000 to LSI and $425,000 to "Other Income." The $425,000 that had been improperly reclassified as "Other Income" included a "cleaning fee" in the fictitious amount of $200,000. By reclassifying $450,000 of the LSI as "Other Income," Brixmor was able to include this amount in its SP NOI calculation for that quarter and thus reach its SP NOI Growth Rate target.

48. In an October 2015 email, Splain asked Carroll whether a $400,000 LSI payment that Brixmor had improperly classified as "other income" should temporarily be reversed in order to reduce the SP NOI Growth Rate for the third quarter of 2015 to 3.6%, squarely down the middle of Brixmor's publicly issued guidance, and instead recognized in the next quarter. Splain explained that if they did not reverse the payment in the current quarter, the SP NOI Growth Rate for the third quarter of 2015 would be 3.8%, which exceeded guidance. In his response, Carroll did not object to the proposed maneuver. After being unable to reach Carroll the next day to confirm his approval, Pappagallo instructed Splain to go ahead with the reversal. Shortly thereafter, Mortimer reached Carroll by phone and reported to Splain that Carroll approved the proposal. The Defendants thus not only improperly classified LSI as "other income," but manipulated the timing of its recognition in order to report results that were consistent with Brixmor's publicly reported guidance range.

(3) ***Adjusting Comparison Period SP NOI***

49. Defendants also manipulated Brixmor's SP NOI Growth Rate for certain quarters by improperly reducing the SP NOI of Comparison Periods.

50. As noted above, the SP NOI Growth Rate for a particular quarter is determined by calculating the percentage by which the SP NOI of that quarter has grown from the SP NOI of the Comparison Period, measured on the Same Property Pool.

51. To ensure that the SP NOI Growth Rate was calculated on the correct Same Property Pool, and consistent with Brixmor's statements to the public about how it calculated SP NOI Growth Rate as well as industry practice, Brixmor properly adjusted the SP NOI of the current quarter as well as the SP NOI of the Comparison Period to exclude any NOI attributable to properties that were not owned as of the end of both periods and for the entirety of both periods. Brixmor then calculated the SP NOI Growth Rate based on these adjusted SP NOI figures for both periods.

52. For example, when SP NOI for the third quarter of 2014 is originally reported, it is calculated on a Same Property Pool that is based on the properties owned as of the end of both the third quarter of 2013 and the third quarter of 2014. However, when the SP NOI for the third quarter of 2014 is reported as a Comparison Period a year later, it must be calculated on a *different* Same Property Pool: that of the properties owned as of the end of both the third quarter of 2014 and the third quarter of 2015. As a result, the SP NOI that was originally reported for the third quarter of 2014 could be expected to change when it is reported as a Comparison Period a year later, and investors fairly assume that any such change is entirely attributable to legitimate changes made to the Same Property Pool.

53. During each quarter of the Relevant Period, Brixmor's Manager of Portfolio Reporting ("Manager 1") kept a "Reconciliation Spreadsheet" that contained all of the adjustments that were made to NOI to arrive at SP NOI for the current period.

54. In the first quarter of 2015, Pappagallo devised the tactic of boosting Brixmor's SP NOI Growth Rate in the current quarter by making improper adjustments to the Comparison Period SP NOI that had nothing to do with legitimate changes in the Same Property Pool. Specifically, at the end of the first quarter of 2015, Splain asked Manager 1 to create a new

version of the Reconciliation Spreadsheet for the current quarter that made it easier to model the impact of adjustments to the SP NOI of both the current quarter—the first quarter of 2015—as well as the Comparison Period—the first quarter of 2014. Splain then sent the spreadsheet to Pappagallo, showing that the actual SP NOI Growth Rate for the current quarter stood at 3.27%. Later that afternoon, Pappagallo sent Splain a modified version of the spreadsheet, which set forth Splain's prior version — which Pappagallo labeled "Version A" — alongside a new "Version B," in which Pappagallo had deducted $250,000 from the SP NOI of the Comparison Period, thereby increasing the SP NOI Growth Rate for the current quarter from 3.27% to 3.39%.

55. As Pappagallo knew or was reckless in not knowing, his deduction of $250,000 from the SP NOI of the Comparison Period lacked any proper accounting justification and was done solely for the purpose of boosting the reported SP NOI Growth Rate so that it fell more squarely within the publicly issued guidance range. That evening, Pappagallo informed Mortimer and Splain that they would be reporting a 3.4% SP NOI Growth Rate for the quarter (rounded up from, but consistent with, the 3.39% reflected in Version B of Pappagallo's spreadsheet). Mortimer and Splain, who each understood how Pappagallo reached the targeted SP NOI Growth Rate, knew or were reckless in not knowing that Pappagallo's manipulation of the SP NOI in the Comparison Period was improper.

56. Defendants employed the same tactic again in the third quarter of 2015. On October 5, 2015, as the Company was preparing its third quarter of 2015 financial filings, Splain emailed Pappagallo, copying Mortimer, and stated that Carroll had asked him to determine whether any properties could be excluded from the Same Property Pool in order to get to a SP NOI Growth Rate of 3.6% for both the quarter and the year. As Carroll, Splain, Pappagallo and Mortimer all knew or were reckless in not knowing, Brixmor publicly reported that its SP NOI

was calculated on the pool of properties that was owned as of the end of both the current quarter and the Comparison Period, and therefore removing properties from the Same Property Pool for any other reason would directly contradict that public representation.

57. Nevertheless, Pappagallo and Splain determined that a particular property, Plymouth Plaza, was exerting a negative impact on overall SP NOI and suggested excluding it from the Same Property Pool on the invented grounds that it was "office space." When the head of Brixmor's investor relations department got wind of this proposed exclusion and questioned why they would suddenly remove a property for this reason, Splain proposed to Pappagallo that they provide her a false explanation. Pappagallo replied, copying Carroll: "[h]ow did she find out we took out Plymouth [Plaza] NOI? She must not be given access to how we make the sausage."

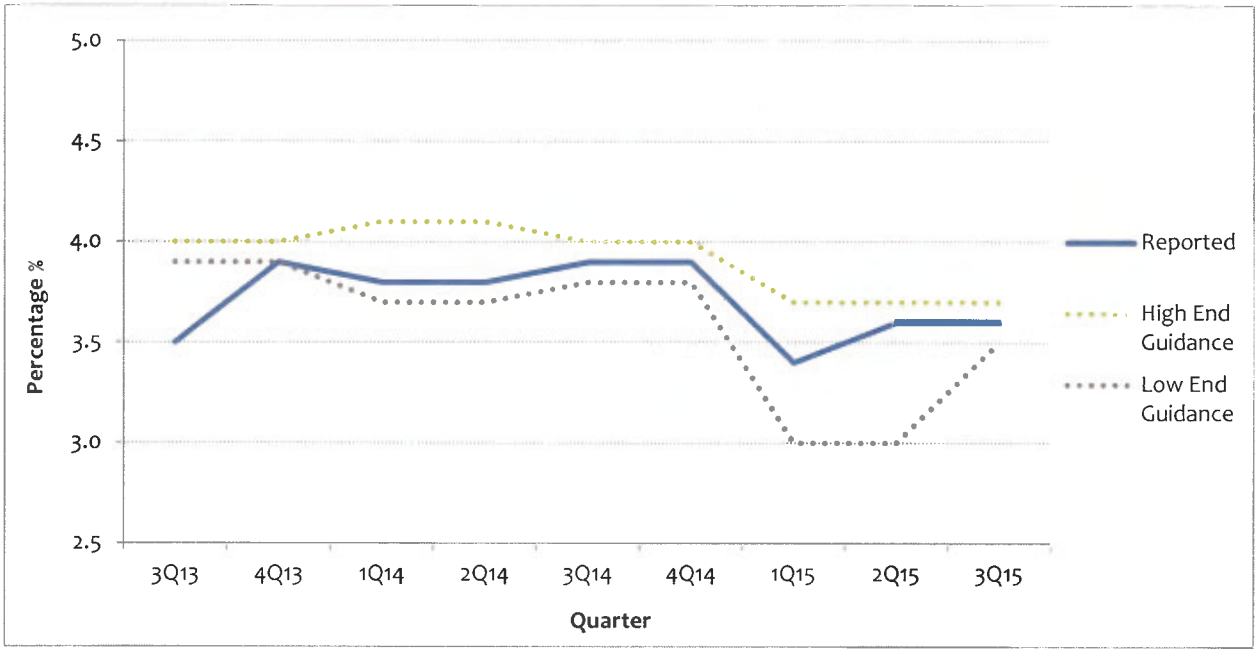
58. Ultimately, Defendants reached Brixmor's SP NOI Growth Rate target in the third quarter of 2015 by improperly excluding two payments of $300,000 and $56,000 from the reported SP NOI of the Comparison Period. In an October 5, 2015 email, Splain informed Pappagallo and Carroll that the $300,000 was a payment that Brixmor had received "years ago," and was originally taken into income in the third quarter of 2014, but that they would now be removing it from the SP NOI for that quarter, which was now being reported as a Comparison Period. In fact, the Defendants knew or were reckless in not knowing that their recognition of the $300,000 payment as income in the third quarter of 2014 improperly boosted the SP NOI Growth Rate back then, and was now being improperly used to manipulate the SP NOI Growth Rate again. By removing the $300,000 payment from the third quarter of 2014, the Defendants were able to boost the SP NOI Growth Rate of the current quarter, the third quarter of 2015, from

3.4% to 3.6%, a rate that was consistent with what Carroll had previously requested and right down the middle of the guidance range that the Company had publicly projected.

D. **Brixmor Materially Misstated Its SP NOI Growth Rate Based on Improper Adjustments**

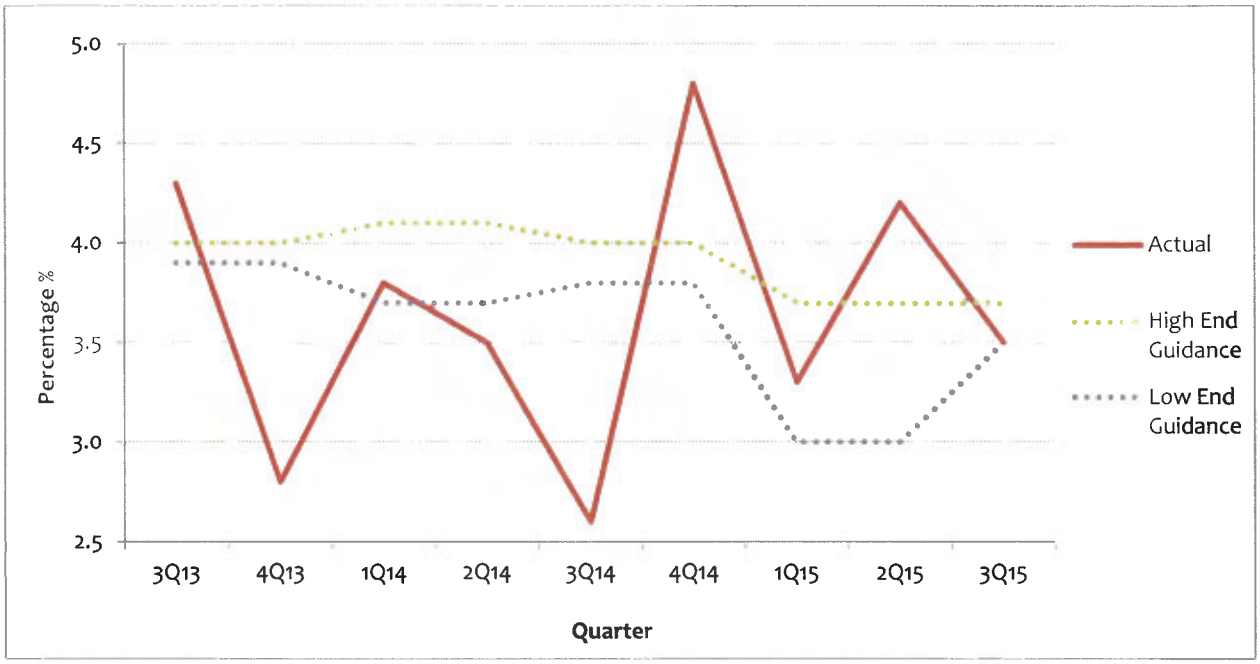
59. As a result of Defendants' improper adjustments, Brixmor reported false SP NOI Growth Rate figures from the third quarter of 2013 to the third quarter of 2015, therefore misleading investors to believe that Brixmor's growth was strong, steady, and hitting the middle of its guidance range virtually every quarter, as set forth in the following chart:

Reported Same Property NOI Growth Rate vs. Guidance



60. In reality, Brixmor's SP NOI Growth Rate fluctuated from quarter to quarter and was outside the range of annual guidance in six of the nine quarters of the Relevant Period, as set forth in the following chart:

Actual Same Property NOI Growth Rate vs. Guidance



61. Indeed, in three of the nine quarters during the Relevant Period in which the actual SP NOI Growth Rate exceeded the annual guidance, Defendants manipulated the figure downward, as the charts above demonstrate, choosing to hide stronger-than-expected growth in order to maintain the narrative of consistent and predictable growth that was central to the Company's investment thesis.

62. Defendants' manipulation of SP NOI also allowed Brixmor to hit its full-year SP NOI Growth Rate targets for 2013 and its revised 2014 guidance, when the Company otherwise would have missed those targets in both years.

63. During the Relevant Period, Brixmor reported false SP NOI Growth Rate figures in all but one of its quarterly filings (Forms 10-Q), each of its two annual filings (Forms 10-K), and its related Forms 8-K furnishing a press release and supplemental financial disclosure in each quarterly reporting period. These misstatements are summarized below:

	3Q13 10-Q, 8-K	4Q13 8-K	FY 2013 10-K	1Q14 10-Q, 8-K	2Q14 10-Q, 8-K	3Q14 10-Q, 8-K	4Q14 8-K	FY 2014 10-K	1Q15 10-Q, 8-K	2Q15 10-Q, 8-K	3Q15 10-Q, 8-K
SP NOI Growth Rate as Reported in Contemporaneous Filings	3.5%	3.9%	4.0%	3.8%	3.8%	3.9%	3.9%	3.9%	3.4%	3.6%	3.6%
Actual SP NOI Growth Rate	4.3%	2.8%	3.8%	3.8%	3.5%	2.6%	4.8%	3.7%	3.3%	4.2%	3.5%
Full-Year Guidance	3.9-4.0%	3.9-4.0%	3.9-4.0%	3.7-4.1%	3.7-4.0%	3.8-4.0%	3.8-4.0%	3.8-4.0%	3.0-3.7%	3.0-3.7%	3.5-3.7%
% by which Reported SP NOI Growth Rate was Misstated	-18.6%	39.3%	5.3%	0.0%	8.6%	50.0%	-18.8%	5.4%	3.0%	-14.3%	2.9%

64. Carroll and Pappagallo each signed Brixmor's Forms 10-Q for the reporting periods ending September 30, 2013, June 30, 2014, September 30, 2014, March 31, 2015, June 30, 2015, and September 30, 2015, and Brixmor's Forms 10-K for the reporting periods ending December 31, 2013 and December 31, 2014, and Splain signed Brixmor's Forms 10-Q for the reporting periods ending June 30, 2014, September 30, 2014, March 31, 2015, June 30, 2015, and September 30, 2015, and Brixmor's Form 10-K for the reporting period ending December 31, 2014. Carroll, Pappagallo, and Splain knew, or were reckless in not knowing, that the reported results were the product of improper adjustments made to align the SP NOI Growth Rates with the targets they had publicly announced in order to make the Company's SP NOI growth appear strong and consistent.

65. Carroll and Pappagallo also made numerous misstatements and omissions to the market through press releases, earnings calls, investor presentations, industry conferences, and media interviews during which they touted Brixmor's falsely reported SP NOI Growth Rates.

66. Carroll, as Principal Executive Officer, and Pappagallo, as Principal Financial Officer, also knowingly or recklessly signed certifications, pursuant to Section 302 of the

Sarbanes-Oxley Act of 2002, and furnished pursuant to Exchange Act Rule 13a-14(a), attached to each of the aforementioned filings, falsely attesting that, based on their knowledge, the reports did not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading, and that the reports fairly presented in all material respects the financial condition, results of operations and cash flows of Brixmor.

67. In addition, Carroll and Pappagallo knowingly or recklessly signed certifications, pursuant to 18 U.S.C. § 1350, and furnished pursuant to Exchange Act Rule 13a-14(b), attached to each of the aforementioned filings, falsely certifying that all information contained in the reports "fairly presents, in all material respects, the financial condition and results of operations of the Company."

FIRSTCLAIM FOR RELIEF

Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c) Thereunder (Carroll, Pappagallo, and Splain)

68. The Commission realleges and incorporates by reference Paragraphs 1 through 67, above.

69. By engaging in the conduct described above, Defendants Carroll, Pappagallo, and Splain, with scienter, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, and in connection with the purchase or sale of securities, have: (a) employed devices, schemes or artifices to defraud; (b) made one or more untrue statements of material fact or one or more omissions of material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in one or more acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

70. By reason of the acts, omissions, practices, and courses of business set forth in this Complaint, Defendants Carroll, Pappagallo, and Splain have violated, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5 (a), (b) and (c) thereunder, 17 C.F.R. §§ 240.10b-5(a), (b) and (c).

SECOND CLAIM FOR RELIEF
Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a) and (c) Thereunder (Mortimer)

71. The Commission realleges and incorporates by reference Paragraphs 1 through 67, above.

72. By engaging in the conduct described above, Defendant Mortimer, with scienter, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, and in connection with the purchase or sale of securities, has: (a) employed devices, schemes or artifices to defraud and (b) engaged in one or more acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

73. By reason of the acts, omissions, practices, and courses of business set forth in this Complaint, Defendant Mortimer violated, and unless restrained and enjoined, will continue to violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5(a) and (c) thereunder, 17 C.F.R. §§ 240.10b-5(a) and (c).

THIRD CLAIM FOR RELIEF
Aiding and Abetting Violations of Section 10(b) of the Exchange Act and Rules 10b-5(a), (b) and (c)
(Mortimer)

74. The Commission realleges and incorporates by reference Paragraphs 1 through 67, above.

75. By engaging in the conduct described above, Defendant Mortimer provided knowing and substantial assistance to Carroll, Pappagallo and/or Splain, who, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, and in connection with the purchase or sale of securities, with scienter, have: (a) employed devices, schemes or artifices to defraud; (b) made one or more untrue statements of material fact or one or more omissions of material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in one or more acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

76. By virtue of the foregoing, Defendant Mortimer aided and abetted and, unless enjoined, will continue to aid and abet the violations of Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rules 10b-5 (a), (b) and (c) thereunder, 17 C.F.R. § 240.10b-5(a), (b) and (c) of Carroll, Pappagallo and/or Splain, in violation of Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e).

FOURTH CLAIM FOR RELIEF
Violation of Exchange Act Rule 13a-14
(Carroll and Pappagallo)

77. The Commission realleges and incorporates by reference Paragraphs 1 through 67, above.

78. Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, promulgated under Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a), requires each principal executive officer and each principal financial officer of an issuer to include certain certifications on, among other things, quarterly reports filed on Form 10-Q and annual reports filed on Form 10-K. The certifications include, but are not limited to, that the report does not contain any untrue statements of material fact, or omit material facts necessary to make statements made therein not misleading, and that the report fairly presents in all material respects the financial condition, results of operations and cash flows of the registrant.

79. By engaging in the conduct described above, Defendants Carroll and Pappagallo each violated Exchange Act Rule 13a-14 by executing false certifications for Brixmor's Forms 10-Q for the reporting periods ending September 30, 2013, June 30, 2014, September 30, 2014, March 31, 2015, June 30, 2015, and September 30, 2015, and Brixmor's Forms 10-K for the reporting periods ending December 31, 2013 and December 31, 2014.

80. By virtue of the foregoing, Defendants Carroll and Pappagallo violated, and unless enjoined, will continue to violate, Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14.

FIFTH CLAIM FOR RELIEF
Violation of Rule 100(b) of Regulation G
(Carroll, Pappagallo, and Splain)

81. The Commission realleges and incorporates by reference Paragraphs 1 through 67, above.

82. By engaging in the conduct described above, Defendants Carroll, Pappagallo, and Splain, acting on behalf of Brixmor, made public a non-GAAP financial measure that, taken together with the information accompanying that measure and any other accompanying discussion of that measure, contained an untrue statement of a material fact or omitted to state a material fact necessary in order to make the presentation of the non-GAAP financial measure, in light of the circumstances under which it was presented, not misleading.

83. By virtue of the foregoing, Defendants Carroll, Pappagallo, and Splain violated, and unless enjoined, will continue to violate, Rule 100(b) of Regulation G, 17 C.F.R. § 244.100.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a Final Judgment:

I.

Permanently enjoining Defendants Carroll, Pappagallo, Splain, and Mortimer, and each of their agents, servants, employees, attorneys and other persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise from violating Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 thereunder, 17 C.F.R. §§ 240.10b-5 .

II.

Permanently enjoining Defendants Carroll and Pappagallo, and each of their agents, servants, employees, attorneys and other persons in active concert or participation with them who

receive actual notice of the injunction by personal service or otherwise from violating Exchange Act Rule 13a-14, 17 C.F.R. § 240.13a-14, promulgated under Section 13(a) of the Exchange Act, 15 U.S.C. § 78m(a).

III.

Permanently enjoining Defendants Carroll, Pappagallo, and Splain, and each of their agents, servants, employees, attorneys and other persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise from violating Rule 100(b) of Regulation G, 17 C.F.R. § 244.100.

IV.

Ordering Defendants to disgorge any ill-gotten gains received from the conduct alleged in this Complaint and to pay prejudgment interest thereon.

V.

Ordering Defendants to pay civil money penalties pursuant to Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3).

VI.

Permanently barring each Defendant, pursuant to Section 21(d)(2) of the Exchange Act, 15 U.S.C. § 78u(d)(2), from acting as an officer or director of any issuer that has a class of securities registered under Section 12 of the Exchange Act, 15 U.S.C. § 781 or that is required to file reports pursuant to Section 15(d) of the Exchange Act,15 U.S.C. § 78o(d).

VII.

Granting such other and further relief as this Court deems just and appropriate.

JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, the Commission demands trial by jury in this action as to all issues so triable.

Dated: August 1, 2019
New York, New York

By: _____

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