

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

SARAH A. BRADLEY,

Plaintiff/Counterclaim Defendant,

V.

C.A. No. 2019-0056-JTL

ANDREW S. ROSEN, ROBERT W.  
SPERRY, DAVID KNICKEL, KAINOS  
CAPITAL, LLC and KAINOS CAPITAL  
LP,

Defendants/Counterclaim Plaintiffs.

## VERIFIED COUNTERCLAIMS AND ANSWER

Defendants and Counterclaim Plaintiffs Andrew S. Rosen, Robert W. Sperry, David Knickel, Kainos Capital, LLC, and Kainos Capital LP, by and through their undersigned counsel, upon knowledge as to their own actions and upon information and belief as to all other matters, allege for their Verified Counterclaims and respond to the Corrected Verified Complaint (the “Complaint”) filed by Sarah A. Bradley as follows:

## VERIFIED COUNTERCLAIMS

## Introduction

1. In the fall of 2018, Kainos was hard at work canvassing potential investors to raise its third and largest fund. (Kainos Capital, LLC and Kainos Capital LP, together with their affiliated entities, are referred to herein as

“Kainos.”) Bradley knew that a successful fundraise was critical to Kainos’s long-term prospects and that the firm and her partners were counting on her to contribute to that effort. But Bradley was privately unhappy to have been offered a smaller percentage of the Fund III carried interest based on her diminishing relative contribution to the firm’s performance. Bradley worked in secret to develop a litigation threat that she intended to, and did, deploy immediately after Kainos released its Fund III offering materials. Bradley’s intention was to create artificial leverage for herself by threatening litigation at a time when airing a public dispute would inflict maximum damage on Kainos. And in this she was correct. By virtue of the concealment and strategic timing of Bradley’s baseless lawsuit, Kainos has suffered substantial economic and reputational injury—just as Bradley calculated.

2. Between October 2018 and January 2019, while everyone else at Kainos was focused on managing the firm’s existing funds and working to launch Fund III, Bradley devoted much of her time to preparing her covert litigation threat. Among other things, Bradley procured copies of old agreements from Kainos and its counsel under the false pretense that Bradley’s tax and estate planning advisors had asked for them; surreptitiously diverted to her personal e-mail account proprietary and confidential contact information for current and potential Kainos investors and important industry executives; and deleted

thousands of relevant e-mails from Kainos's servers in a deliberate (albeit unsuccessful) attempt to destroy evidence.

3. To the extent that she was working on Kainos business in this period, Bradley continued to represent to potential investors that Fund III was on track and that the Kainos team, Bradley included, remained committed. These representations were false, of course, as became evident once Bradley launched her litigation effort. Bradley also aggressively pushed her colleagues to finalize the Fund III confidential private placement memorandum—the 100-plus-page disclosure document that signaled the formal commencement of fundraising—so that it would be disseminated to investors before she initiated her litigation threat. It was only after the Fund III offering memorandum went live that Bradley finally surfaced the extreme (and false) allegations contained in her Complaint, and when Kainos refused to accede to her unfounded demands, Bradley filed suit. The sequencing of these events was driven entirely by Bradley, and the public revelation of Bradley's ownership dispute just after Kainos had distributed its offering materials had the inevitable effect of derailing the nascent fundraise.

4. Bradley is of course entitled to dispute her economics within Kainos and even to bring litigation in good faith. But as set out in the Answer, and as will be established through the contemporaneous documentary evidence, Bradley's extravagant claims of a “fraudulent scheme” to “steal” her interest in the firm's

management company lack any foundation. Bradley knew and accepted all of the terms of her relationship with Kainos and worked in accordance with those terms for years. The allegations of the Complaint are instead part of Bradley's plan to use this litigation to hold up Kainos and her partners.

5. While Bradley is entitled to pursue her own interests, she is and was at all times relevant to this dispute a fiduciary to Kainos Capital LP, Kainos Capital, LLC, and her partners. Her fiduciary duties prohibit Bradley from acting on Kainos's behalf or causing Kainos to act in ways likely to injure Kainos and its members and partners. Those duties also prohibit her from strategically timing a litigation to inflict maximum injury on Kainos. But that is exactly what Bradley has done. As alleged below, those actions constitute a breach of fiduciary duty.

6. Making matters worse, Bradley gratuitously filed as public exhibits to her Complaint the private placement memoranda for Kainos Funds I, II, and III, which contained confidential, highly sensitive, and proprietary information about the firm's financial performance and its investing strategies. By so doing, Bradley breached the fiduciary duties she owed to Kainos as well as her contractual confidentiality obligations.

## **Factual Background**

### **A. Rosen, Sperry, and Bradley form Kainos.**

7. Before starting Kainos, Rosen was a partner at HM Capital Partners I, LP (“HM Capital”), a private equity firm. During Rosen’s tenure at HM Capital, his portfolio delivered consistently positive returns. By late 2010, Rosen began considering forming a standalone fund focused on the food and consumer products sector, and on May 24, 2011, Rosen formed Kainos Capital, LLC—which would later serve as the management company for Kainos’s initial fund (“Fund I”)—and became that entity’s sole member. Rosen recruited Sperry and Bradley to join him in the new enterprise. Rosen and Sperry’s impressive track records were critical to the founding of Kainos: their pre-Kainos managed investments have generated a 2.4x gross return on approximately \$1.6 billion of invested capital and achieved a gross internal rate of return of 35% (as of year-end 2018). Bradley, by contrast, had no track record prior to joining Kainos.

8. From its inception, Kainos has been structured like many private equity firms: the management company earns an annual fee based on a fixed percentage of certain assets under management (which it uses to pay salaries and other expenses), and each fund’s general partner is entitled to keep a percentage of that fund’s returns as carried interest. For Fund I, the management fee was 1.9%, and the carried interest was set at 20%.

9. With respect to Fund I, Rosen, Sperry, and Bradley agreed that Rosen would ultimately receive approximately 25% of the carried interest, Sperry would receive approximately 20%, and Bradley would receive approximately 15% (with the rest reserved for firm employees). The partners also agreed that their interests in the management company would be essentially pro rata to their anticipated carried interest. This worked out to a 42% interest for Rosen, a 33% interest for Sperry, and a 25% interest for Bradley.

10. Sperry and Bradley joined Rosen as members of the Fund I management company under an Assignment and Assumption Agreement, dated February 28, 2013. Rosen, Sperry, and Bradley received their agreed-upon carried interest percentages in Fund I by becoming limited partners of a separate entity governed by a separate limited partnership agreement.

11. At all times relevant to this lawsuit, Bradley has served as a designated officer of Kainos Capital, LLC, the general partner to Kainos Capital LP—which is now the management company for Fund I and Fund II—and as a member of the investment committee of the management company who exercised key managerial authority. By virtue of these positions of trust and confidence, Bradley owes fiduciary duties to Kainos Capital LP and Kainos Capital, LLC.

**B. Fund I thrives without Bradley's active participation in deals.**

12. Kainos is headquartered in Dallas. The firm's offices are in Dallas, and nearly all of the firm's partners and employees work in the Dallas headquarters. Bradley is an exception. She chose not to work with the other firm partners and employees and instead lives and works in New Jersey.

13. Fund I has been tremendously successful: as of December 2018, managed investments in that fund have generated a 2.7x gross return on their invested capital and a gross internal rate of return of 43%. This success was attributable to Rosen, Sperry, and Kainos's other Dallas-based partners and employees, who worked to source deals, negotiate transactions, and manage the fund's portfolio companies.

14. Although Bradley was brought on to perform investor relations and source new deals, she showed virtually no interest in business development. She did little to vet potential deals and seldom attended trade shows or other operationally focused networking events. As confirmed in due diligence materials sent to potential investors in Kainos's second fund, Bradley played no role in sourcing five of the seven deals in Fund I, and she claimed only secondary and tertiary credit, respectively, for the other two deals.

15. While Bradley was provided the opportunity to serve as a director on three Fund I portfolio company boards, she showed little interest in this work

either. Bradley rarely met with portfolio company management teams to learn about their businesses, and senior operating executives of these companies expressed frustration to Rosen and Sperry about her lack of preparation and engagement in her board duties.

16. Rosen and Sperry raised these concerns with Bradley as they developed. Bradley acknowledged “growing pains” in a November 2014 e-mail to Rosen and Sperry (attached as **Ex. A**) and wrote that “it has been hard for me in this mixed role as I want to contribute on the deal side as well.” But Bradley failed to make a meaningful contribution to deal sourcing. As a result, Kainos was forced to bring in an outside executive in January 2016 to lead the firm’s business development efforts. By that time, Bradley was neither developing business for Kainos nor seeking to execute the business developed by others.

17. Even though Bradley had virtually no involvement in the firm’s day-to-day operations and only sporadic in-person interactions with the firm’s Dallas-based employees, the Complaint seeks to cast Kainos’s culture in an unflattering light based on events that allegedly occurred in 2014 and 2016. This attack on the firm’s culture is not just gratuitous; it is false. Before she launched her litigation strategy, Bradley consistently and publicly praised Kainos’s positive workplace culture generally and its promotion of women specifically—both before and after the events alleged in the Complaint.



18. For example:

- a) In an August 29, 2012 e-mail (attached as **Ex. B**), Bradley opined that “it is so rare for a PE firm to have a true female partner and I credit Andrew and Bob for being ‘progressive’ and truly valuing my input.”
- b) In a November 3, 2016 e-mail (attached as **Ex. C**), Bradley praised Kainos’s “culture of inclusiveness,” and acclaimed Rosen for being “gender neutral” and “a huge advocate for women.”
- c) In an interview in late 2016, Bradley explained that she “jumped at the opportunity” to join Kainos, because she had “always thought of Andrew as one of the most talented and respected investors in the food industry,” noting that Rosen recruited her when she was “nine months pregnant with [her] fourth child.” (A video recording of Bradley’s interview is available on YouTube and may be accessed via the following link: <https://tinyurl.com/y5sz5x6j>.)
- d) In an October 26, 2017 e-mail (attached as **Ex. D**), Bradley told Kainos employees: “The feedback to date from our investors is that we are unique [sic] group with an incredible culture, highly talented and top caliber management teams and a partner they are proud to be investing with! That is a testament to all of you!”
- e) In a June 21, 2018 e-mail (attached as **Ex. E**), Bradley told Rosen that when speaking with investors, she “always discuss[es] you in a very positive manner as our leader,” and “talk[s] a lot about our culture and investment strategy and how that is largely guided by you.”

**C. The Kainos partners negotiate a new arrangement for Fund II, and Bradley repeatedly affirms her understanding of that arrangement.**

19. In 2015, seeking to build on the success of Fund I, Kainos began preparations for a second, larger fund (“Fund II”). None of the Fund I agreements

dictated the terms that would apply to future funds. Kainos had also admitted three new partners in July 2015—two of whom were internal promotions, and the third of whom joined the firm from the outside—and each of these individuals expected to receive a carried interest allocation in Fund II commensurate with their titles, in addition to their annual compensation from the fund’s management company. The firm therefore had to devise ownership allocations to reflect the admission of these new partners and the expected contributions of the incumbents.

20. Bradley’s lawsuit is premised on the theory that Bradley was deceived about the ownership arrangement that Kainos implemented for Fund II. But in fact—and as Bradley’s own contemporaneous documents make clear—she was fully aware that the ownership arrangements for Fund II would be different than for Fund I, and actively participated in informing investors of Fund II’s changing ownership arrangements.

21. In a November 24, 2015 e-mail to Rosen and Sperry (attached as **Ex. F**), Bradley wrote that “[i]n order to finalize our PPM”—the private placement memorandum for potential investors in Fund II—“we need to understand the structure of the go-forward entity,” because “investors will ask ... what the carry splits will be in Fund II as well as the ownership of the Firm/Management company.” Bradley then followed up to “clarify” that while she did not think investors would “be concerned with whether the management company is a

partnership or Ccorp”—a reference to ongoing discussions about potentially converting the management company away from an LLC structure for tax reasons—they would “want to understand the ownership of that vehicle and how it has changed from Fund I to Fund II. This goes to compensation and governance questions.”

22. Not long after Bradley sent these e-mails, in or about early December 2015, Rosen spoke with Bradley to convey the terms on which Rosen and Sperry were prepared to move forward with Bradley as partners in Fund II. Rosen proposed to Bradley that she receive 12% of the carried interest for Fund II, which was less than her Fund I allocation on a percentage basis, but greater on an absolute dollars basis, as Fund II was expected to be substantially larger than Fund I. Rosen explained that to incentivize and retain firm personnel and align the firm’s structure with investor expectations, a greater percentage of the Fund II carry was being allocated to deal sourcing and execution and portfolio company management, which were not areas in which Bradley had made substantial contributions to the firm.

23. Rosen also explained to Bradley that because the partnership had doubled in size, Rosen and Sperry proposed to transition to a salary model for partner compensation to ensure that compensation for Kainos’s six partners would be determined on the basis of their contributions to the firm during the year and not

their percentage shares of the management company. Rosen told Bradley that under this approach she should expect to receive annual compensation of approximately \$1 to \$1.5 million in regular years, with a material increase above that range in fundraising years (in each case, exclusive of Bradley's receipt of Fund II carry).

24. Around this same time, Rosen informed Bradley that Sperry, Bradley, and the three new partners would each receive an ownership interest in the management company equal to their respective shares of the Fund II carried interest—in Bradley's case, 12%. (Rosen received a relatively larger interest that equaled the sum of Rosen's share of the Fund II carry and the carry percentages allocated to non-partners.) Because Kainos was adopting a salary-based partner compensation model, these ownership percentages had no economic significance, but Rosen believed that it was important from an investor perception standpoint that each Kainos partner receive an interest in the management company commensurate with the level of his or her contribution to the firm.

25. In late 2015, Kainos started preparing for investor diligence for Fund II. Bradley was responsible for crafting responses to a sample due diligence questionnaire (called a "DDQ"). On December 17, 2015, Bradley sent an e-mail to Rosen that reproduced "the very first questions in the DDQ," which, as Bradley characterized them, "deal with the management company, ownership, etc."

Bradley explained that “[a]ll of our investors have the chart with the carry splits and management company ownership from last time,” and stressed that any changes to these numbers would be “a key thing [investors] will look at from Fund I to Fund II.” Bradley thus understood that Kainos was obligated to provide potential investors with accurate information that correctly presented the agreed-upon Fund II ownership structure.

26. Rosen’s response attached a chart that listed the updated management company ownership percentages that he and Bradley had previously discussed. Bradley expressed concern that this allocation would “raise questions” with investors, because “[i]t would be highly unusual for the management company to change this dramatically.” Bradley repeated this concern in a subsequent e-mail to Rosen, and suggested that they “do it pro-rata based on the partner’s carry” so as not to “raise questions.” Rosen promptly responded, “I prefer as I outlined,” to which Bradley replied, “Got it.”<sup>1</sup>

27. Bradley thereafter told investors, over and over again, that she would receive 12% of the carried interest in Fund II and that she would hold a 12% interest in the management company:

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<sup>1</sup> The entire Bradley/Rosen e-mail exchange from December 17, 2015 is attached as **Exhibit G**. Although Bradley selectively quoted from this exchange in her Complaint, she did not attach the e-mail as an exhibit or describe her “Got it” response.

- a) On February 18, 2016, Bradley e-mailed a prospective Fund II investor a schedule that reflected Bradley's 12% interest in the management company and a 12% carry allocation for Fund II and contrasted these with her respective interests during Fund I (this e-mail is attached as **Ex. H**).
- b) On March 2, 2016, Bradley e-mailed another prospective Fund II investor a schedule that reflected Bradley's 12% interest in the management company and a 12% carry allocation for Fund II and contrasted these with her respective interests during Fund I (this e-mail is attached as **Ex. I**).
- c) On March 22, 2016, Bradley e-mailed another prospective Fund II investor a completed due diligence questionnaire that disclosed her 12% interest in the management company (this e-mail is attached as **Ex. J**). Bradley had personally participated in drafting this due diligence questionnaire over several weeks.
- d) On March 23, 2016, Bradley sent a near-final due diligence questionnaire to another prospective Fund II investor that disclosed her 12% interest in the management company and a 12% carry allocation in Fund II and contrasted these percentages with her interests during Fund I (this e-mail is attached as **Ex. K**). Bradley had personally participated in drafting this due diligence questionnaire over several weeks. One week later, Bradley sent this investor a final questionnaire that contained the same information (this e-mail is attached as **Ex. L**).
- e) On May 3, 2016, Bradley e-mailed a prospective Fund II investor a schedule that disclosed her 12% interest in the management company and a 12% carry allocation for Fund II and contrasted these numbers with Bradley's respective interests during Fund I (this e-mail is attached as **Ex. M**).
- f) On June 22, 2016, Bradley e-mailed another prospective Fund II investor a due diligence questionnaire that disclosed her 12% interest in the management company and a 12% carry allocation for Fund II and contrasted these with her respective interests during Fund I (this e-mail is attached as **Ex. N**).

- g) On July 1, 2016, Bradley sent a prospective Fund II investor a due diligence questionnaire that disclosed her 12% interest in the management company and contrasted this with her interest in Fund I (this e-mail is attached as **Ex. O**).
- h) On July 1, 2016, Bradley sent another e-mail to Kainos's financial advisor and attached a schedule for distribution to a different prospective Fund II investor that disclosed Bradley's 12% interest in the management company and a 12% carry allocation for Fund II and contrasted these numbers with Bradley's respective interests during Fund I (this e-mail is attached as **Ex. P**).

28. This mass of contemporaneous documents negates Bradley's claim that there was some kind of "fraud" involved in her ownership allocation in Fund II. To the contrary: Bradley was clearly informed of the ownership allocation; was clearly informed of the reason for the proposed ownership allocation; clearly accepted the proposed ownership allocation; and repeatedly communicated the ownership allocation to potential investors.

29. Moreover, in Bradley's own words at the time, her ownership percentage in the management company was "not ... a big deal." Midstream of her December 17, 2015 e-mail exchange with Rosen, Bradley sent an email stating that "since we are going to a salaried model for partners this should not be a big deal." That e-mail is attached as **Exhibit Q**. This note confirms Bradley's understanding that Kainos's partners would starting in 2016 receive a discretionary amount of year-end compensation, and not a fixed percentage of management company distributions.

30. Bradley subsequently accepted guaranteed payments and limited partner distributions from the post-conversion management company related to 2016 (the conversion year; approximately \$800,000), 2017 (approximately \$1.2 million), and 2018 (approximately \$2 million) without objecting to her share of the distributions. Bradley was well aware that these distributions did not correspond to a 25% share of the management company's profits in those years. For example, in July 2017 and August 2018, Bradley received Schedule K-1s from Kainos that reported, on the very first page, the amount of Bradley's annual discretionary payment from the management company and the percentage share of the firm's profits to which that amount translated: 12% in 2016 and 7.48% in 2017.

31. Bradley likewise never disputed the accuracy of Kainos's multiple disclosures to its investors on SEC Form ADV, a publicly filed document describing the ownership structure of the firm's management company. These disclosures expressly stated that Bradley owned a less than 25% interest in the management company and that Rosen and Sperry were the only individuals who owned interests in the management company's general partner. (*See, e.g.*, **Ex. R** at 159–61.)

**D. Kainos prepares to launch Fund III, and Rosen, Sperry, and Bradley discuss a new compensation arrangement.**

32. By mid-2018, Kainos had started planning an even larger third fund ("Fund III"), with a targeted first closing in early 2019. Kainos understood that it



would need to attract new capital to raise a larger fund, but that goal appeared to be readily achievable in light of the firm's successful track record. By the fall of 2018, Kainos had received indications of interest from a number of new potential investors.

33. As with Fund II, before they could launch Fund III, Kainos's partners needed to revisit the allocation of carried interest. By that point, Bradley no longer sat on any portfolio company boards and played no meaningful role in deal sourcing.

34. Bradley was scheduled to meet with Rosen and Sperry over lunch on October 24, 2018 to discuss the economic arrangements for Fund III, and she recognized the need to explain her limited contribution to the firm. Thus, on October 22, Bradley sent Rosen and Sperry an unsolicited, multipage, bulleted list of her "kainos accomplishments." (Ex. S.) Bradley's list focused almost entirely on her "Fundraising Contributions," and included the false claim that Bradley had been "asked not to spend time on new deals and focus [her] efforts on investors, coinvestment and fundraising."

35. At the same time, Bradley began to explore a litigation campaign against Kainos. On the morning of the scheduled lunch, Bradley wrote to Knickel and asked him to provide "a copy of all the [Fund II] agreements regarding the management company" and her "carried interest and other partnership documents."

(Ex. T.) These agreements had all been available to Bradley for years, and she had previously reviewed most of them. Bradley claimed that she was “estate planning and need[ed] to have my attorney review these documents,” but other documents from this period indicate that Bradley was actually seeking these agreements at the behest of litigation counsel.

36. Bradley, Rosen, and Sperry met for lunch as scheduled that afternoon, and Rosen and Sperry proposed to Bradley that her carried interest be reduced for Fund III. They told Bradley that, while she continued to perform well in investor relations, Kainos’s other partners and the firm’s investors would not accept an allocation of carry to Bradley at Fund II levels given her increasingly limited role at the firm. Rosen and Sperry told Bradley that they were currently considering offering her 5% of the carried interest in Fund III, but that they had not yet settled on a final proposal, and assured Bradley that her annual target compensation from the Kainos management company would be consistent with what she had received during Fund II.

37. Bradley expressed displeasure with Rosen and Sperry’s proposal, but she did not reject it, and before departing the lunch, Bradley told Sperry that she was excited about Kainos’s future. Bradley’s apparent acceptance of the proposed arrangement, and her subsequent conduct in apparent support of the development

of Fund III, led Kainos to believe that Bradley was continuing as a partner for Fund III.

**E. While feigning a commitment to the Fund III capital raise, Bradley plots in secret.**

38. From at least this point forward, Bradley pursued a plan of maximizing her litigation leverage at the expense of Kainos's interests. The centerpiece of the plan was to induce Kainos to release its confidential Fund III offering documents and then immediately threaten litigation. Sequencing her litigation in that way, Bradley knew, would create the greatest risk and exposure to Kainos, and therefore, she believed, increase her leverage to extract a favorable settlement.

39. In late-October 2018, Bradley began communicating on a regular basis with the Tendy Law Office ("Tendy"), a New York-based law firm that claims expertise in plaintiff-side commercial litigation. Between October 25 (the day after the Rosen/Sperry lunch meeting) and November 7, 2018, Bradley requested and received additional organizational documents from Knickel and Kainos's outside counsel dating all the way back to 2011. (Exs. U, V.) When making these requests, Bradley continued to pretend that she needed the agreements to facilitate personal tax and estate planning and concealed the fact that she was working with litigation counsel. And when she received the requested

materials, Bradley immediately forwarded them to personal or family e-mail accounts to ensure that Kainos did not learn the identity of the ultimate recipient.

40. Starting in this period and continuing through mid-January 2019, Bradley never suggested to anyone at Kainos that she had concerns about either her compensation in prior years or her ownership interest in the management company. Bradley instead led Kainos and its potential investors to believe that she was committed to Fund III.

41. Throughout October and November 2018, Bradley worked to plan Kainos's annual limited partners meeting, held in Dallas on November 7 and 8, where the firm formally announced that it would be launching the Fund III capital raise. The meeting was a success, and Bradley took the opportunity to discuss the new fund with many of the firm's limited partners. Kainos's financial advisor, Lazard, reported to Rosen and Bradley that there was "a lot of good 'buzz' from both existing and prospective LPs as it relates to Fund III."

42. After the meeting concluded, Bradley took the lead in corresponding with these investors and deepening both her own and the firm's relationship with prospective participants in Fund III. On a near-daily basis, Bradley held calls and video conferences with potential investors, scheduled on-site due diligence meetings, and played an active role in responding to investor questions.

43. Bradley understood that her contacts at these investors were putting their own credibility on the line by supporting a potential investment in Kainos and causing their firms to expend time and resources on pre-market diligence. For example, in a December 19 e-mail to her colleagues (attached as **Ex. W**), Bradley reported that her contact at a prominent prospective investor, which had never before invested in a Kainos fund, told Bradley that she “came out of the [annual limited partners meeting] further impressed with Kainos” and would “really champion [Kainos] internally.” In that same e-mail, Bradley reported that her contact at another potential investor had told Bradley that she had “banked her reputation at the firm” on participating in Fund III.

44. While this was happening, Bradley worked covertly to hone her litigation threat. Bradley had at least 16 telephone calls with Tendy between October and December 2018, many of which lasted for more than half an hour and took place in the middle of the work day. Bradley also had numerous phone calls and meetings with current counsel at Reid Collins & Tsai LLP (“Reid Collins”) starting no later than November. For at least one such meeting, held on November 28 at Reid Collins’s New York offices, Bradley expensed her car trip to Kainos.

45. Bradley also consulted a Dallas-based private investigator that claims on its website (<https://www.texasgumshoe.com>) to be a “pioneer in surveillance

investigations” and to “know [its] way around federal and state laws and statutes.” While it is not presently clear whom Bradley asked this investigator to surveil or investigate, it is clear from Bradley’s Kainos phone records that she had at least six calls with the “Texas gumshoe” between December 11 and December 18, 2018.

46. Bradley also in this period quietly laid the groundwork for a departure from Kainos. On December 4, 2018, Bradley e-mailed a Kainos administrator and requested the maximum 401(k) deduction from her first paycheck for 2019, a departure from Bradley’s historical practice.

47. Next, on December 12, Bradley secretly forwarded to her personal e-mail account a Microsoft Excel file that contained proprietary contact information for more than 1,700 professional contacts, including current and potential Kainos investors and executives at companies in the food and consumer products industries. Bradley had no authority to transfer this file outside of Kainos. The contact information that it contained is confidential and commercially sensitive and would be of significant value to a competing private equity firm. Kainos stores its contact information on a secure platform on the firm’s computer system, and Bradley knew that she would lose access to that platform if she left the firm.

48. And then, in an effort to cover her tracks, Bradley on December 20 asked a Kainos employee to begin the process of transferring Bradley's cell phone number from a Kainos-issued device to a new personal device.

49. Finally, and most brazenly, Bradley tried to destroy relevant documents. Between November 26, 2018 and January 17, 2019 (the day Bradley's counsel threatened suit), Bradley deleted more than 25,000 e-mails from her Kainos e-mail account in a marked break from her customary e-mail management practices, and she deleted several dozen more e-mails in the weeks that followed, including after filing this lawsuit. In some cases, Bradley engaged in a bulk purge, but in others, she individually selected relevant messages for deletion, including an e-mail reflecting a contact from Reid Collins on December 8, 2018. Bradley's attempt to destroy all of this potential evidence was fortuitously thwarted by Kainos's e-mail archiving system.

50. On or around December 21, 2018, Rosen called Bradley to convey Bradley's annual compensation for 2018 and to revisit their October discussion about the Fund III arrangement. Consistent with the agreement they had reached three years earlier, Rosen told Bradley that she would be paid \$2 million for 2018—a fundraising year. Bradley did not object to that amount, assert that she was entitled to a 25% distribution of the management company's profits, or otherwise disclose her dispute regarding the firm's ownership.

51. Rosen also told Bradley that upon further reflection, he proposed to increase Bradley's carried interest allocation for Fund III from 5% to 7.5%, which would have provided Bradley with roughly equivalent value to her Fund II carry allocation based on Fund III's anticipated larger size. Bradley said nothing to suggest that she was unwilling to participate in Fund III on those terms, nor did she inform Rosen that she planned imminently to threaten litigation against Kainos and him personally. To the contrary, Bradley responded enthusiastically to the increased carried interest allocation and told Rosen that she was excited about Kainos's future and looking forward to raising Fund III.

52. To maximize the leverage behind her planned litigation threat, Bradley wanted Kainos to distribute the Fund III private placement memorandum ("Fund III PPM") before surfacing her ownership dispute. Once it distributed the Fund III PPM, Kainos would be "in the market" and would assume a duty to update its offering materials if they contained stale information. Moreover, the distribution of the Fund III PPM would mark the formal commencement of the fundraise, upon which investors would expect Kainos to move expeditiously toward an initial closing by opening a data room, responding to DDQs, holding in-person meetings, and discussing specific commitment levels. With the distribution of the PPM, Kainos was publicly committed and thus more vulnerable to bad news and any suggestion that its offering materials were not complete and accurate.



Bradley knew all of this based on her extensive experience as an investor relations executive.

53. Bradley also knew that any Fund III PPM that did not reference her ownership dispute would immediately become obsolete and misleading once Bradley threatened litigation. That would confront Kainos with an unenviable choice: the firm could either quickly agree to Bradley's settlement demand, or it would need to disclose the dispute to investors and, in so doing, imperil the Fund III capital raise by stopping its forward momentum just after Kainos had fired the starting gun.

54. Beginning in mid-December 2018, Bradley aggressively pushed Kainos's employees to finalize the Fund III PPM. Right after a 33-minute phone call with Tendy on December 12, Bradley directed her subordinate to "focus all efforts on [the] PPM" (attached as **Ex. X**). Bradley thereafter hounded the Kainos team in a series of e-mails and phone calls in an effort to distribute the PPM before the holidays. When that did not occur, Bradley sent an e-mail to Rosen on December 28 (attached as **Ex. Y**) to say that she "would like to finish the PPM by Friday next week" and asked him to immediately scan his comments to her, even though Rosen was on vacation with his family. Rosen sent his comments to Bradley on December 31. Bradley led Rosen to believe that she was eager to expedite the Fund III fundraise in auspicious circumstances, giving no indication

that her newfound urgency in fact reflected a desire to have the PPM public before her litigation strike.

55. On December 19, 2018, Bradley contacted Hal Ritch, a former investment banking colleague of Bradley's, and Ritch thereafter prepared for Bradley a 32-page valuation analysis of the Kainos management company. Although the content of that analysis indicates that Ritch believed it would be used to facilitate a third-party sale of an interest in the management company, Bradley actually wanted the analysis to help her prepare a settlement demand.

56. In January 2019, Bradley continued her push to finalize the Fund III PPM with even more vigor. On January 7, Bradley sent Rosen an e-mail (attached as **Ex. Z**) insisting that Kainos complete the Fund III PPM that same week and telling Rosen that Lazard "feels strongly we need to get moving and not lose momentum." Then, on January 14, Bradley e-mailed a group of senior Kainos employees (attached as **Ex. AA**), demanding "the final PPM and Marketing presentation within the hour," and attributing to Lazard the message that Kainos was "losing people and momentum by delaying [the] PPM."

57. Lazard was anxious to finalize the Fund III PPM in mid-January, but only because Bradley had allowed them to make commitments to investors without telling Lazard of her plan to threaten litigation. With Bradley's knowledge and support, Lazard had in December instructed certain potential investors that they

would receive the Fund III PPM and access to the data room by early January, and Lazard was concerned about maintaining credibility with those investors. But Lazard would never have set those expectations if it had known of Bradley's claims, and would have instead advised Kainos to delay the fundraiser until those claims could be addressed.

58. On January 14 and 15, Bradley and her subordinate distributed the Fund III PPM to dozens of prospective investors. Because Bradley had concealed her dispute, the PPM that Bradley shepherded through Kainos made no reference to her allegations. And the PPM also repeatedly disclosed that the management company for Funds I, II, and III was Kainos Capital LP without describing Bradley's litigation contention that Kainos Capital LP was never validly formed in 2016 and therefore not the rightful management company.

**F. Bradley launches her litigation threat, files suit, and discloses confidential information.**

59. On January 16, 2019, in the middle of a day of meetings with prospective Fund III investors in New York City, Bradley met with Ritch to review his valuation analysis. The next morning, at 11:00 AM on January 17, Bradley asked Ritch to send her the analysis that they had reviewed the day before, and Ritch immediately sent her his analysis.

60. Minutes later, Bradley’s attorneys sent Kainos a draft of the Complaint and demanded that they “repay” Bradley all of the money they had “stolen” from her—or else Bradley would proceed to file the Complaint.

61. Kainos was shocked to learn of Bradley’s assertions in the draft pleading. If Bradley had raised her concerns earlier, Kainos would have deferred the formal commencement of the Fund III capital raise (through distribution of the Fund III PPM) to address Bradley’s claims. And the firm certainly would not have allowed Bradley to lead the fundraising effort and hold herself out to potential investors as the face of Kainos had it known of the ownership dispute. But Kainos never had the chance to make those decisions, because Bradley kept the firm in the dark until after the PPM was distributed.

62. Instead, just as Bradley intended, the timing of Bradley’s litigation threat placed Kainos in a lose-lose situation. With the Fund III PPM having just been distributed, numerous prospective investors were contacting the firm and Lazard to schedule site visits, submit DDQs, and discuss the terms of a potential investment. Kainos could not engage these investors about a potential investment in Fund III without disclosing that Bradley had threatened them with a lawsuit. And so the firm began to contact its existing and prospective investors to inform them of the news.

63. Kainos did not accept Bradley's settlement demand, and on January 25, 2019, Bradley filed this lawsuit. Bradley attached as publicly-available exhibits to her Complaint the PPMs for Funds I, II, and III in their entirety. Bradley's counsel also made these materials public on its firm website.

64. The PPMs contain an extensive amount of confidential, highly sensitive, and proprietary information, including with regard to Kainos's investment strategy and the financial performance of Kainos and its portfolio companies. Reflecting the proprietary and commercially sensitive nature of these documents, every page of the PPMs is stamped "*Proprietary and Confidential*" and the first paragraph of each states, in capital letters, that "ANY REPRODUCTION OF THIS MEMORANDUM ... OR THE DISCLOSURE OF ITS CONTENTS WITHOUT THE PRIOR WRITTEN CONSENT OF [THE FUND'S GENERAL PARTNERS] IS PROHIBITED."

65. In publicly filing the PPMs with her Complaint, Bradley disregarded her fiduciary and contractual confidentiality obligations. The limited partnership agreements for the carried interest vehicles for Fund I and Fund II (together, the "Carry Vehicle Agreements") obligate the limited partners, including Bradley, to "keep confidential, and not disclose to any Person, any matter relating to" the carry vehicles, the funds, or the management company.

66. On January 28, 2019, Counterclaim Plaintiffs advised Bradley that her disclosure of the PPMs constituted a breach of her confidentiality obligations. Bradley and her counsel removed the PPMs from the Court's publicly-available docket and removed the link from her counsel's website that day. But Bradley and her counsel failed to disable the URL address on the law firm website from which the PPMs could be accessed, and the PPMs accordingly remained accessible to everyone on the internet. Only on February 1, seven days after Bradley filed the Complaint, was that URL address disabled.

67. But the damage was already done. The Complaint's false allegations—in particular the malicious claims concerning Kainos's culture—were reported on by numerous trade publications and national newspapers. It is all but assured that numerous reporters and competitors accessed and downloaded the PPMs either from the Court's public docket or Bradley's counsel's firm website.

68. Bradley's actions have caused substantial harm to Kainos. Prospective Fund III investors (including existing Fund I and II investors) have told Kainos that they could not understand why Bradley had spent months developing a relationship with them and touting the firm's merits only to turn around and accuse her co-founders of fraud within days of the distribution of the Fund III PPM. Many investors were also upset that they had invested significant time and resources preparing for Fund III without knowledge of Bradley's dispute.

69. Kainos has postponed Fund III to try to repair these investor relationships. Kainos expects that certain new investors that were poised to participate in Fund III will instead pursue other opportunities.

### **Count One**

#### **Breach of Fiduciary Duty (by Kainos Capital LP and Kainos Capital, LLC)**

70. Counterclaim Plaintiffs repeat and incorporate by reference the allegations above.

71. Bradley served as an agent who exercised key managerial authority on behalf of Kainos and its management company, Kainos Capital LP. Bradley worked on behalf of the management company with the trust and confidence of Sperry, Rosen, and the other Kainos partners. Bradley was the firm's principal point of contact with the investment community, and in that role, Bradley communicated extensively with Kainos's investors concerning fundraising, co-investment opportunities, and the firm's financial performance. Bradley was also empowered within Kainos with primary responsibility for preparing the Fund III PPM, ensuring that it was materially complete and accurate, and deciding when and to whom it should be distributed.

72. Bradley also served on the investment committee for Kainos Capital LP and for the prior management company, and Bradley's consent was therefore required for the firm to make any new investments. The amended and restated

limited partnership agreement for Kainos Capital LP expressly requires that decisions regarding new investments be unanimously approved by the investment committee, in keeping with the firm's historical practice. Bradley exercised this power on at least one occasion when she vetoed a potential investment that was supported by every other Kainos partner.

73. For all of these reasons, Bradley owed fiduciary duties to Kainos Capital LP and Kainos Capital, LLC.

74. Bradley was also an officer of Kainos Capital, LLC and owed fiduciary duties to Kainos Capital, LLC and Kainos Capital LP in that capacity as well. Pursuant to the Limited Liability Company Agreement of Kainos Capital, LLC (attached as **Ex. BB**), Bradley served as an officer with the title "Executive Vice President/Partner" and was delegated "the authorities and duties that are normally associated with that office." As detailed above, Bradley was in fact delegated significant authority by Kainos's other partners to communicate with investors and make investment decisions on behalf of Kainos.

75. Bradley's fiduciary duty of loyalty required her to act in the best interests of Kainos Capital LP and Kainos Capital, LLC, to act in good faith, to disclose to Kainos Capital LP and Kainos Capital, LLC information material to the fiduciary relationship, and to keep confidential information concerning Kainos's business. Bradley also had an obligation to ensure that any private placement



memoranda or other firm communications sent to investors were materially complete and accurate to the best of her knowledge.

76. Bradley breached her fiduciary duties to Kainos Capital LP and Kainos Capital, LLC by intentionally acting to harm Kainos Capital LP's and Kainos Capital, LLC's interests for personal benefit. As set forth above, Bradley concealed her ownership dispute while advancing the Fund III fundraising process, intentionally caused Kainos to issue a Fund III PPM that failed to disclose the dispute, and only then launched her litigation threat so as to cause maximum harm to Kainos Capital LP and Kainos Capital, LLC.

77. Bradley further breached her fiduciary duties by knowingly or with gross negligence disclosing the PPMs when filing her Complaint, resulting in the disclosure of highly sensitive information concerning Kainos Capital LP and Kainos Capital, LLC and the funds and portfolio companies that they manage.

78. Bradley's conduct caused Kainos Capital LP and Kainos Capital, LLC damages in an amount to be proven at trial. Kainos has been forced to postpone Fund III, resulting in significant economic loss. Kainos Capital LP and Kainos Capital, LLC also suffered reputational harm with the investor community as a result of Bradley's unfounded allegations, and that harm was exacerbated by Bradley's concealment of her dispute during the Fund III fundraising.

79. Kainos Capital LP and Kainos Capital, LLC also suffered economic and reputational damages from Bradley's intentional public disclosure of confidential business information, as detailed above.

## **Count Two**

### **Breach of Contract (by Rosen, Sperry, and Knickel)**

80. Rosen, Sperry, and Knickel repeat and incorporate by reference the allegations above.

81. The Carry Vehicle Agreements are valid contracts. Bradley signed the Carry Vehicle Agreements and is bound by their terms.

82. Pursuant to Section 10.11 of the Carry Vehicle Agreements, Bradley was obligated to "keep confidential, and not disclose to any Person, any matter relating to" the Carry Vehicles, Kainos's funds, or Kainos Capital LP. Bradley breached this obligation by including the PPMs as publicly-available exhibits to her Complaint and by permitting her counsel to post a link to her filing on the firm's website. The PPMs included sensitive and proprietary business matters that Bradley knew were prohibited from public disclosure.

83. In their capacities as limited partners for Fund I and Fund II, Rosen, Sperry, and Knickel suffered economic harm from the public disclosure of Kainos's confidential business information.

### **Prayer for Relief**

WHEREFORE, Counterclaim Plaintiffs pray this Court enter an Order:

- a) awarding Counterclaim Plaintiffs damages, in an amount to be determined at trial, together with pre- and post-judgment interest;
- b) awarding Counterclaim Plaintiffs their attorneys' fees and costs; and
- c) granting Counterclaim Plaintiffs such other and further relief as this Court deems just and appropriate.

## **ANSWER TO CORRECTED VERIFIED COMPLAINT**

### **General Denial**

All allegations not expressly admitted herein are denied. All headings and subheadings in the Complaint do not constitute well-pleaded allegations of fact and therefore require no response. To the extent that a response is deemed required, Defendants deny any and all allegations contained in the headings and subheadings in the Complaint. For the Court's convenience, in certain instances, Defendants have adopted the defined terms and phrases set forth in the Complaint for the limited purpose of this Answer, but such use is not, and should not be construed as, an acknowledgement, admission, or adoption of any fact or characterization made by Bradley. Defendants deny that plaintiff is entitled to any of the relief sought in the Prayer for Relief on pages 69 and 70 of the Complaint. Defendants expressly reserve the right to seek to amend and/or supplement their Answer as may be necessary.

For ease of reference, Defendants respond to the allegations collectively, such that if any one of them had personal knowledge of the underlying facts alleged, the allegation is admitted or denied on the basis of that knowledge. In adopting this drafting convention, however, Defendants expressly deny that the knowledge of one defendant is attributable to another in all instances and reserve the right to amend their Answer if necessary to specify when certain facts were uniquely within the knowledge of certain defendants and not others.

### **Responses to Specific Allegations**

Incorporating the foregoing, Defendants state as follows in response to the specific allegations set forth in the Complaint:

1. This case arises from a fraudulent scheme perpetrated by Defendants Rosen, Sperry, and Knickel—principals of the private equity firm Kainos Capital (“**Kainos**”)<sup>1</sup> to steal Bradley’s 25% membership interest in the firm’s investment manager, Kainos Capital, LLC (“**Kainos Manager**”).<sup>2</sup> Bradley now seeks to recover what Rosen, Sperry, and Knickel took from her in utter disregard of their contractual and fiduciary duties.

**RESPONSE:** Paragraph 1 sets forth Bradley’s description of her legal claims, to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 1 and in particular deny that Bradley is entitled to any relief. Footnote one defines the term “Kainos” as used in the Complaint, and thus no response to that footnote is required. Regarding footnote two, Defendants admit that Kainos GP is the general partner of Kainos Capital LP, and that Kainos Capital LP is the name of the limited

partnership that serves as the management company for the Kainos funds following the Conversion. Defendants otherwise deny the allegations contained in footnote two.

2. Rosen, Sperry, and Bradley founded Kainos. Prior to starting Kainos, Rosen was a principal at Hicks Muse Tate & Furst (“**Hicks Muse**”).<sup>3</sup> Hicks Muse’s reputation, however, had been irrevocably damaged by a pay-to-play scandal involving state pension funds, as well as significant investment losses. To distance himself from the Hicks Muse scandals and poor track record, Rosen set out to start a new private equity firm free from the negative Hicks Muse reputation.

**RESPONSE:** Defendants admit the allegations contained in the first and second sentences of Paragraph 2 and aver, by way of further response, that immediately prior to forming Kainos, Rosen was a partner at HM Capital. With regard to the third sentence of Paragraph 2, Defendants admit that in September 2009, in connection with an industry-wide investigation, HM Capital, an entity founded by former partners of Hicks Muse, entered into an Assurance of Discontinuance with the Office of the Attorney General of the State of New York that resolved allegations involving improper conduct by a placement agent that Hicks Muse / HM Capital had engaged to assist with obtaining public pension fund investments, respectfully refer the Court to that Assurance and Discontinuance for a complete and accurate statement of its contents, and otherwise deny the allegations contained in the third sentence of Paragraph 2. Defendants deny the allegations contained in the final sentence of Paragraph 2, except Defendants admit

that Rosen departed HM Capital to start a new private equity firm (Kainos).

Defendants deny the allegations contained in footnote three.

3. Rosen recruited Bradley to help him co-found the new firm. Experienced in investment banking, investor relations, and fundraising, Bradley was a rising star in the industry. Rosen, on the other hand, had no experience in starting up a private equity firm and needed Bradley's skill and expertise.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 3 and aver, by way of further response, that prior to Bradley becoming a partner of Kainos, Bradley joined HM Capital as a partner. With regard to the second sentence of Paragraph 3, Defendants admit that Bradley had experience in investment banking and investor relations prior to joining Kainos, but otherwise deny the allegations. With regard to the third sentence of Paragraph 3, Defendants admit that Rosen had not founded a private equity firm before Kainos, but otherwise deny the allegations.

4. Perhaps most importantly, however, Rosen needed Bradley's contacts and reputation. She had developed key business relationships in the investor community and had consistently produced noteworthy results as an investment banker. Bradley's competency and track record earned her recognition as one of the Most Influential Women in Mid-Market M&A, and one of private equity's Top 15 Women to Watch and Female Influencers by the Wall Street Journal Private Equity Analyst. With Bradley as part of the new firm, Rosen could leverage her reputation to help him overcome the stigma of his past association with the fraud and failure surrounding Hicks Muse.

**RESPONSE:** Defendants deny the allegations contained in the first and fourth sentences of Paragraph 4. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second

sentence in Paragraph 4, and on that basis deny the allegations therein. With regard to the third sentence of Paragraph 4, Defendants admit that Bradley received the recognitions stated therein, but otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and on that basis deny the remaining allegations in that sentence. By way of further response to the allegations contained in the third sentence of Paragraph 4, Defendants aver that Bradley received the recognitions stated therein years after joining Kainos.

5. Rosen approached Bradley and pitched the idea of starting a new investment firm together with an initial fund of \$400 million. Bradley explained that any new firm would have to be completely separate from Hicks Muse. Bradley also explained that without a large anchor investor and a first close of around \$125 million, raising a fund of \$400 million would be virtually impossible. In response, Rosen assured Bradley that he could easily obtain approximately \$150 million from current Hicks Muse investors to jump-start Kainos, with the vast majority coming from Carson Private Capital.

**RESPONSE:** Defendants admit that Rosen discussed with Bradley the idea of either founding a new private equity firm or creating a new sector-specific fund within HM Capital, but otherwise deny the allegations contained in Paragraph 5.

6. Based on Rosen's assurances, Bradley agreed to co-found Kainos with Rosen and Sperry. Bradley, Rosen, and Sperry agreed that they would all be owners of the investment manager, Kainos Manager, and that they would all also receive a salary, distributions of profits from the Kainos Manager, and have a right to the carried interest generated by the investment funds that Kainos Manager would create. The co-founders all agreed to the following membership percentages in Kainos Manager: Bradley — 25%; Sperry — 33%; and Rosen — 42%. Further, and more importantly, they agreed to be bound by the operating agreement that governed Kainos Manager and, in turn, their respective rights.

**RESPONSE:** With regard to the first sentence of Paragraph 6, Defendants admit that Rosen, Sperry, and Bradley all eventually agreed to found Kainos, but otherwise deny the allegations contained in that sentence. With regard to the second sentence of Paragraph 6, Defendants admit that Rosen, Sperry, and Bradley agreed that each would have an ownership interest in the initial management company (Kainos Capital, LLC), that each would receive a salary from the initial management company, and that each would have a right to a portion of the carried interest in Kainos's first fund, but otherwise deny the allegations set forth in that sentence. Defendants admit the allegations contained in the third sentence of Paragraph 6, subject to their averment that Rosen, Sperry, and Bradley did not agree that Kainos Capital, LLC would serve as the management company for future Kainos funds, if any, and that Rosen, Sperry, and Bradley likewise did not agree that their respective ownership percentages in the management company for future Kainos funds, if any, would remain the same. With regard to the fourth sentence of Paragraph 6, Defendants admit that Rosen, Sperry, and Bradley agreed to be bound by the terms of the limited liability company agreement for Kainos Capital, LLC, dated May 24, 2011, and respectfully refer the Court to that agreement, as well as the Assignment and Assumption Agreement between and among Rosen, Sperry, and Bradley, dated February 28, 2013 ("Assignment and Assumption Agreement"), for a complete and accurate statement of their contents.



To the extent that the allegations contained in the fourth sentence of Paragraph 6 are inconsistent with the terms of those agreements, Defendants deny such allegations.

7. Early on, it became clear that fundraising would be more difficult when Carson Private Capital notified Rosen that it would not do business with a Hicks Muse-related entity or principal, including Rosen.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 7.

8. With Carson Private Capital out of the picture, Bradley and the Kainos team had to start virtually from scratch to secure the necessary investor commitments.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 8.

9. Faced with mounting obstacles to a traditional start-up raise, Bradley came up with an innovative idea to combine an investment in Kainos's fund with the purchase of Hicks Muse's legacy assets. She developed and presented the idea to the Canadian Pension Plan Investment Board ("**CPPIB**") in October 2012. Intrigued by the idea and impressed with Bradley's approach, CPPIB provided an early investment of over \$100 million to Kainos's first fund and over \$400 million to a separate special purpose vehicle to purchase the Hicks Muse legacy assets (the "**SAV**"). With an anchor investor in place, Kainos—largely through Bradley—raised the remaining funds. In fact, Kainos's first fund, Kainos Capital Partners, LP ("**Fund I**"), closed with equity commitments totaling approximately \$475 million.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 9. Defendants deny the allegations contained in the second sentence of Paragraph 9, except Defendants admit that Bradley participated in a presentation to CPPIB in October 2012. Defendants deny the allegations contained in the third sentence of Paragraph 9, except Defendants admit that CPPIB made the investment described in that sentence, subject to their averment that the assets were

purchased from entities managed by HM Capital. Defendants deny the allegations contained in the fourth sentence of Paragraph 9, except Defendants admit that following the CPPIB investment described in Paragraph 9, Kainos raised the remaining funds for Fund I. Defendants admit the allegations contained in the final sentence of Paragraph 9.

10. After launching Fund I, Kainos Manager began generating significant fee earnings. As Kainos began to see early success in the market, Rosen began a power grab inside Kainos, excluding Bradley from the decision-making process while taking complete control over Kainos's accounting, management, and compensation. Rosen also began evolving the culture of Kainos into one of forced overconsumption of alcohol and general debauchery, coupled with shaming and coercion if anyone tried to push back. At the same time Rosen was consolidating power and turning Kainos into a frat house, he was also secretly plotting to reduce Bradley's interest in Kainos Manager.

**RESPONSE:** Defendants admit the allegations set forth in the first sentence of Paragraph 10. Defendants deny the allegations contained in the second, third, and fourth sentences of Paragraph 10.

11. The co-founders had agreed to form Kainos Manager as an LLC. Under the Kainos Manager operating agreement that the co-founders agreed to, each cofounder receiving membership interests that carried the same rights, none of which included the ability to force out another member. Thus, under Kainos Manager's operating agreement, Rosen and Sperry had no authority to reduce Bradley's interest in their sole discretion.

**RESPONSE:** Defendants admit that Kainos Capital, LLC was formed as a limited liability company. The second sentence of Paragraph 11 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to that agreement for a

complete and accurate statement of its contents. To the extent that the allegations contained in the second sentence of Paragraph 11 are inconsistent with that agreement, Defendants deny such allegations. The third sentence of Paragraph 11 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in the third sentence of Paragraph 11.

12. On December 17, 2015, as Kainos was ramping up to launch its second fund, Kainos Capital Partners II, LP (**“Fund II”**), and as its economic prospects were brightening, Rosen sent an email to Bradley that indicated he intended to reduce her interest in Kainos Manager to 12%. Rather than attempting to comply with Delaware law in seeking to reduce Bradley’s interest, Rosen attempted to strong-arm Bradley into voluntarily agreeing to the reduction with no compensation. Rosen also told Bradley that if she did not help raise Fund II, he would fire her for cause and strip her of her economic rights, including the carried interest in the firm’s investment portfolio that comprised a significant part of her compensation. Bradley objected to Rosen’s purported reduction in her interest in Kainos Manager and never agreed to Rosen’s terms. Bradley refused to give up over half of her share of Kainos Manager for nothing. Consistent with his view of himself as a dictator rather than one of three managing members in an LLC, Rosen responded: “Happy to discuss but don’t see changing it.” Despite Rosen’s dictatorial decree, he could not lawfully reduce Bradley’s interest, let alone without compensation, and so she retained her 25% interest in Kainos Manager.

**RESPONSE:** The final sentence of Paragraph 12 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in the final sentence of Paragraph 12. Defendants deny the allegations contained in the first, second, third, fourth, fifth, and sixth sentences of Paragraph 12, except Defendants admit that Rosen and Bradley exchanged a series of e-mails on December 17, 2015, in which Rosen and

Bradley discussed the management company for Fund II, and Defendants respectfully refer the Court to these e-mails for a complete and accurate statement of their contents.

13. When Bradley followed up with a call to Rosen, he told her not to send any more emails on the subject of her ownership interest or with respect to governance of the firm and told her again that if she refused to raise Fund II, she would be terminated, and he and Sperry would make sure that her carried interest never vested.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 13.

14. Having refused to agree to Rosen's demand that she give away a substantial portion of her interest in Kainos Manager, Bradley turned to creating more value for Kainos and herself by raising Fund II and expanding its role in the market. Bradley's efforts were extremely successful, helping Fund II raise \$895 million of committed capital, nearly double the size of Fund I.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 14, except Defendants admit that Kainos raised \$895 million of capital for Fund II.

15. After Fund II closed, Kainos had over \$1.3 billion under management. As a result, Kainos's annual gross income generated by the management fees, transactional fees, and monitoring fees for Fund I and Fund II exceeded \$25 million annually. As a 25% owner, Bradley held a substantial interest in an increasingly valuable investment manager and its profit stream that stood poised to become even more valuable as its investments grew.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 15. Defendants deny the allegations contained in the second and final sentences of Paragraph 15.

16. Meanwhile, Rosen was intent to carry out his plan to reduce Bradley's interest in spite of her refusal to agree to his 2015 demand. Unbeknownst to Bradley, in April 2016 as Fund II was about to close, Rosen, Sperry, and Knickel

conspired to fraudulently extinguish Bradley's 25% ownership interest in Kainos Manager without consideration, in breach of their fiduciary and contractual duties.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 16.

17. Specifically, Rosen, Sperry, and Knickel concocted a scheme to (a) convert the investment manager from a Delaware LLC to a Delaware limited partnership (the "**Conversion**"), which they planned to use to reduce Bradley's ownership rights to zero, and (b) fraudulently induce her into signing to the conversion.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 17, except Defendants admit that in April 2016, Kainos Capital, LLC (a Delaware limited liability company) was converted into Kainos Capital LP (a Delaware limited partnership).

18. To convince her to sign the consent to the Conversion (the "**Consent**"), Knickel told Bradley the Conversion was *only* for tax purposes while hiding the real reason: to create a new business structure that stripped Bradley of her interest and granted Rosen and Sperry absolute control over the investment manager. In fact, Knickel expressly assured Bradley that although the new limited partnership agreement had not been drafted yet, Bradley's existing rights and interest under Kainos Manager's governance documents would *not* materially change. To ensure Bradley's quick compliance, Defendants also told Bradley she had to sign the Consent immediately, or Fund II would not close.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 18, except Defendants admit that Knickel sent Bradley an e-mail on April 21, 2016, in which Knickel stated that the Conversion would "take advantage of an exemption from self-employment tax for distributed shares of income."

19. Under time pressure to close Fund II and relying on the representation that the Conversion's sole purpose was to provide the investment manager's owners a tax benefit, Bradley signed the Consent. At the time, Defendants prevented Bradley from discovering that the purported Conversion would

extinguish her LLC interest, deprive her of participation in management, and subject her to an LP structure that was fundamentally different than the one agreed to by all of the Kainos co-founders when starting the firm.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 19, except Defendants admit that Bradley signed the Consent.

20. Having fraudulently induced Bradley to sign the Consent, Rosen, Sperry, and Knickel then attempted to execute their plan to take her interest in Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 20.

21. On April 21, 2016, in spite of Knickel's representation *that same day* that no limited partnership agreement had yet been drafted, Rosen, Sperry, and Knickel adopted a limited partnership agreement they had prepared for Kainos Capital LP ("**LP Agreement**") that extinguished Bradley's ownership interest in the investment manager, taking her from a 25% owner to nothing. Defendants then executed an amended and restated limited partnership agreement ("**Amended LP Agreement**") that purported to give Rosen and Sperry sole control over the post-Conversion investment manager through a general partner they owned and controlled.

**RESPONSE:** Paragraph 21 purports to characterize the contents of the limited partnership agreement for Kainos Capital LP and the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 21 are inconsistent with those agreements, Defendants deny such allegations. Defendants deny the other allegations contained in Paragraph 21.

22. The LP Agreement and Amended LP Agreement purported to eliminate the restrictions that Rosen faced under the Kainos Manager's operating agreement. Unlike under the LLC structure, under the new GP/LP structure, the

governing documents gave Rosen the unfettered ability to run Kainos as a dictatorship, and reduce or eliminate the limited partners' ownership interest, including Bradley's, with no compensation.

**RESPONSE:** Paragraph 22 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, the limited partnership agreement for Kainos Capital LP, and the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 22 are inconsistent with those agreements, Defendants deny such allegations.

23. And, in spite of Knickel's representation that her ownership interest would remain intact, the Amended LP Agreement also purported to assign Bradley a revocable 12% profit-sharing interest in Kainos Capital LP ("**LP Interest**"). This meant that rather than having a 25% ownership interest in the member-managed manager, she was unwittingly converted to a revocable 12% passive limited partnership interest, which was subject to Rosen's and Sperry's unilateral whim.

**RESPONSE:** Paragraph 23 purports to characterize the contents of the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 23 are inconsistent with that agreement, Defendants deny such allegations. Defendants deny the other allegations contained in Paragraph 23.

24. The following year, Rosen and Sperry exercised the discretion afforded them under the Amended LP Agreement to further reduce Bradley's LP Interest to a paltry 7.48% without any notification to Bradley. Critically, the LP

Interest only gave Bradley the right to share in the profits of Kainos Capital LP but did not come with any managerial or voting rights that Bradley enjoyed as a 25% member of Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 24. The other allegations contained in Paragraph 24 purport to characterize the contents of the limited liability company agreement for Kainos Capital, LLC and the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 24 are inconsistent with those agreements, Defendants deny such allegations.

25. Although Rosen, Sperry, and Knickel proceeded with their scheme as though they had properly converted Kainos Manager into Kainos Capital LP, the conversion was ineffective under Delaware law for a myriad of reasons. In order to prevent both Bradley and Kainos's investors from understanding the true nature of the Conversion and resulting Kainos corporate structure, Rosen, Sperry, and Knickel decided to give Kainos GP—the general partner of the converted limited partnership that was entirely owned and controlled by Rosen and Sperry—the same name as Kainos Manager: “Kainos Capital, LLC.” So, to anyone seeking to identify Kainos's investment manager entity following the Conversion, it appeared that Kainos Manager was the same exact entity as the general partner of Kainos Capital LP. But in fact, Kainos Manager and Kainos GP were completely distinct entities — in spite of the fact that they had the same exact name.

**RESPONSE:** The first sentence of Paragraph 25 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in the first sentence of Paragraph 25. Defendants deny the remaining allegations contained in Paragraph 25, except



Defendants admit that Kainos Capital, LLC is the name of the general partner of Kainos Capital LP, that Rosen and Sperry are the members of Kainos Capital, LLC, and that, prior to the Conversion, Kainos Capital, LLC was the name of the Kainos management company.

26. The ultimate goal of the games Rosen, Sperry, and Knickel played with the “Kainos Capital, LLC” name was to cause both Bradley as well as Kainos’s investors to assume that after the Conversion, Bradley continued to hold a 25% membership interest in the general partner of Kainos Capital LP, when in fact, Bradley had been excluded altogether from ownership of the investment manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 26.

27. Defendants’ shell game would only work, however, if the entity name “Kainos Capital, LLC” was available when they formed Kainos GP. So, they had to convert Kainos Manager first in order to make the “Kainos Capital, LLC” name available for Kainos GP to use.

**RESPONSE:** Paragraph 27 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 27.

28. Thus, at 12:17 pm on April 21, 2016, a Certificate of Conversion was filed that purported to convert Kainos Manager, then legally named as “Kainos Capital, LLC” to Kainos Capital LP. Then, *three minutes later* at 12:20 pm the same day, the Certificate of Formation for Kainos GP also legally named as “Kainos Capital, LLC” was filed. Importantly, however, the Certificate of Conversion was signed and filed by Kainos GP *before* Kainos GP ever existed. Consequently, the purported Conversion of Kainos Manager to Kainos Capital LP was invalid because the entity that purported to authorize the Conversion did not exist at the time the Certificate of Conversion was signed and filed.

**RESPONSE:** With regard to the first and second sentences of Paragraph 28, Defendants admit that at 12:17 pm on April 21, 2016, a Certificate of

Conversion to Limited Partnership (the “Certificate of Conversion”) was filed that converted the management company of Kainos from Kainos Capital, LLC to Kainos Capital LP, and that, at 12:20 pm the same day, the Certificate of Formation for Kainos Capital, LLC, the general partner of Kainos Capital LP, was filed. Defendants respectfully refer the Court to the Certificate of Conversion and the Certificate of Formation for a complete and accurate statement of their contents, and to the extent that the allegations contained in the first and second sentences of Paragraph 28 are inconsistent with those certificates, Defendants deny such allegations. The remaining allegations contained in Paragraph 28 assert legal conclusions to which no response is required. To the extent that a response to such allegations is required, Defendants deny those allegations.

29. Thus, the purported Conversion of Kainos Manager to Kainos Capital LP was legally ineffective. Nonetheless, since April 2016 Rosen, Sperry, and Knickel have acted as though they properly converted Kainos Manager to Kainos Capital LP, representing to Bradley, investors, and regulatory authorities that the Conversion was effective. Presumably using their alleged unilateral authority under the ineffective LP Agreement and Amended LP Agreement, Defendants have been acting as though they in fact had all of the powers allegedly created by those nugatory agreements.

**RESPONSE:** The first sentence of Paragraph 29 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegation contained in the first sentence of Paragraph 29. Defendants deny the allegations contained in the second and third sentences of Paragraph 29, except Defendants admit that since April 2016, Rosen, Sperry, and

Knickel have acted in conformity with their understanding that the Conversion was effective and aver that, prior to January 17, 2019, Bradley had likewise acted as though the Conversion was effective.

30. In addition to the botched Conversion, there has never been a meeting of the minds nor execution of the Amended LP Agreement. When Bradley saw versions of the document long after April 2016 and the final close of Fund II, she refused to sign them. In fact, the Amended LP Agreement represents Rosen's mere arrogation of powers that no one has ever agreed to grant him, on the part of an entity that was not lawfully constituted.

**RESPONSE:** To the extent that the first and third sentences of Paragraph 30 assert legal conclusions, no response to the allegations contained in those sentences is required. To the extent that a response is required, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 30, except Defendants admit that Bradley has not provided her signature to the amended and restated limited partnership agreement for Kainos Capital LP.

31. Since the attempted Conversion, Rosen and Sperry have carried on with their campaign of coercion through the threat of economic harm to keep Bradley managing investor relations and raising funds while they continue to reduce her interest in the investment manager pursuant to their purported rights under the Amended LP Agreement. Because of Defendants' constant threats that she would be fired if she raised any trouble, Bradley has not aggressively sought more information regarding her compensation and financial interests, although she has always objected to any reduction or elimination of her ownership. And, of course, because Rosen controlled all of Kainos's management and accounting, Bradley had no information from which she could independently determine if she was being appropriately and fairly compensated.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 31.

32. In late 2018, however, Rosen and Sperry told Bradley that she would need to start raising funds for Kainos's \$1.5 billion third fund ("**Fund III**")

targeted to close in the first half of 2019, but that her interest in the investment manager would be further decreased to 5%. As before, Rosen and Sperry made clear that if Bradley did not accept the uncompensated and unjustified reduction in her share of profits from the investment manager, she would lose everything, and her family's financial health would be in jeopardy.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 32, except Defendants admit that, in October 2018, Rosen and Sperry discussed with Bradley a proposed compensation arrangement for Fund III. By way of further response, Defendants aver that Rosen and Bradley had a subsequent conversation in which they discussed a compensation arrangement for Fund III that was more lucrative for Bradley.

33. After that meeting, Bradley finally obtained various governance documents for Kainos Manager, the post-Conversion entity Kainos Capital LP, and other previously undisclosed documents that Rosen, Sperry, and Knickel had used in their attempt to effectuate the Conversion. For the first time, Bradley was able to learn the extent of Defendants' fraud and determine that through the purported Conversion, Defendants had sought to deprive Bradley of her ownership interest in Kainos Manager without ever making full disclosure or attempting to compensate her for what they had taken.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 33, except Defendants admit that Bradley requested and received various governance documents from Kainos and its counsel beginning in October 2018.

34. To be clear, Bradley believed all along that Kainos Manager, the entity which she co-founded and in which she held rights, was the same "Kainos Capital, LLC" that was the general partner of the Kainos Capital LP. It was only in late 2018 that Bradley realized her co-founders had secretly created a new entity with the same name, in which she held no ownership interest.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 34.

35. Meanwhile, at all points in time, Defendants have concealed the investment manager's financial records and refused to provide enough information for Bradley to determine how its profits are calculated. Upon information and belief, Defendants have also artificially reduced Kainos Capital LP's profits to further diminish Bradley's yearly payout on her reduced profit interest in the investment manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 35.

36. By this action, Plaintiff seeks: (1) rescission of the purported Conversion and related alterations to the investment manager's governance and ownership structure that purported to limit, eliminate, or reduce the rights she had as a 25% member of Kainos Manager; (2) a declaration that the purported Conversion of Kainos Manager to Kainos Capital LP was legally ineffective, and/or a determination that the LP Agreement and the Amended LP Agreement are not binding on Bradley, in order to restore Bradley's 25% interest in Kainos Manager; and/or (3) to recover the value of what Defendants misappropriated from her through their fraudulent and bad-faith conduct in breach of their fiduciary and contractual duties — to wit, the value of her 25% share of a successful fund management firm with approximately \$3 billion in assets under management, as well as the past due amounts that she has been entitled to all along as a 25% owner of the investment manager.

**RESPONSE:** Paragraph 36 sets forth Bradley's description of the relief that she is seeking in this action, to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 36 and in particular deny that Bradley is entitled to any relief.

37. Plaintiff Sarah A. Bradley is an individual.

**RESPONSE:** Defendants admit the allegation set forth in Paragraph 37.

38. Defendant Andrew S. Rosen is an individual. This Court has jurisdiction over Rosen, pursuant to 6 *Del. C.* § 18-109(a), as a member-manager of Kainos Manager and/or as an officer who participated materially in the management of Kainos Manager. Rosen also submitted to this Court's jurisdiction in § 7(d) of the Assumption and Assignment Agreement, dated February 28, 2013, between Rosen, Sperry, and Bradley. Rosen is also a co-conspirator in the fraud

alleged herein, a substantial act in furtherance of which occurred in Delaware when the Conversion papers were filed with the Delaware Secretary of State.

**RESPONSE:** Defendants admit the allegation set forth in the first sentence of Paragraph 38. The remaining allegations contained in Paragraph 38 assert legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny such allegations, except Defendants admit that this Court has jurisdiction over Rosen with respect to the subject matter of this lawsuit.

39. Defendant Robert W. Sperry is an individual. This Court has jurisdiction over Sperry, pursuant to 6 *Del. C.* § 18-109(a), as a member-manager of Kainos Manager and/or as an officer who participated materially in the management of Kainos Manager. Sperry also submitted to this Court's jurisdiction in § 7(d) of the Assumption and Assignment Agreement, dated February 28, 2013, between Rosen, Sperry, and Bradley. Sperry is also a co-conspirator in the fraud alleged herein, a substantial act in furtherance of which occurred in Delaware when the Conversion papers were filed with the Delaware Secretary of State.

**RESPONSE:** Defendants admit the allegation set forth in the first sentence of Paragraph 39. The remaining allegations contained in Paragraph 39 assert legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny such allegations, except Defendants admit that this Court has jurisdiction over Sperry with respect to the subject matter of this lawsuit.

40. Defendant David Knickel is an individual who served as Kainos Manager's Chief Financial Officer ("CFO"). This Court has jurisdiction over Knickel, pursuant to 6 *Del. C.* § 18-109(a), as an officer who participated materially in the management of Kainos Manager. Knickel is also a co-conspirator in the fraud alleged herein, a substantial act in furtherance of which occurred in Delaware when the Conversion papers were filed with the Delaware Secretary of State.

**RESPONSE:** Defendants admit the allegation contained in the first sentence of Paragraph 40. The remaining allegations contained in Paragraph 40 assert legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny such allegations, except Defendants admit that this Court has jurisdiction over Knickel with respect to the subject matter of this lawsuit.

41. Defendant Kainos Capital, LLC (*i.e.*, Kainos GP) is a limited liability company organized and existing under the laws of the State of Delaware. This Court has jurisdiction over Kainos GP as a Delaware limited liability company and, pursuant to 6 *Del. C.* § 17-109(a), as the general partner of Defendant Kainos Capital LP, a Delaware limited partnership.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 41. The remaining allegations contained in Paragraph 41 assert legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny such allegations, except Defendants admit that this Court has jurisdiction over Kainos Capital, LLC with respect to the subject matter of this lawsuit.

42. Defendant Kainos Capital LP is a limited partnership organized and existing under the laws of the State of Delaware. This Court has jurisdiction over Defendant Kainos Capital LP as a Delaware limited partnership.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 42. The remaining allegations contained in Paragraph 42 assert legal conclusions, to which no response is required. To the extent that a response is required, Defendants deny such allegations, except Defendants admit

that this Court has jurisdiction over Kainos Capital LP with respect to the subject matter of this lawsuit.

43. Bradley's career in the financial industry represents decades of experience holding prestigious positions at large global institutions, both investment banks and private equity firms. That experience has given Bradley a skillset and collection of contacts that are almost impossible to replicate in her industry. In fact, in both 2017 and 2018 Bradley has been named as one of the Most Influential Women in Mid-Market M&A,<sup>4</sup> and, in 2015, as one of private equity's Top 15 Women to Watch and Female Influencers by the Wall Street Journal Private Equity Analyst.

**RESPONSE:** Defendants deny the allegations contained in the first and second sentences of Paragraph 43, except Defendants admit that Bradley has held positions in the investment banking and private equity industries during her professional career. Defendants admit the allegations contained in the third sentence of Paragraph 43. Footnote 4 is a link to a website, and thus no response to that footnote is required.

44. Bradley is a graduate of the University of Texas, where she also received a master's degree in public accounting. After completing her education, she began a career in investment banking with the Mergers & Acquisitions Group at Donaldson, Lufkin & Jenrette, before moving to Citigroup to become a Director in the investment bank's Global Consumer Group. Bradley then moved to Deutsche Bank where she worked as a Managing Director in the U.S. Financial Sponsors Group and U.S. Consumer Group. As a Managing Director at Deutsche Bank, she was responsible for food and consumer investment banking and middle market private equity investment banking. Prior to co-founding Kainos, Bradley was a Managing Director at Investcorp where she spent three years as Head of Global Investor Relations and Fundraising.

**RESPONSE:** Defendants admit the allegations contained in Paragraph 44, except Defendants deny that Bradley has a master's degree in public accounting.



By way of further response, Defendants aver that it is their understanding that Bradley has a master's degree in professional accounting.

45. During her investment banking career, Bradley worked with private equity firms on numerous transactions in the food and consumer sectors. On one such transaction, she worked with Andrew Rosen of the Dallas-based private equity firm Hicks Muse, later renamed "HM Capital." In October 2010, while Bradley was employed at Investcorp, Rosen reached out to her to request a lunch meeting.

**RESPONSE:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation set forth in the first sentence of Paragraph 45, and on that basis deny that allegation. Defendants admit the allegations contained in the second and third sentences of Paragraph 45, except Defendants deny that Hicks Muse was later renamed HM Capital and aver that the lunch meeting described in the third sentence of Paragraph 45 took place in or about October 2010.

46. The prior year Hicks Muse had entered into a multi-million dollar settlement to resolve claims related to a pay-to-play scheme, in which Hicks Muse indirectly paid kickbacks to induce state pension funds to invest millions of dollars with Hicks Muse.<sup>5</sup> In addition to the fallout from the pay-to-play scandal, Hicks Muse was facing substantial problems with the investments in both legacy funds and their current fund, the "2007 Sector Performance Fund." Several of their portfolio companies had become worthless, and a large portion of their investment team was leaving or had left the firm.

**RESPONSE:** With regard to the first sentence of Paragraph 46 and footnote 5, Defendants admit that in September 2009, in connection with an industry-wide investigation, HM Capital entered into an Assurance of Discontinuance with the Office of the Attorney General of the State of New York

that resolved allegations involving improper conduct by a placement agent that Hicks Muse / HM Capital had engaged to assist with obtaining public pension fund investments, respectfully refer the Court to that Assurance and Discontinuance for a complete and accurate statement of its contents, and otherwise deny the allegations contained in the first sentence of Paragraph 46 and footnote 5. Defendants deny the remaining allegations contained in Paragraph 46, except Defendants admit that, in 2010, HM Capital was managing a “2007 Sector Performance Fund,” that certain portfolio companies in that fund were underperforming at that time, and that certain HM Capital personnel had left the firm in recent years.

47. The view in the market was that Hicks Muse was toxic and full of subpar investment professionals with questionable ethics. With this perception, Hicks Muse, and its partners like Rosen, had no reasonable prospects for raising new funds under the Hicks Muse banner. The only option left for Hicks Muse was to operate a “zombie fund,” a fund comprised of mostly illiquid and depressed investments that still generated management fees from remaining holdings in some portfolio companies.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 47.

48. Thus, if Rosen was to continue his career in the financial industry, he had to do so outside of Hicks Muse. And critically, he had to ensure that Hicks Muse’s reputation did not follow him to his new venture. To solve his problem, he turned to Bradley.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 48.

49. At the October 2010 lunch meeting with Bradley, Rosen expressed an interest in spinning out Hicks Muse’s food group but was unsure of how that could be accomplished. Bradley advised Rosen that to support a standalone fund focused on the food sector, he needed to make a clean break from Hicks Muse and form a

new firm with different governance, management, and ownership. Recognizing the value Bradley would bring to the new venture, Rosen said that he needed Bradley to raise capital from investors and lend the new firm credibility as a co-founder. He told Bradley that her role would primarily involve raising funds and managing investor relations but would not be limited to those two functions. Bradley would also sit on the firm's investment committee and the boards of several portfolio companies, as well as help as needed with due diligence and business development.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 49.

50. Rosen also shared that Robert Sperry would also be a partner of Kainos alongside himself and Bradley. Sperry had previously worked with Rosen as an external Operating Partner at Hicks Muse and had most recently been a Partner at Brynwood Partners. Rosen also represented to Bradley that Sperry expected the investor relationships he had cultivated at Brynwood would also be highly interested in following him and investing in Kainos.

**RESPONSE:** Defendants admit the allegations contained in the second sentence of Paragraph 50. Defendants otherwise deny the allegations contained in Paragraph 50.

51. Rosen told Bradley he planned to have the firm based in Dallas, Texas. Bradley told Rosen that she could not work out of a Dallas office and would not move to Dallas, as her family and husband's business were in the New York area. Rosen assured Bradley that she did not need to move to Dallas and that he wanted Bradley to stay in the New York area to be near the center of the private equity and investment banking community. In fact, Rosen preferred that Bradley stay in the New York area as it would alleviate the need for Rosen to come to New York as regularly.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 51, except Defendants admit that prior to Bradley joining HM Capital as a partner, Rosen informed Bradley that it would not be necessary for her to relocate to Dallas.

52. Concerned by the risks of leaving her job to join a startup firm, Bradley told Rosen that the new fund needed initial closing of commitments from existing Hicks Muse investors of at least \$125 million to have a chance of reaching the minimum viable fund size of \$400 million. Rosen assured her that he could obtain at least \$150 million of commitments from several major Hicks Muse investors, the largest of which would be Carson Private Capital.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 52.

53. Many of her former and current colleagues and investor contacts told Bradley that linking up with the Hicks Muse legacy would be “career suicide,” but, relying on Rosen’s assurances regarding the commitments he could secure, Bradley agreed. In late 2010, Bradley joined Hicks Muse as a partner while it was winding down and before the spin-out of Kainos could be completed.

**RESPONSE:** Defendants deny that Rosen provided Bradley with any “assurances regarding the commitments he could secure.” Defendants lack knowledge or information sufficient to form a belief as to the truth of the other allegations contained in the first sentence of Paragraph 53, and on that basis deny those allegations. With regard to the second sentence of Paragraph 53, Defendants admit that Bradley joined HM Capital as a partner in 2011, and otherwise deny the allegations contained in that sentence.

54. In April 2011, Bradley attended Hicks Muse’s Annual Meeting where the plan to wind down Hicks Muse and spin out the food group was announced. Bradley officially joined Hicks Muse in September 2011, where, according to the firm’s press release, she would “take a leadership role in raising a new private equity fund focused exclusively on the food and consumer products sector.”

**RESPONSE:** With regard to the first sentence of Paragraph 54, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that Bradley attended the Annual Meeting of HM Capital, and on that

basis deny that allegation. Defendants otherwise deny the allegations contained in the first sentence of Paragraph 54. Defendants admit the allegations contained in the second sentence of Paragraph 54, subject to their averment that the reference to Hicks Muse in this sentence should instead refer to HM Capital.

55. On Bradley's first day of work, Rosen shared a letter that Carson Private Capital—which he had earlier identified to Bradley as likely the largest initial investor in the new fund—had written to Hicks Muse saying that it was no longer supportive of Hicks Muse and would have no further business dealings with the firm or its principals. Although Rosen had guaranteed he could obtain \$150 million in initial investments, the letter meant Kainos would have to find another way to raise the \$125 million of initial commitments that Bradley had earlier identified as absolutely necessary for the fund to get off the ground. In addition, none of Sperry's investor relationships from Brynwood Partners were willing to invest in Kainos either.

**RESPONSE:** Defendants deny the allegations set forth in Paragraph 55.

56. Despite Rosen's failure to deliver the anchor investments he had promised and Sperry's failure to leverage his investor relationships, Bradley followed through on her commitment to make Kainos's launch successful. Working tirelessly from the end of 2011 through 2012, she raised funds, drafted initial Private Placement Memorandum for Fund I, and helped prepare a data room for potential investors. Bradley also worked with an agency to create a logo, brand standards, presentations, marketing materials and website to support the launch of Fund I. And as Kainos began fundraising for Fund I in Summer 2012, Bradley met extensively with potential investors alongside co-founders Rosen and Sperry.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 56, except Defendants admit that Bradley participated in the Fund I capital raise. With regard to the second sentence of Paragraph 56, Defendants admit that Bradley participated in the Fund I capital raise, that Bradley prepared an initial draft of the private placement memorandum for Fund I, and that

Bradley helped to prepare a data room for potential investors, and otherwise deny the allegations contained in that sentence. With regard to the third sentence of Paragraph 56, Defendants admit that Bradley worked with the referenced agency, but otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in that sentence, and on that basis deny those allegations. With regard to the final sentence of Paragraph 56, Defendants admit that Bradley attended meetings with potential investors in Fund I with Rosen and/or Sperry, and otherwise deny the allegations contained in that sentence.

57. The Kainos team struggled to convince investors to back Fund I due to a lack of existing commitments and support from existing Hicks Muse investors and Hicks Muse's negative reputation. In fact, Fund I's first closing of an investor commitment in August 2012 totaled only \$21 million, far short of the \$125 million that Bradley told Rosen was needed to launch Fund I. Despite its bleak prospects, Bradley was still committed to Kainos's success and as required, personally invested in Fund I. Mortgaging her home to put together funds, Bradley contributed \$1.5 million of her own money to Fund I to cover her portion of Kainos Managers' general partner commitment.

**RESPONSE:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation that Bradley mortgaged her home to raise funds to satisfy a capital commitment to be made over a period of years to Fund I, and on that basis deny the allegation. Defendants otherwise deny the allegations contained in Paragraph 57, except Defendants admit that Fund I's first closing occurred in August 2012, with total commitments in excess of \$70 million, and

that Bradley ultimately made a \$1.5 million personal commitment to the general partner of Fund I to be made over the Fund I investment period.

58. The initial investment commitments that Rosen had guaranteed never materialized and Kainos was in real danger of failing before it ever started. With their backs against the wall, Bradley put together a plan to keep alive the prospect that Kainos could still become a successful private equity firm.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 58.

59. Bradley approached a large pension fund, CPPIB, with her plan for it to both buy the legacy Hicks Muse portfolio companies and become the anchor investment in Fund I. Bradley reached out to her contact at CPPIB who put her in touch with the key decision makers. After walking CPPIB through her idea over the phone, they agreed to meet with Bradley and Rosen on October 9, 2012.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 59, except Defendants admit that, at Rosen's direction, Bradley contacted CPPIB about a potential investment. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 59, and on that basis deny those allegations. With regard to the third sentence of Paragraph 59, Defendants admit that Rosen and Bradley met with representatives of CPPIB in October 2012. Defendants lack knowledge or information sufficient to form a belief as to the truth of the other allegations contained in the third sentence of Paragraph 59, and on that basis deny those other allegations.

60. Following that meeting, CPPIB agreed to purchase a portfolio of food-related companies from Hicks Muse for \$468 million and further agreed to commit \$138 million to Fund I. In order to finalize the deal, Bradley coordinated all of the interested parties, including CPPIB, the Hicks Muse limited partner

advisory committee, and all the existing Hicks Muse investors. Throughout those discussions CPPIB raised concerns about Rosen's integrity, but Bradley vouched for him and assuaged CPPIB's fears. Without Bradley's creation of the CPPIB investment structure and the relationships and trust she developed with investors, Kainos would not exist today.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 60, subject to their averment that CPPIB purchased the assets described in that sentence from entities managed by HM Capital. Defendants admit the allegations contained in the second sentence of Paragraph 60, subject to their averments that the reference to the "Hicks Muse limited partner advisory committee" should instead be to the "Sector Performance Fund limited partner advisory committee" and that the reference to "Hicks Muse investors" should instead be to "HM Capital investors." Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 60, and on that basis deny those allegations. Defendants deny the allegations contained in the fourth sentence of Paragraph 60.

61. In February 2013, Kainos closed the landmark investment with CPPIB in a deal that would later be considered the gold standard for that type of transaction. Often cited as a case study in industry conferences, it became a seminal transaction in the private equity fundraising marketplace.

**RESPONSE:** Defendants admit that Kainos closed the CPPIB investment in February 2013. Defendants lack knowledge or information sufficient to form a belief as to the truth of the other allegations contained in Paragraph 61, and on that basis deny those other allegations.



62. With an anchor investor in place due to Bradley's ingenuity, Kainos closed Fund I in December 2013 with a final fund size of \$475 million, exceeding their \$400 million target. Several of the other investors in Fund I resulted from Bradley's prior relationships.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 62, except Defendants deny that "an anchor investor" was "in place due to Bradley's ingenuity." Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegation set forth in the second sentence of Paragraph 62, and on that basis deny the allegation.

63. Private equity managers like Kainos generate revenue by collecting management fees ("**Management Fees**"), typically based on the percentage of assets under management within a given fund. For example, Kainos Manager collected Management Fees of 1.9% from Fund I under the investment management agreement with Fund I. Investment managers also collect deal fees earned in connection with the Fund's acquisition of specific assets that are typically based on the size of the transaction ("**Transaction Fees**"). Additionally, investment managers can collect monitoring and oversight fees paid by portfolio companies for various consulting and advisory services ("**Monitoring Fees**").

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 63, subject to their averment that the percentage may be applied to a base other than assets under management and that certain assets under management may not be subject to a management fee. Defendants admit the allegations contained in the third and fourth sentences of Paragraph 63, subject to their averment that investment management agreements do not always provide for Transaction Fees or Monitoring Fees and that not every portfolio company may be subject to Transaction Fees and Monitoring Fees. The second sentence of

Paragraph 63 purports to characterize the contents of the Fund I investment management agreement, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the second sentence of Paragraph 63 are inconsistent with that agreement, Defendants deny those allegations.

64. Pursuant to the Kainos investment management agreements, the Management Fees, Transaction Fees, and Monitoring Fees are collected by the investment manager. Consistent with industry practice, Kainos also retains a share of the profits of each investment fund that it manages. This share of the profits is referred to as “**Carried Interest.**” Unlike the fees described above, profits realized from Carried Interest are routed through an entity other than the investment manager.

**RESPONSE:** The first sentence of Paragraph 64 purports to characterize the terms of the “Kainos investment management agreements,” and Defendants respectfully refer the Court to the investment management agreements for Kainos Fund I and Kainos Fund II for a complete and accurate statement of their contents. To the extent that the allegations contained in the first sentence of Paragraph 64 are inconsistent with those agreements, Defendants deny those allegations. Defendants admit the other allegations contained in Paragraph 64, except that Defendants deny the allegation that carried interest was “routed through an entity other than the investment manager,” and aver by way of further response that under Kainos’s structure, the investment manager had no right to receive, and did not receive, carried interest.

65. In addition to her ownership interest in Kainos Manager, Bradley and Rosen agreed that she would be compensated as an employee through a combination of base salary, performance bonuses, and a share of Carried Interest. As CPPIB prepared to close on its commitment in early 2013, Kainos began the process of formalizing its structure to reflect those arrangements.

**RESPONSE:** Defendants admit that, with respect to Fund I, Rosen and Bradley agreed that Bradley would receive a base salary, profit distributions associated with an ownership interest in Kainos Capital, LLC, and a share of Carried Interest, but otherwise deny the allegations contained in the first sentence of Paragraph 65. Regarding the second sentence of Paragraph 65, Defendants admit that Bradley, Rosen, and Sperry executed certain agreements bearing on their arrangement as Kainos partners for Fund I. Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in the second sentence of Paragraph 65 are inconsistent with those agreements, Defendants deny those allegations.

66. On January 25, 2013, Knickel sent an email to Kainos's transactional counsel at Weil Gotshal requesting that the LLC agreement for the investment manager "be revised to reflect the following ownership: Andrew S. Rosen 42% Robert W. Sperry 33% Sarah A. Bradley 25%." Thus, in exchange for her initial cash commitment to Fund I and the cash investment in the SAV, as well as the critical role she played and tremendous risk undertaken in founding and launching Kainos, Bradley received a one-quarter interest in Kainos Manager.

**RESPONSE:** With regard to the first sentence of Paragraph 66, Defendants admit that on January 25, 2013, Knickel sent an e-mail to Weil Gotshal regarding the limited liability company agreement for Kainos Capital, LLC and respectfully refer the Court to that e-mail for a complete and accurate statement of its contents.

Defendants deny the allegations contained in the second sentence of Paragraph 66, except Defendants admit that as part of the arrangement for Fund I, Bradley received a 25% membership interest in Kainos Capital, LLC.

67. On February 22, 2013, Knickel emailed Rosen, Sperry, and Bradley for their execution of an Assignment and Assumption Agreement, which Knickel described as “the agreement by which [Sperry] and [Bradley] officially become owners of Kainos.” Rosen, Sperry, and Bradley entered into the Assignment and Assumption Agreement, dated February 28, 2013, but by its terms is effective as of January 1, 2013.<sup>6</sup>

**RESPONSE:** With regard to the first sentence of Paragraph 67, Defendants admit that on February 22, 2013, Knickel sent an e-mail to Rosen, Sperry, and Bradley concerning the Assignment and Assumption Agreement, and Defendants respectfully refer the Court to that e-mail for a complete and accurate statement of its contents. With regard to the second sentence of Paragraph 67, Defendants admit that Rosen, Sperry, and Bradley entered into the Assignment and Assumption Agreement. The other allegations contained in the second sentence of Paragraph 67 purport to characterize the contents of the Assignment and Assumption Agreement, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the second sentence of Paragraph 67 are inconsistent with that agreement, Defendants deny those allegations. With regard to footnote 6, Defendants admit that the document attached as Exhibit A to the Complaint is a true and correct copy of the Assignment and Assumption Agreement.

68. Pursuant to the Assignment and Assumption Agreement, Rosen—who had originally formed Kainos Manager as its sole member in May 2011—assigned membership interests in that investment-manager entity, as agreed, to Defendant Sperry and Plaintiff Bradley. Consistent with Knickel’s email to transactional counsel and the Assignment and Assumption Agreement, Rosen assigned Bradley a 25% interest in Kainos Manager. Each of the private placement memoranda (“PPM”) issued by Kainos lists Bradley as a co-founder of Kainos.

**RESPONSE:** With regard to the first sentence of Paragraph 68, Defendants admit that Rosen originally formed Kainos Capital, LLC in May 2011 and was at that time its sole member. With regard to the second sentence of Paragraph 68, Defendants admit that, on January 25, 2013, Knickel sent an e-mail to Weil Gotshal regarding the limited liability company agreement for Kainos Capital, LLC and respectfully refer the Court to that e-mail for a complete and accurate statement of its contents. The remaining allegations contained in Paragraph 68 purport to characterize the contents of the Assignment and Assumption Agreement and the PPMs, and Defendants respectfully refer the Court to those documents for a complete and accurate statement of their contents. To the extent that these allegations are inconsistent with those documents, Defendants deny the allegations.

69. In signing the Assignment and Assumption Agreement, Rosen and Sperry, and Bradley agreed to be bound by the terms of the limited liability company agreement of Kainos Manager, dated as of May 24, 2011 (“**LLC Agreement**”).<sup>7</sup> Prior to the execution of the Assignment and Assumption Agreement, Rosen was the sole member of Kainos Manager. The LLC Agreement in place when Rosen was the sole member specified that Kainos Manager was to be member-managed. After Bradley and Sperry were admitted as members, the LLC Agreement was not amended to further define how the management powers would be delegated amongst the members. The LLC Agreement contemplates termination of a membership interest in Kainos Manager only in the event of a

member's resignation following the voluntary assignment of the member's interest, or upon dissolution of the entity.

**RESPONSE:** Defendants admit the allegations contained in the second and fourth sentences of Paragraph 69. The first, third, and fifth sentences of Paragraph 69 purport to characterize the contents of the limited liability company agreement for Kainos Capital, LLC and the Assignment and Assumption Agreement, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in the first, third, and fifth sentences of Paragraph 69 are inconsistent with those agreements, Defendants deny those allegations. With regard to footnote 7, Defendants admit that the document attached as Exhibit B to the Complaint is a true and correct copy of the limited liability company agreement for Kainos Capital, LLC.

70. Thanks in no small part to Bradley's efforts, Fund I closed in December 2013 with a final fund size of \$475 million.

**RESPONSE:** Defendants admit that Fund I closed in December 2013 with a final fund size of approximately \$475 million, but otherwise deny the allegations contained in Paragraph 70.

71. But, beginning what would become a common theme at Kainos, the professionalism and quality of work reflected in the business side of the firm was not mirrored in its culture. Instead, Rosen created a frat-house-styled ethos of forced overconsumption of alcohol and general debauchery coupled with shaming and coercion if anyone tried to push back.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 71.

72. For example, at the 2013 Kainos holiday party that same month, Rosen and Sperry organized a drinking game where each Kainos employee was asked to choose a partner with whom they would drink a shot. As a result, Bradley was pressured to drink numerous shots of hard alcohol. Bradley, the only female executive, was told that she had to participate in the drinking game if she wanted to be “part of the team.” Unfortunately, this was not an isolated event and irresponsible hazing with alcohol became a regular feature of the firm’s culture.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 72.

73. Despite her concerns related to the firm’s culture, Bradley worked throughout 2014 to find, analyze, and close acquisitions for Fund I’s portfolio, in addition to performing her investor relations role. For example, Bradley was one of the contact points for Fund I’s very first deal involving a company called InterHealth. After helping to push that deal through to close, Bradley served on InterHealth’s board. Similarly, Bradley worked up and helped to lead a deal involving a company called FemPro that closed in August 2014. Bradley also served on FemPro’s board.

**RESPONSE:** Defendants admit that Bradley served on the boards of directors of InterHealth and FemPro, but otherwise deny the allegations contained in Paragraph 73.

74. On the business side, Kainos was performing well and the outlook was positive. Kainos had consistent deal flow for new investments, promising returns, and increasing investor demand for future Kainos funds. But, as Kainos was taking off, inside the firm Rosen was creating a toxic and dangerous culture.

**RESPONSE:** Defendants admit the allegations contained in the first and second sentences of Paragraph 74. Defendants deny the allegations contained in the third sentence of Paragraph 74.

75. At Kainos’s firm retreat in November 2014, the binge drinking that characterized the prior year’s holiday party intensified. Rosen announced that the retreat’s slogan was “Where the Great Ones Play Hurt,” pressuring firm personnel to drink excessively and prove they could still perform the next day. After witnessing excessive drinking and several rounds of shots pushed by Sperry and

Rosen on associates for several hours, Bradley expressed concern to Rosen about the excessive drinking. Rosen told her that she could “love it, learn it, or leave it.”

**RESPONSE:** Defendants deny the allegations contained in Paragraph 75.

76. The following morning, a Kainos associate was missing and was later found passed out drunk perilously close to a pool on the property. The dangerous levels of drinking persisted throughout the remainder of the retreat, and at one point Bradley was groped by a drunken Kainos executive. Following that incident, Bradley excused herself and returned to her room.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 76. Defendants deny the allegation set forth in the second sentence of Paragraph 76 that “[t]he dangerous levels of drinking persisted throughout the remainder of the retreat.” Defendants lack knowledge or information sufficient to form a belief as to the truth of the other allegations contained in the second and third sentences of Paragraph 76, and on that basis deny those other allegations.

77. A week later, Rosen met with Bradley in Minneapolis before a board meeting and expressed anger that Bradley did not fully participate in the partying at the retreat. Bradley explained that she left the retreat an hour earlier than the others to catch a flight to a conference where she was scheduled to speak and meet with current and prospective investors. Rosen said that it was clear Bradley was not a part of the firm’s “culture” and that he did not see a future for her if she did not change. At the same meeting, Rosen informed Bradley she would no longer be permitted to work on new deals. Rosen also told her that she had to apologize to the Kainos team the next time she was in Dallas at a firm meeting for not fully participating in the partying.

**RESPONSE:** Defendants admit that Bradley told Rosen that she left the November 2014 retreat early to fly to a conference where she would speak and meet with investors, but otherwise deny the allegations contained in Paragraph 77.



78. Rosen, unsurprisingly, ignored Bradley's concerns and he continued to build a frat-house culture at Kainos. The following year Rosen's approach again put Kainos employees in peril. At the November 2016 firm retreat, as they had in the past, Rosen and Sperry pushed excessive alcohol consumption. This time, one of Kainos's employees drank so much that she became unconscious and non-responsive, requiring EMTs to stabilize her and provide medical attention.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 78, except Defendants admit that, at the firm's November 2016 retreat, a Kainos employee received medical attention after briefly losing consciousness.

79. Rosen's desire to control Kainos was not limited to compelling everyone to consume dangerous levels of alcohol. Rosen wanted control over all aspects of Kainos and would take whatever steps necessary to gain that control, including trying to exploit Bradley's vulnerabilities. Rosen knew that Bradley's family was financially dependent on what she earned from Kainos. Bradley had mortgaged her home to make her required capital investment and much of her net worth was tied up in Kainos. Rosen knew Bradley was the major breadwinner for her family of six and he exploited her need to protect her family's financial health as leverage in an attempt to ensure his control of Kainos went unquestioned.

**RESPONSE:** Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the fourth sentence of Paragraph 79, and on that basis deny those allegations. Defendants deny the other allegations contained in Paragraph 79.

80. For example, at the meeting in Minneapolis following the 2015 firm retreat where Bradley left a few hours early, Rosen told Bradley that either she did what she was told, or she would be forced out and would lose all that she had invested at Kainos.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 80.

81. At the same meeting, Rosen also told Bradley he had decided he would be Kainos's "benevolent dictator," as Tom Hicks had been at Hicks Muse, and would therefore take over all managerial responsibilities. Rosen, of course,

had no actual authority to anoint himself Kainos's dictator under to Kainos Manager's LLC Agreement. Instead, he was one of three member-managers and so owed fiduciary duties to Kainos Manager and to Bradley as a member. Disregarding those duties and limitations, Rosen told Bradley she would no longer be involved in any management decisions, including the hiring, termination, and compensation of professionals.

**RESPONSE:** Defendants deny the allegations contained in the first and fourth sentences of Paragraph 81. The second sentence of Paragraph 81 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the second sentence of Paragraph 81 are inconsistent with that agreement, Defendants deny those allegations. With regard to the third sentence of Paragraph 81, Defendants admit that Rosen was a member-manager of Kainos Capital, LLC. The third sentence of Paragraph 81 otherwise asserts legal conclusions to which no response is required.

82. After that meeting, Rosen and Sperry began keeping Kainos Manager financials from Bradley, refusing to share any firm profit and loss reports. They also excluded her from management decisions in which she had previously participated and refused to put her on boards of Kainos's portfolio companies.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 82.

83. In December 2015, Rosen continued his attempt to squeeze Bradley out of the control and ownership of Kainos Manager. On December 17, 2015, Rosen sent an email to Bradley that indicated he intended to reduce her interest in the Kainos Manager to 12%. But, under the Kainos Manager LLC Agreement and Delaware law, Rosen did not have the power to unilaterally reduce her 25% interest. So, instead, Rosen attempted to strong-arm Bradley into voluntarily agreeing to the reduction with no compensation.

**RESPONSE:** Defendants deny the allegations contained in the first and fourth sentences of Paragraph 83. Defendants deny the allegations contained in the second sentence of Paragraph 83, except Defendants admit that Rosen and Bradley exchanged a series of e-mails on December 17, 2015, in which Rosen and Bradley discussed the management company for Fund II, and respectfully refer the Court to these e-mails for a complete and accurate statement of their contents. The third sentence of Paragraph 83 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the third sentence of Paragraph 83 are inconsistent with that agreement, Defendants deny those allegations. The third sentence of Paragraph 83 also contains an allegation that asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny that allegation.

84. Bradley immediately responded and objected, refusing to give up over half of her share of Kainos Manager for nothing. Consistent with his view of himself as a dictator rather than one of three managing members in an LLC, Rosen responded: “Happy to discuss but don’t see changing it.” Despite Rosen’s dictatorial decree, he could not lawfully reduce Bradley’s LLC interest. [sic] and so she retained her 25% interest in Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in the first and second sentences of Paragraph 84, except Defendants admit that Rosen and Bradley exchanged a series of e-mails on December 17, 2015, in which Rosen and

Bradley discussed the management company for Fund II, and respectfully refer the Court to these e-mails for a complete and accurate statement of their contents. The third sentence of Paragraph 84 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in the third sentence of Paragraph 84.

85. When Bradley followed up with a call to Rosen, he told her not to send any more emails on the subject or with respect to governance of the firm and told her again that if she refused to raise Fund II, she would be terminated, and he and Sperry would make sure that her Carried Interest never vested.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 85.

86. Having refused to agree to Rosen's demand that she give away a substantial portion of her interest in Kainos Manager, Bradley turned to creating more value for Kainos and herself by raising Fund II and expanding its role in the market.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 86.

87. In January 2016, Bradley began the fundraising process for Fund II. Bradley's fundraising efforts were successful, and Fund II was ready for its first closing of investor commitments by April 2016. Meanwhile, Rosen was still searching for a way to reduce or eliminate Bradley's 25% membership interest in Kainos Manager, having been unsuccessful in bullying Bradley into agreeing to give up her ownership interest in late 2015.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 87, except Defendants admit that Kainos began the Fund II capital raise in January 2016 and that, due in part to Bradley's efforts, Kainos was ready for the first closing of investor commitments by April 2016.

88. Under the Kainos Manager LLC Agreement, however, there was no way to unilaterally reduce Bradley's interest. So, days before the scheduled first

closing of Fund II, Rosen, Sperry, and Knickel—with the assistance of transactional counsel at Weil Gotshal—concocted a fraudulent scheme to forcibly and covertly extinguish Bradley’s LLC interest and rights. Knickel then set out to execute the scheme.

**RESPONSE:** The first sentence of Paragraph 88 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the first sentence of Paragraph 88 are inconsistent with that agreement, Defendants deny those allegations. Defendants deny the allegations contained in the second and third sentences of Paragraph 88.

89. On April 21, 2016, at 5:27 p.m. on the eve of the Fund II closing, Knickel, at Defendants’ behest, sent Bradley an email with the subject line “Signatures Required for Closing.”<sup>8</sup> Knickel attached two documents for Bradley’s signature. The first was a securities compliance certification. According to Knickel, “[t]he second is a consent for the conversion of Kainos Capital from an LLC to an LP to take advantage of an exemption from self-employment tax for distributed shares of income.”

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley’s signature, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 89 are inconsistent with those documents, Defendants deny those allegations. Defendants deny that Knickel sent the e-mail referenced in Paragraph 89 “at Defendants’ behest.” With regard to footnote 8, Defendants admit that the

document attached as Exhibit C to the Complaint is a true and correct copy of the e-mail referenced in Paragraph 89.

90. Telling Bradley that the Conversion was *solely* for tax purposes, Knickel conveyed that as an owner in the converted entity she would benefit from the tax advantage when she received her share of the distributions. There was no reference to extinguishing or decreasing Plaintiff's ownership rights nor any of the many other unacceptable and material features of the limited partnership that Bradley would later learn had been surreptitiously enacted. Instead, the implication of Knickel's statement, which he would later confirm, was the exact opposite: that following the conversion, Bradley would retain all the rights she had under the LLC agreement, including her 25% ownership, and receive an additional tax benefit upon distribution of her 25% share of the profits.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley's signature, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 90 are inconsistent with those documents, Defendants deny those allegations.

91. The Consent stated that the members of Kainos Manager (Rosen and Sperry, and Bradley) were agreeing to convert Kainos Capital, LLC to a Delaware limited partnership to be named Kainos Capital LP and admitting Kainos Capital, LLC as the sole general partner of Kainos Capital LP.<sup>9</sup> The document is otherwise silent regarding membership or partnership interests in either entity.

**RESPONSE:** Paragraph 91 purports to characterize the contents of the Consent, and Defendants respectfully refer the Court to that document for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 91 are inconsistent with the Consent, Defendants deny

those allegations. With regard to footnote 9, Defendants admit that the document attached as Exhibit D to the Complaint is a true and correct copy of the Consent.

92. Based on Knickel's representation that the *sole* purpose of the conversion was to provide tax benefits to the investment manager's owners (including Bradley as a 25% owner), and Bradley's straightforward reading that the Kainos Manager would serve as the sole general partner of the new limited partnership, she understood that the conversion would not have any other impact her rights or interest as an owner.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 92.

93. Still, after receiving the Consent, Bradley followed up with a phone call to Knickel to confirm her understanding. On the call, Knickel reiterated the conversion was driven by tax considerations and told Bradley that she needed sign it immediately because if she did not, the closing for Fund II could not occur.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 93.

94. Knickel also told her that the new limited partnership agreement had not been drafted yet. Importantly, Knickel added she would have a chance to review and make comments once drafted, *and confirmed that the new limited partnership agreement would not materially change the terms of the current agreement.* Under the existing LLC agreement, Bradley was a 25% owner and managing member of Kainos Manager. Under time pressure to close Fund II and with an understanding that her management rights and ownership interest in the investment manager would not materially change, Bradley signed the Consent on the same day she received it—April 21, 2016.

**RESPONSE:** Defendants deny the allegations contained in the first and second sentences of Paragraph 94. With regard to the fourth sentence of Paragraph 94, Defendants lack knowledge or information sufficient to form a belief as to whether Bradley signed the Consent on the same day she received it, and on that basis deny that allegation. By way of further response, Defendants aver that Bradley e-mailed the signed Consent to Knickel on April 22, 2016. Defendants

otherwise deny the allegations contained in the fourth sentence of Paragraph 94, except Defendants admit that Bradley received the Consent on April 21, 2016. The third sentence of Paragraph 94 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the third sentence of Paragraph 94 are inconsistent with that agreement, Defendants deny those allegations.

95. The tax benefit that Knickel claimed as the purpose of the conversion was a pretext for a larger scheme to extinguish all of Bradley's ownership interest and her rights to participate in firm management, while granting Rosen and Sperry absolute control.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 95.

96. To ensure that their scheme worked, Rosen, Sperry, and Knickel had to make Bradley believe that the only purpose for the conversion was to get the owners a tax benefit. They could not let Bradley see the Kainos GP documentation or the LP Agreement, which purportedly provided the mechanisms to deprive Bradley of her ownership interest and give Rosen and Sperry unbridled managerial control over every aspect of the investment manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 96.

97. Carrying out the Defendants' scheme, Knickel provided the Consent to Bradley via email without the exhibits that were referenced therein: the LP Agreement and the Certificate of Conversion to Limited Partnership. He then told her the LP Agreement *did not even exist*—and that it would not change her current arrangement materially—but insisted that she sign the Consent immediately or they would not be able to close Fund II.



**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley's signature, including the Consent, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in the first sentence of Paragraph 97 are inconsistent with those documents, Defendants deny the allegations. Defendants deny the allegations contained in the second sentence of Paragraph 97.

98. The Kainos Capital LP Agreement that was referenced as Exhibit A to the Consent was dated April 21, 2016.<sup>10</sup> Pursuant to that LP Agreement, Kainos GP was admitted as the general partner and Knickel was admitted as the sole limited partner.

**RESPONSE:** Paragraph 98 purports to characterize the contents of the Consent and the limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to the Consent and that agreement for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 98 are inconsistent with those documents, Defendants deny the allegations. With regard to footnote 10, Defendants admit that the document attached as Exhibit E to the Complaint is a true and correct copy of the limited partnership agreement for Kainos Capital LP, which Defendants aver was prepared as a placeholder agreement in connection with the Conversion.

99. Exhibit B to the Consent was the Certificate of Conversion to Limited Partnership, dated as of April 21, 2016, that was "executed and filed by Kainos

Capital, LLC, as general partner, to convert Kainos Capital, LLC (the “Other Entity”) to Kainos Capital LP.”<sup>11</sup>

**RESPONSE:** Paragraph 99 purports to characterize the contents of the Consent and the Certificate of Conversion, and Defendants respectfully refer the Court to those documents for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 99 are inconsistent with those documents, Defendants deny the allegations. With regard to footnote 11, Defendants admit that the document attached as Exhibit F to the Complaint is a true and correct copy of the Certificate of Conversion.

100. As Bradley would later learn, the reason the April 21, 2016 Certificate of Conversion (unlike the Consent that Bradley signed) defined the converted Kainos Capital, LLC as the “Other Entity” because on the same day they purported to convert Kainos Capital LLC, to a limited partnership, Rosen and Sperry formed Kainos GP as a new Delaware limited liability company with the *exact same name as Kainos Manager*—Kainos Capital, LLC—to act as Kainos Capital LP’s general partner. Rosen and Sperry are the members of Kainos GP. Knickel, on behalf Kainos GP, signed the Certificate of Conversion that was filed with the Delaware Secretary of State. Knickel also signed the Certificate of Limited Partnership of Kainos Capital LP that was filed with the Delaware Secretary of State.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 100, except Defendants admit that Kainos Capital, LLC is the name of the general partner of Kainos Capital LP. Defendants admit the allegations contained in the second, third, and fourth sentences of Paragraph 100.

101. Upon information and belief, the reason that Rosen and Sperry formed the general partner of the new limited partnership with the same name as Kainos Manager was so that anyone who might look into the LP structure would conclude that the purported Conversion had not materially changed the LLC structure.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 101.

102. The Consent document references Kainos Capital, LLC as the entity being converted, and references Kainos Capital, LLC as the entity that would become the general partner of the newly formed Kainos Capital LP. But despite being drafted by sophisticated transactional counsel at Weil Gotshal, the Consent misleadingly makes no distinction between the two entities that would allow even a trained lawyer—let alone a layperson reading the document—to have any further understanding of these distinct entities with the same name. More importantly, this deliberate shell game with the Kainos entities had the intended effect of concealing the substantive changes to the LLC structure that Defendants were able to accomplish using the Consent as a Trojan Horse.

**RESPONSE:** The first sentence of Paragraph 102 purports to characterize the contents of the Consent, and Defendants respectfully refer the Court to that document for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 102 are inconsistent with the Consent, Defendants deny those allegations. With regard to the second sentence of Paragraph 102, Defendants admit that attorneys at the Weil Gotshal firm assisted with the drafting of the Consent, but otherwise deny the allegations contained in that sentence. Defendants deny the allegations contained in the final sentence of Paragraph 102.

103. Given this confusing use of the various Kainos entities and Knickel's affirmative statement that the new LP agreement would not materially change Bradley's rights or interest, as Rosen and Sperry planned, Bradley signed the Consent believing that she would maintain her 25% ownership interest and all her rights in the LLC following the Conversion to the LP.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 103.

104. The reality was quite different. The end product of the purported Conversion was Kainos Capital LP, a limited partnership with Knickel as the initial

limited partner and the newly formed Kainos GP, in which Bradley would later learn that she had no ownership interest, serving as the general partner. In other words, before the Conversion, Bradley held a valuable 25% managing-membership interest in Kainos Manager. Afterwards, according to the transaction documents put together by Rosen, Sperry, and Knickel—with Weil Gotshal’s help—she owned nothing. Accordingly, the purported Conversion was an effort to allowed Rosen, Sperry, and Knickel to deprive Bradley of her membership interest in Kainos Manager without providing her any consideration and to her of numerous rights without her informed consent. The Conversion is depicted in the chart below:

**RESPONSE:** Defendants admit that Kainos Capital, LLC was converted to Kainos Capital LP, that Knickel was the initial limited partner of Kainos Capital LP, and that the general partner of Kainos Capital LP was named Kainos Capital, LLC, but otherwise deny the allegations contained in the first, second, third, fourth, and fifth sentences of Paragraph 104. The sixth sentence of Paragraph 104 references a graphic that purports to depict the Conversion in chart form. To the extent that a response to these allegations is required, Defendants deny the allegations contained in the sixth sentence of Paragraph 104 and the accompanying graphic.

105. Rosen’s, Sperry’s, and Knickel’s plan to use the same name for the new general partner as the original investment manager to hide their scheme from Bradley and Kainos’s investors, however, tripped up their scheme. They could not create Kainos GP as “Kainos Capital, LLC” as long as Kainos Manager existed under that name. Consequently, they had to convert Kainos Manager to Kainos Capital LP before they could form Kainos GP, otherwise the name “Kainos Capital, LLC” would not be available. So, they had to file the Certificate of Conversion first, before they could file the certificate of formation for Kainos GP.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 105. The allegations contained in the second, third, and

fourth sentences of Paragraph 105 assert legal conclusions to which no response is required. To the extent that a response is required, Defendants deny those allegations.

106. The entity that signed and filed the Certificate of Conversion, however, was Kainos GP, not Kainos Manager.<sup>12</sup> That document was filed on April 21, 2016 at 12:17 pm. They then filed the certificate of formation for Kainos GP at 12:20 pm on April 21, 2016.<sup>13</sup> Thus, the entity that purportedly took the action to convert Kainos Manager to Kainos Capital LP did not exist at that time and did not have the capacity to consummate the conversion of Kainos Manager to Kainos Capital LP.

**RESPONSE:** Defendants admit the allegations contained in the first, second, and third sentences of Paragraph 106. The allegations contained in the fourth sentence of Paragraph 106 assert legal conclusions to which no response is required. To the extent that a response is required, Defendants deny those allegations. Footnote 12 refers to Exhibit F to the Complaint, which is the Certificate of Conversion, and Defendants refer the Court to that document for a complete and accurate statement of its contents. With regard to footnote 13, Defendants admit that the document attached as Exhibit G to the Complaint is a true and correct copy of the Certificate of Formation for Kainos Capital, LLC.

107. Nonetheless, after failing to properly convert Kainos Manager into Kainos Capital LP, Rosen, Sperry, and Knickel proceeded to act as though the Conversion was effective. Later on April 21, 2016, Defendants Sperry and Rosen caused the newly formed Kainos GP to exercise its powers as the general partner of Kainos Capital LP to cause that partnership to adopt an Amended and Restated Limited Partnership Agreement (the “**Amended LP Agreement**”).<sup>14</sup> As with the LP Agreement, Bradley did not see the Amended LP Agreement at the time of Conversion, and only saw it much later, well after the scheme to attempt to steal

her part of her membership interest had been executed by Rosen, Sperry, and Knickel and months after the final close of Fund II.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 107, except Defendants admit that since April 2016, Rosen, Sperry, and Knickel have acted in conformity with their understanding that the Conversion was effective and aver that, prior to January 17, 2019, Bradley had likewise acted as though the Conversion was effective. With regard to footnote 14, Defendants admit that the document attached as Exhibit H to the Complaint is a true and correct copy of the amended and restated limited partnership agreement for Kainos Capital LP.

108. The Amended LP Agreement, which Bradley has never signed and to which she never agreed, lists her as a limited partner with a 12% LP Interest in Kainos Capital LP. The Amended LP Agreement vests exclusive authority to manage, control, and direct the operations, business, and affairs of the partnership in the Rosen-and-Sperry-controlled general partner Kainos GP. Kainos GP also has sole discretion to remove Bradley from the Investment Committee upon twenty-four hours' notice.

**RESPONSE:** With regard to the allegations contained in the first sentence of Paragraph 108, Defendants admit that they have not received Bradley's signature to the amended and restated limited partnership agreement for Kainos Capital LP, respectfully refer the Court to that agreement for a complete and accurate statement of its contents, and otherwise deny the allegations contained in that sentence. The remaining allegations contained in Paragraph 108 purport to characterize the contents of the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to

that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 108 are inconsistent with that agreement, Defendants deny those allegations.

109. Most importantly, the LP Agreement vested sole and exclusive power in the GP to determine—to raise or lower—the partnership interests going forward. Consequently, Defendants purported to grant themselves unilateral and unfettered rights to further reduce Bradley’s interest.

**RESPONSE:** Paragraph 109 purports to characterize the contents of the limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 109 are inconsistent with that agreement, Defendants deny those allegations.

110. Far from a fair substitute for Bradley’s original ownership interests and contrary to Knickel’s assurances, the Amended LP Agreement gave Bradley an interest that bore little resemblance to her original 25% membership interest. The Amended LP Agreement granted Bradley only a *revocable* 12% profit-sharing interest. It also granted Kainos GP (in other words, Rosen and Sperry) entirely new and extraordinary powers that were not disclosed to Bradley or Kainos’s investors and to which she never agreed. These powers include the right to unilaterally change her limited partner percentage interest in the partnership “at any time in its sole discretion” and the right to unilaterally terminate any limited partner for any reason at any time.

**RESPONSE:** Paragraph 110 purports to characterize the contents of the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in

Paragraph 110 are inconsistent with that agreement, Defendants deny those allegations.

111. This new termination right was patently unfair to Bradley because upon such termination, the limited partner would “immediately and automatically forfeit without consideration its entire Partnership interest” And there had been no such provision in the LLC Agreement. Adding insult to injury, the Amended LP Agreement includes draconian non-competition and non-solicitation clauses that purport to apply around the globe, even against limited partners whom Rosen and Sperry could (theoretically) terminate unilaterally without cause.

**RESPONSE:** Paragraph 111 purports to characterize the contents of the limited liability company agreement for Kainos Capital, LLC and the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 111 are inconsistent with those agreements, Defendants deny those allegations.

112. At no point before inducing Bradley into signing the Consent did Rosen, Sperry, or Knickel inform Bradley—to whom they owed fiduciary duties—of the litany of rights that she would lose under the LP Agreement or the Amended LP Agreement. They also did not inform her of the broad and unchecked rights Rosen and Sperry would gain, including the unlimited right to reduce or eliminate Bradley’s LP Interest for any reason, or for no reason whatsoever.

**RESPONSE:** To the extent that the first sentence of Paragraph 112 asserts a legal conclusion, no response is required. To the extent that the allegations contained in the second sentence of Paragraph 112 purport to characterize the contents of the amended and restated limited partnership agreement for Kainos



Capital LP, Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents, and, to the extent that the allegations contained in the second sentence of Paragraph 112 are inconsistent with that agreement, Defendants deny the allegations. Defendants otherwise deny the allegations contained in Paragraph 112.

113. If Bradley had understood that the Conversion was intended to terminate her membership interest in Kainos Manager, she never would have signed the Consent and never would have raised Fund II. Rosen and Sperry knew that, and thus, took extensive steps to ensure that the documents were confusing, that they only shared small pieces of the entire picture with her, and, when asked direct questions, they lied.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 113.

114. After the Conversion and the first close of Fund II, Bradley continued her fundraising efforts. As with Fund I, those efforts for Fund II were successful. Fund II closed at the end of October 2016 with a final fund size of \$895 million, meaning that Kainos's fee generation would effectively triple with Fund II under management.

**RESPONSE:** Defendants admit the allegations contained in the first and second sentences of Paragraph 114. With regard to the third sentence of Paragraph 114, Defendants admit that Fund II closed in October 2016 with a final fund size of \$895 million, and otherwise deny the allegations contained in that sentence.

115. Throughout 2017, Kainos invested the capital raised in Fund II and managed the investments in Fund I. Kainos's fee income again dramatically increased with both Fund I and Fund II under management for an entire year. Bradley continued to perform her role in 2017, communicating with investors and reviewing and analyzing potential portfolio company investments.

**RESPONSE:** With regard to the first sentence of Paragraph 115, Defendants admit that, in 2017, Kainos managed the investments in Fund I and began to invest the capital raised in Fund II, but otherwise deny the allegations contained in that sentence. Defendants deny the allegations contained in the second sentence of Paragraph 115. With regard to the third sentence of Paragraph 115, Defendants admit that Bradley was a Kainos partner in 2017, communicated with Kainos investors throughout that year, and analyzed potential portfolio company investments in her capacity as a member of the investment committee for Kainos Capital LP, but otherwise deny the allegations contained in that sentence.

116. At all times, Bradley was keenly aware of Rosen's and Sperry's consistent threats that if she were to step out of line with their expectations, they would terminate her and take her Carried Interest before it vested. If that happened, she would lose the majority of Carried Interest resulting from the capital she had invested with Kainos, and her family would be exposed to significant financial harm. Knowing that the threat of economic harm to Bradley's family allowed them to exploit her, at the end of 2017, Rosen and Sperry brazenly continued to cut Bradley's limited partnership interest in the investment manager without even notifying Bradley.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 116.

117. Specifically, Rosen and Sperry "allocated" a 7.48% profit-sharing interest to Bradley for 2017, further decreasing the 12% LP interest from 2016. So, rather than receive the minimum of \$2.4 million in distributions that she was owed for 2017 based upon her 25% ownership interest, she received only received 7.48% of the profits, or \$720,234. Moreover, upon information and belief, Rosen and Sperry manipulated the accounting for Kainos Capital LP by, among other things, paying themselves and their cronies excess salaries and bonuses, further driving down the profits distributable to Bradley at her reduced percentage.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 117.

118. Defendants reduced Bradley's LP interest to 7.48% without her consent. To the extent that Bradley sought to object to the unwarranted taking, Defendants, particularly Rosen, threatened her with elimination of all her rights, including her Carried Interest in Fund I and Fund II.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 118.

119. In 2018, Rosen continued to use intimidation to maintain control of Kainos and Bradley. As a result of that intimidation and to protect her substantial investment of time and money in Kainos, Bradley continued in her role, handling investor relations, including providing reports and updates on Kainos's portfolio companies and potential upcoming transactions. Bradley also sat on Kainos's investment committee throughout 2018, performing due diligence and analyzing potential investment opportunities for the deployment of the remaining capital in Fund II.

**RESPONSE:** Defendants deny the allegations contained in the first and second sentences of Paragraph 119, except Defendants admit that Bradley was a Kainos partner in 2018 and communicated with Kainos investors throughout that year. Defendants deny the allegations contained in the third sentence of Paragraph 119, except Defendants admit that Bradley was a member of the investment committee of Kainos Capital LP throughout 2018 and analyzed potential investment opportunities in that capacity.

120. Kainos's business continued to be extremely profitable and maintained its upward trajectory. Kainos sold three portfolio companies in Fund I in 2018, realizing a substantial profit on those sales, and invested another 55% of Fund II in new and promising deals. Due to the success of Funds I and II, in the second half of 2018 it became apparent that there was market interest and therefore an opportunity for Kainos to raise a third fund in 2019. For Fund III, Kainos plans to raise \$1.5 billion with a targeted closing date in May 2019.

**RESPONSE:** With regard to the first sentence of Paragraph 120, Defendants admit that Kainos has been a success and that, at the end of 2018, the

firm was preparing to launch a third fund, but otherwise deny the allegations contained in that sentence. Defendants admit the allegations contained in the second and third sentences of Paragraph 120, except Defendants deny that an incremental 55% of Fund II was invested in 2018, aver that the correct incremental percentage is 44%, and deny that Fund II was sufficiently far along in its life span at that time to be characterized as a “success.” Defendants deny the allegations contained in the final sentence of Paragraph 120, and aver by way of further response that Kainos was compelled to postpone the Fund III capital raise in light of Bradley’s conduct as described in the accompanying Verified Counterclaims.

121. To make plans for Fund III, Bradley met with Rosen and Sperry in October 2018. Shockingly, at that meeting, Rosen and Sperry dictated to Bradley that her LP Interest in Kainos Capital LP would be reduced again, this time to 5% (and that her Carried Interest in Fund III would also be decreased to 5%). Despite concerns of further retaliation, Bradley objected.

**RESPONSE:** Defendants admit the allegations contained in the first sentence of Paragraph 121. Defendants deny the allegations contained in the second and third sentences of Paragraph 121, except Defendants admit that, during a meeting held in October 2018, Rosen and Sperry told Bradley that they were at that time considering an economic arrangement for Fund III in which Bradley would receive a 5% carried interest allocation in the new fund.

122. Rosen and Sperry expressed surprise that Bradley cared about her interest in the investment manager because according to them, there was “no value there.” Of course, this was blatantly untrue because an interest in an investment manager of funds with assets under management of \$1.3 billion poised to double in

size is tremendously valuable. Further, Rosen and Sperry never would have gone to such extreme lengths of deception to strip Bradley of her rights in Kainos Manager if in fact her ownership of the investment manager was “worthless.” Additionally, Rosen knew the investment manager had value as he had met with an investor interested in acquiring a stake in the management company earlier in 2018. That investor walked Rosen through the rising values and strong interest in private equity management companies like Kainos.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 122, except Defendants admit that, during the October 2018 meeting referenced in Paragraph 121, Bradley asked Rosen and Sperry whether they had given any thought to the size of Bradley’s membership interest in the management company for Fund III, and that Rosen and Sperry replied that they were surprised by the question in light of the fact that the management company had for several years been using a salary-based model for partner compensation. Defendants deny the allegations contained in the second, third, fourth, and fifth sentences of Paragraph 122.

123. Bradley’s concerns were not unfounded, and Rosen and Sperry continued their threats of economic harm to force Bradley to raise Fund III for them for even less. After Rosen departed the October 2018 meeting early, Defendant Sperry warned Bradley that Rosen would not renegotiate (his unilateral decision that she would only be entitled to 5%) and that she needed to do whatever he says, or they would force her out and leave her with nothing.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 123, except Defendants admit that Rosen departed the October 2018 meeting before Sperry and Bradley.

124. Bradley left the October 2018 meeting terrified, yet again, that Rosen and Sperry would take what she had worked to build at Kainos. Mindful of her

family's dependence on her investment in Kainos and protecting Kainos's investors, she pressed ahead and prepared to raise Fund III. She spent the next several months lining up potential investors and drafting the offering documents for Fund III. On January 14, 2019, Kainos provided the PPM to potential investors, targeting a fund size of \$1.25 billion with an expected hard cap and final fund size of \$1.5 billion for a close in the second quarter of 2019. That PPM identified Bradley along with Rosen and Sperry as the original founders of Kainos.

**RESPONSE:** Defendants deny the allegations contained in the first, second, and third sentences of Paragraph 124, except Defendants admit that between October 2018 and mid-January 2019, Bradley purported to spearhead the Fund III capital raise. Defendants admit the allegations contained in the fourth and fifth sentences of Paragraph 124.

125. But, although she took all the necessary steps to get Fund III ready to launch, after this meeting, and for the first time, Bradley also obtained the majority of the organizational documents that Rosen, Sperry, and Knickel had kept from her and used to create their fiefdom. These documents allowed Bradley to uncover the nature of Defendants' scheme launched in April 2016 to wrongfully and secretly deprive her of her ownership in Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 125, except Defendants admit that Bradley took certain steps to get Fund III ready to launch and requested and received various governance documents from Kainos and its counsel beginning in October 2018.

126. At the time of the Conversion, Bradley had relied on Knickel's representations that the only reason for the Conversion was to take advantage of a tax benefit and her interests would not materially change in the new GP/LP structure. As discussed above, Bradley did not see the LP Agreement, Amended LP Agreement, or the Certificate of Conversion at the time she signed the Consent to the Conversion.

**RESPONSE:** Defendants deny the allegations contained in the first sentence of Paragraph 126. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 126, and on that basis deny those allegations.

127. Moreover, the Conversion also meant that the ultimate controlling entity for Fund I and Fund II was no longer Kainos Manager, where Bradley held membership rights, but was instead Kainos GP, where Bradley did not. This meant that through the Conversion, Rosen and Sperry had blocked Bradley's ability to obtain information regarding Fund I and Fund II that she previously had as a managing member of the ultimate controlling entity. By stopping this flow of information Rosen and Sperry further concealed the true nature of the Conversion, and how they were exercising their control after the Conversion, making it even more difficult for Bradley to uncover their fraud.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 127, except Defendants admit that, following the Conversion, Kainos Capital, LLC has been the general partner of Kainos Capital LP.

128. Eventually, Bradley received, but never signed, the Amended LP Agreement for Kainos Capital LP. In December 2016 and again in March 2017, Knickel emailed Bradley requesting her signature. Critically, both times Knickel, played his role in the scheme as communicator of misleading information. In sending Bradley documentation on these occasions, Knickel omitted the schedules to the Amended LP Agreement, including Schedule 2, the only place where the limited partners' percentage interest is identified.

**RESPONSE:** Defendants admit that Bradley received multiple drafts of the amended and restated limited partnership agreement for Kainos Capital LP, including in December 2016 and March 2017, when Knickel sent a draft of that agreement to multiple Kainos partners to request their signatures, and that Bradley's signature to the amended and restated limited partnership agreement for

Kainos Capital LP was not received. Defendants respectfully refer the Court to Knickel's e-mails to Bradley and others in December 2016 and March 2017 and the accompanying attachments for a complete and accurate statement of their contents, and, to the extent that the allegations contained in Paragraph 128 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 128, and aver by way of further response that Bradley understood and repeatedly represented to Kainos's investors that both her interest in the management company and her carried interest for Fund II would be 12% and that Bradley received a draft of the amended and restated limited partnership agreement for Kainos Capital LP by no later than May 2016.

129. Bradley never saw a complete Amended LP Agreement until October 2018, when, for the first time, she saw that Rosen and Sperry had unilaterally decided to give her only a 12% profit share. Even then, Knickel was still not willing to be transparent; the version he shared with Bradley in October 2018 was not complete. Schedule 2 only showed Bradley's interest, the interest amounts of the other limited partners were redacted.

**RESPONSE:** Defendants respectfully refer the Court to Knickel's e-mail to Bradley, dated October 24, 2018, and the attached amended and restated limited partnership agreement for Kainos Capital LP for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 129 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 129.



130. The selective materials that Knickel sent to Bradley in December 2016 and March 2017 were deceptive in other aspects as well. On their face, they gave the general partner expansive powers to control the limited partner, Kainos Capital LP, including the ability to reduce or extinguish a limited partner's interest at the general partner's sole discretion. The limited partner was identified as Kainos Capital, LLC. Unaware that Rosen and Sperry had created a new LLC with the identical name to the original Kainos Manager, Bradley reasonably believed that as a 25% owner of the GP, she would continue to have managerial rights of the investment manager. Rosen, Sperry and Knickel of course, had a contrary intention. They intended to extinguish her interest in Kainos Manager along with her under its LLC Agreement and her ability to participate in the operations and distribution of interests in the investment manager.

**RESPONSE:** The allegations contained in the second and third sentences of Paragraph 130 purport to characterize the contents of the amended and restated limited partnership agreement for Kainos Capital LP, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that these allegations are inconsistent with that agreement, Defendants deny the allegations. Defendants otherwise deny the allegations contained in Paragraph 130.

131. Rosen, Sperry, and "company" counsel at Weil Gotshal easily could have identified the Kainos Capital, LLC acting as the general partner as a newly formed entity. In fact, they did distinguish between the two identically named entities in the Certificate of Conversion that was filed with the Delaware Secretary of State by defining Kainos Manager as the "Other Entity." But, on the document they provided to Bradley, they stayed silent, and let Bradley draw the same conclusion anyone would: that there was only one Kainos Capital, LLC, and she owned a 25% share of it.

**RESPONSE:** The allegations contained in the second and third sentences of Paragraph 131 purport to characterize the contents of the Certificate of Conversion and the Consent, and Defendants respectfully refer the Court to those

documents for a complete and accurate statement of their contents. To the extent that these allegations are inconsistent with those documents, Defendants deny the allegations. Defendants otherwise deny the allegations contained in Paragraph 131.

132. Because Rosen, Sperry, and Knickel took extensive steps to draft misleading documents, and trickle out information in ways that made it impossible to connect the dots, it was only in late 2018 that Bradley fully realized the extent of the deception that Defendants had deployed in April 2016 to accomplish their scheme.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 132.

133. In fact, as late as October 2018, Knickel was still attempting to deceive Bradley to keep her from understanding Defendants' scheme. That month Bradley asked Knickel in writing to provide her with the original operating agreement for Kainos Manager. Knickel lied and told her it did not exist. Bradley, undeterred, obtained the agreement from Kainos's counsel at Weil Gotshal.

**RESPONSE:** Defendants admit the allegations contained in the second and fourth sentences of Paragraph 133. Defendants deny the allegations contained in the first and third sentences of Paragraph 133.

134. By late 2018, Bradley had collected enough of the data points to piece the story together. At that point, Bradley realized that she had been misled into signing the Consent and that Defendants had tricked her in an attempt to eliminate her rights in Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 134.

135. Further, as the story materialized, Bradley began to realize that she had not been given entity level accounting data from which to determine how Defendants were even calculating the investment manager's profit and loss. Specifically, at no point in time had Rosen and Sperry shared any financial or accounting information for Kainos Capital LP at the entity level, only giving her

access to her individual tax information, which only showed the profit share in Kainos Capital LP that they arbitrarily assigned to her.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 135, except Defendants admit that Kainos provided Bradley with Schedule K-1 tax forms that showed Bradley's percentage share of Kainos Capital LP's profits for taxable years 2016 and 2017.

136. Bradley now seeks to hold Defendants accountable for their deception and breaches of fiduciary duty and to seek this court's equitable powers to recover what was taken from her as a result of that scheme.

**RESPONSE:** Paragraph 136 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 136 and in particular deny that Bradley is entitled to any relief.

137. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

138. On or about May 24, 2011, Rosen formed Kainos Manager as a member-managed LLC. As its sole member, Rosen adopted the LLC Agreement. On or about February 28, 2013, Bradley and Rosen and Sperry entered into an Assignment and Assumption Agreement, whereby Rosen assigned Sperry a 33% managing member membership interest and Bradley a 25% managing-member membership interest in Kainos Manager and admitted both Defendant Sperry and Bradley as members subject to the terms of the LLC Agreement. The LLC Agreement remained the operative agreement for Kainos Manager.

**RESPONSE:** Defendants admit the allegations contained in the first and second sentences of Paragraph 138. With regard to the third sentence of Paragraph 138, Defendants admit that, on or about February 28, 2013, Bradley, Rosen, and Sperry entered into the Assignment and Assumption Agreement, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in the third sentence of Paragraph 138 are inconsistent with that agreement, Defendants deny those allegations. The final sentence of Paragraph 138 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants respectfully refer the Court to the limited liability company agreement for Kainos Capital, LLC and the Assumption and Assignment Agreement for a complete and accurate statement of their contents and deny any allegation that is inconsistent with those agreements.

139. Consideration for the LLC Agreement was valid and appropriate.

**RESPONSE:** Paragraph 139 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants respectfully refer the Court to the limited liability company agreement for Kainos Capital, LLC and the Assumption and Assignment Agreement for a complete and accurate statement of their contents and deny any allegation that is inconsistent with those agreements.

140. Bradley, Rosen, and Sperry have mutual obligations under the LLC Agreement.

**RESPONSE:** Paragraph 140 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 140.

141. Bradley has performed all conditions, covenants, and promises required from her in accordance with the terms and conditions of the LLC Agreement.

**RESPONSE:** Paragraph 141 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 141.

142. The Conversion, which Defendants attempted to carry out on or about April 21, 2016, purported to extinguish Bradley's 25% managing member membership interest in Kainos Manager without providing any compensation to Bradley.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 142.

143. Meanwhile, because the purported conversion of Kainos Manager to Kainos Capital LP was not lawfully affected, they have failed to honor their ongoing contractual obligations to Bradley since the purported Conversion.

**RESPONSE:** Paragraph 143 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 143.

144. Bradley is therefore entitled, to receive the compensation to which she has been at all points in time and remains contractually entitled.

**RESPONSE:** Paragraph 144 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 144, and in particular deny that Bradley is entitled to any relief.

145. Alternatively, if the Conversion were validly affected (which it was not) she is entitled to the fair value of her extinguished membership interest in Kainos Manager.

**RESPONSE:** Paragraph 145 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 145, and in particular deny that Bradley is entitled to any relief.

146. Nevertheless, Rosen, Sperry, and Kainos Capital LP (**“Contract Defendants”**) in purporting to accomplish the Conversion, have failed to compensate Bradley for the fair value of her managing member membership interest within a reasonable time following the purported Conversion. Instead, Rosen and Sperry later purported to assign Bradley an illusory 12% LP Interest in the converted entity Kainos Capital LP. Unlike Bradley’s 25% membership interest under the LLC Agreement, the purported 12% LP Interest could be reduced or eliminated altogether at any time, for any reason, and without compensation, in the sole discretion of the general partner Kainos GP, the newly formed entity controlled by Rosen and Sperry. That purported assignment of an illusory limited partnership interest does not constitute payment of “fair value” under Delaware law.

**RESPONSE:** The first sentence of Paragraph 146 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in that sentence. Defendants deny the allegations contained in the second sentence of Paragraph 146. With regard to the

third sentence of Paragraph 146, Defendants admit that Kainos Capital, LLC is the general partner of Kainos Capital LP and that Rosen and Sperry are the members of Kainos Capital, LLC. The other allegations contained in the third sentence of Paragraph 146 purport to characterize the contents of the amended and restated limited partnership agreement for Kainos Capital LP and the limited liability company agreement for Kainos Capital, LLC, and Defendants respectfully refer the Court to those agreements for a complete and accurate statement of their contents. To the extent that these allegations are inconsistent with those agreements, Defendants deny the allegations. The fourth sentence of Paragraph 146 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in the fourth sentence of Paragraph 146.

147. Accordingly, Contract Defendants breached the terms and conditions of the LLC Agreement.

**RESPONSE:** Paragraph 147 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 147.

148. As a direct and proximate result of Contract Defendants' breaches of contract, Bradley has suffered and will continue to suffer substantial damages. Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.

**RESPONSE:** Paragraph 148 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the

allegations contained in Paragraph 148 and in particular deny that Bradley is entitled to any relief.

149. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

150. The LLC Agreement contains an implied covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing requires a contracting party to refrain from arbitrary and unreasonable conduct that would prevent the other party from receiving the benefit of their bargain.

**RESPONSE:** Paragraph 150 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 150.

151. If the Conversion were validly affected (which it was not) Contract Defendants breached the implied covenant of good faith and fair dealing by eliminating Plaintiff's Kainos Manager membership interests and/or converting them into a revocable passive limited partnership interests without consideration.

**RESPONSE:** Paragraph 151 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 151.

152. As a direct and proximate result of Contract Defendants' breach of the implied covenant of good faith and fair dealing in the LLC Agreement, Bradley has suffered and will continue to suffer substantial damages. Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.



**RESPONSE:** Paragraph 152 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 152 and in particular deny that Bradley is entitled to any relief.

153. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

154. As member-managers of Kainos Manager and/or as officers who participated materially in the management of Kainos Manager, Rosen, Sperry, and Knickel owed Bradley the full extent of fiduciary duties recognized under Delaware law, including the duties of care and loyalty. Pursuant to those duties, as fiduciaries asking Bradley to make a discretionary decision, such as whether to sign the Consent, Rosen, Sperry, and Knickel were required to disclose all material facts bearing on the decision at issue and were required to refrain from acting disloyally.

**RESPONSE:** Defendants admit that Rosen, Sperry, and Knickel were each member-managers and/or officers of pre-Conversion Kainos Capital, LLC and that each participated in the management of Kainos. The other allegations contained in Paragraph 154 assert legal conclusions to which no response is required.

155. The purported Conversion was a self-interested transaction, and Rosen, Sperry, and Knickel breached their fiduciary duties to Bradley by pursuing a bad faith course of conduct to enrich themselves at Bradley's expense. Because the Conversion was pursued through deception and without any compensation to Bradley for the purpose of wrongfully appropriate her Kainos Manager membership interests, the purported Conversion, if legally effective, was not entirely fair.

**RESPONSE:** Paragraph 155 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 155.

156. In further violation of their fiduciary duties under Delaware law, Rosen, Sperry, and Knickel failed to disclose all material facts bearing on Bradley's decision to sign the Consent. On April 21, 2016, Knickel sent Bradley an email with the subject line "Signatures Required for Closing," wherein Knickel falsely represented that the Conversion was designed only "to take advantage of an exemption from self-employment tax for distributed shares of income."

**RESPONSE:** The first sentence of Paragraph 156 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in that sentence. With regard to the second sentence of Paragraph 156, Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley's signature, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in the second sentence of Paragraph 156 are inconsistent with those documents, Defendants deny such allegations.

157. The version of the Consent attached to Knickel's email intentionally excluded the exhibits to the Consent that would have revealed the Conversion's true nature and purpose. After receiving Knickel's email, Bradley followed up with a phone call where Knickel reiterated the tax-based purpose for the Conversion and told Bradley that she needed sign the Consent immediately because if she did not, the closing for Fund II could not occur.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley's signature, and

respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in the first sentence of Paragraph 157 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 157.

158. Knickel also told her that the new limited partnership agreement had not been drafted yet, but she would have a chance to review and make comments and that Bradley's rights and interest would not materially change. But Defendants failed to disclose to Bradley that the true purpose of the Conversion was to enable Defendants to potentially extinguish Bradley's 25% membership interest and concomitant management rights in Kainos Manager.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 158.

159. Rosen, Sperry, and Knickel also failed to disclose that Rosen and Sperry had formed Kainos GP to exclude Bradley from participation in the management decisions of Kainos Capital LP, the investment manager following the Conversion.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 159.

160. Bradley signed the Consent in justifiable reliance upon the only information she received from her fiduciaries regarding the Conversion.

**RESPONSE:** Defendants admit that Bradley signed the Consent. The other allegations contained in Paragraph 160 assert legal conclusions to which no response is required.

161. Meanwhile, in spite of their ongoing fiduciary duties and Bradley's enduring 25% ownership interest, Defendants have been paying Bradley a fraction of what she has been owed in terms of compensation based on nothing but their discretion.

**RESPONSE:** Defendants deny the allegation that Bradley has an “enduring 25% ownership interest” and the allegation that “Defendants have been paying Bradley a fraction of what she has been owed in terms of compensation based on nothing but their discretion.” Paragraph 161 otherwise asserts legal conclusions to which no response is required.

162. As a direct and proximate result of Rosen’s, Sperry’s, and Knickel’s breaches of their fiduciary duties, Bradley has suffered and will continue to suffer substantial damages. Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.

**RESPONSE:** Paragraph 162 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 162 and in particular deny that Bradley is entitled to any relief.

163. Bradley has no adequate remedy at law.

**RESPONSE:** Paragraph 163 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 163 and in particular deny that Bradley is entitled to any relief.

164. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

165. On April 21, 2016, Knickel sent Bradley an email with the subject line “Signatures Required for Closing,” and attached the Consent. In his email, Knickel falsely characterized that attachment exclusively as “a consent for the conversion of Kainos Capital from an LLC to an LP to take advantage of an exemption from self-employment tax for distributed shares of income,” when the true purpose of the Conversion was to extinguish Plaintiff’s 25% membership interest and concomitant management rights in Kainos Manager.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley’s signature, and Defendants respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 165 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 165.

166. After receiving Knickel’s email, Bradley followed up with a phone call where Knickel reiterated the tax-based purpose for the Conversion and told Bradley that she needed sign the Consent immediately because if she did not, the closing for Fund II could not occur. Knickel also told her that the new limited partnership agreement had not been drafted yet, but she would have a chance to review and make comments and that Bradley’s rights and interest would not materially change.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 166.

167. At the time he sent the April 21, 2016 email and spoke with Bradley on a follow-up call, Knickel knew or believed that his above-described communications to Bradley were false, or otherwise made them with reckless indifference to the truth.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 167.

168. Knickel made the above-described communications to Bradley with the intent to induce Bradley to sign the Consent so that the Conversion could be effectuated.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 168.

169. Bradley signed the Consent in justifiable reliance upon Knickel's misrepresentations despite the fact that he owed Bradley fiduciary duties as the CFO of Kainos Manager.

**RESPONSE:** Defendants admit that Bradley signed the Consent and that Knickel is the CFO of Kainos Capital LP. The other allegations contained in Paragraph 169 assert legal conclusions to which no response is required.

170. By signing the Consent in reliance on Knickel's false representations, Bradley has suffered and will continue to suffer substantial damages. Meanwhile, because she was fraudulent induced to sign the Consent, its legal effect should be invalidated (to the extent that the Conversion was otherwise valid). Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.

**RESPONSE:** Defendants admit that Bradley signed the Consent. The other allegations contained in Paragraph 170 assert legal conclusions to which no response is required. To the extent that a response is required, Defendants deny those allegations and in particular deny that Bradley is entitled to any relief.

171. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

172. On April 21, 2016, Knickel sent Bradley an email with the subject line "Signatures Required for Closing," and attached the Consent. In his email, Knickel falsely characterized that attachment exclusively as "a consent for the

conversion of Kainos Capital from an LLC to an LP to take advantage of an exemption from self-employment tax for distributed shares of income,” when he knew that the true purpose of the Conversion was to extinguish Bradley’s 25% membership interest and concomitant management rights in Kainos Manager.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley’s signature, and Defendants respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 172 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 172.

173. After receiving Knickel’s email, Bradley followed up with a phone call where Knickel reiterated the tax-based purpose for the Conversion and told Bradley that she needed sign the Consent immediately because if she did not, the closing for Fund II could not occur. Knickel also told her that the new limited partnership agreement had not been drafted yet, but she would have a chance to review and make comments and that Bradley’s rights and interest would not materially change.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 173.

174. Knickel made the above-described statements to Bradley with the intent to induce Bradley to sign the Consent so that the Conversion could be effectuated.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 174.

175. Bradley signed the Consent in justifiable reliance upon the representations of Knickel, who owed Bradley fiduciary duties as the CFO of Kainos Manager.

**RESPONSE:** Defendants admit that Bradley signed the Consent and that Knickel is the CFO of Kainos Capital LP. The other allegations contained in Paragraph 175 assert legal conclusions to which no response is required.

176. By signing the Consent in reliance on Knickel's false representations, Bradley has suffered and will continue to suffer substantial damages. Meanwhile, because she was fraudulently induced to sign the Consent, its legal effect should be invalidated (to the extent that the Conversion was otherwise valid). Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.

**RESPONSE:** Defendants admit that Bradley signed the Consent. The remainder of Paragraph 176 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny those allegations and in particular deny that Bradley is entitled to any relief.

177. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

178. Rosen and Sperry entered into a conspiracy with Knickel to extinguish—through the unlawful means of fraud—Bradley's 25% membership interest and concomitant management rights in Kainos Manager.

**RESPONSE:** Paragraph 178 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 178.

179. Upon information and belief, the parties to the conspiracy came to an agreement to extinguish Bradley's membership interest and management rights by fraudulently inducing her to sign the Consent agreeing to the Conversion. The



parties to the conspiracy agreed that Knickel would represent to Bradley that the Conversion was being undertaken solely for tax purposes, while omitting the exhibits to the Consent that would have revealed the Conversion's true nature and purpose.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 179.

180. Knickel committed the unlawful, overt act of fraud by sending Plaintiff an April 21, 2016 email to Bradley with the subject line "Signatures Required for Closing," that attached the Consent, in which Knickel falsely represented that the Conversion was exclusively designed "to take advantage of an exemption from self-employment tax for distributed shares of income." After receiving Knickel's email, Bradley followed up with a phone call where Knickel reiterated the tax-based purpose for the Conversion and told Bradley that she needed to sign the Consent immediately because if she did not, the closing for Fund II could not occur. Knickel also told her that the new limited partnership agreement had not been drafted yet, but she would have a chance to review and make comments and that Bradley's rights and interest would not materially change. For their part, Rosen and Sperry committed an overt act in furtherance of the conspiracy by forming Kainos GP and signing the Consent in an attempt to affect the Conversion in bad faith.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley's signature, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in the first sentence of Paragraph 180 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations set forth in Paragraph 180, except Defendants admit that Rosen and Sperry each signed the Consent.

181. Bradley signed the Consent in justifiable reliance upon the representations of Knickel, who owed Bradley fiduciary duties as the CFO of Kainos Manager.

**RESPONSE:** Defendants admit that Bradley signed the Consent and that Knickel is the CFO of Kainos Capital. The other allegations contained in Paragraph 181 assert legal conclusions to which no response is required.

182. By signing the Consent in reliance on Knickel's false representations, Bradley has suffered and will continue to suffer substantial damages. To the extent that Bradley suffered injuries from Knickel's fraud in furtherance of the conspirators' common purpose of inducing Bradley to sign the Consent, Rosen and Sperry are jointly and severally liable for any damages attributable to that fraud. Should the Court determine that rescission is impracticable, Bradley seeks compensatory and/or rescissory damages in an amount to be proved at trial.

**RESPONSE:** Defendants admit that Bradley signed the Consent. The other allegations contained in Paragraph 182 assert legal conclusions to which no response is required. To the extent that a response is required, Defendants deny those allegations and in particular deny that Bradley is entitled to any relief.

183. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

184. A clear controversy exists between Bradley and Defendants as to whether the Conversion was valid, first, because Bradley signature on the Consent was obtained through Rosen's, Sperry's, and Knickel's fraudulent inducement, coercion, and breaches of their fiduciary duties of loyalty and disclosure, and second, because the Certificate of Conversion was improperly filed by Kainos GP, an entity that did not yet exist. Thus, a clear controversy exists as to whether the Conversion of Kainos Manager into Kainos Capital LP was effective.

**RESPONSE:** Paragraph 184 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 184.

185. The controversy involves the rights or other legal relations of the Plaintiff and this action is asserted against persons and entities who have an interest in contesting the claim and have contested the claims.

**RESPONSE:** Paragraph 185 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 185.

186. The controversy is between parties whose interests are real and adverse, and the issues involved are ripe for judicial determination.

**RESPONSE:** Paragraph 186 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 186.

187. Plaintiff seeks a declaratory judgment that the purported Conversion of Kainos Manager to Kainos Capital LP was ineffective and invalid.

**RESPONSE:** Paragraph 187 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

188. Plaintiff further seeks a declaration that because the Conversion was invalid, the Conversion is treated as though it did not occur, and thus Kainos Manager, and not Kainos Capital LP, is the active legal entity.

**RESPONSE:** Paragraph 188 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

189. Plaintiff also seeks a declaration that the ownership of Kainos Manager remains the same as it was prior to the Conversion as stated in the Assignment and Assumption Agreement and that the governing documents for Kainos Manager are the LLC Agreement and the Assignment and Assumption Agreement.

**RESPONSE:** Paragraph 189 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

190. Plaintiff seeks a declaration that because the Conversion was invalid, the Certificate of Conversion, LP Agreement, and Amended LP Agreement are invalid and unenforceable.

**RESPONSE:** Paragraph 190 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

191. Plaintiff seeks a declaration that because Kainos Capital LP is not a legal entity, the benefits and obligations of all agreements entered into by Kainos Manager prior to the Conversion will flow to Kainos Manager.

**RESPONSE:** Paragraph 191 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

192. Plaintiff seeks a declaration that because Kainos Capital LP is not a legal entity, the benefits and obligations of all agreements entered into by Kainos Capital LP since the Conversion will flow to Kainos Manager.

**RESPONSE:** Paragraph 192 describes the declaratory relief that Bradley seeks, and this description requires no response. To the extent that a response is required, Defendants deny that Bradley is entitled to any such relief.

193. A declaratory judgment is necessary and proper in order to determine Bradley's rights and to determine the validity of the Conversion of Kainos Manager into Kainos Capital LP.

**RESPONSE:** Paragraph 193 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 193 and in particular deny that Bradley is entitled to any relief.

194. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

195. If the Conversion were legally valid (which it was not), Bradley is entitled to rescission of the Conversion and related alterations to the investment manager's governance and ownership structure based on the grounds of fraud, misrepresentation, breach of fiduciary duties, unilateral mistake, unconscionability, duress, and breach of contract.

**RESPONSE:** Paragraph 195 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 195 and in particular deny that Bradley is entitled to any relief.

196. The Conversion was marred by fraud and misrepresentation because it was falsely represented to Bradley that the Conversion was designed *solely* "to

take advantage of an exemption from self-employment tax for distributed shares of income.” The version of the Consent sent to Bradley intentionally excluded the exhibits to the Consent that would have revealed the Conversion’s true nature and purpose. Bradley was also told that the new limited partnership agreement had not been drafted yet, but that she would have a chance to review and make comments and that, in any event, Bradley’s rights and interest would not materially change.

**RESPONSE:** Defendants admit that on April 21, 2016, Knickel sent Bradley an e-mail that attached certain documents for Bradley’s signature, and respectfully refer the Court to that e-mail and its attachments for a complete and accurate statement of their contents. To the extent that the allegations contained in Paragraph 196 are inconsistent with those documents, Defendants deny such allegations. Defendants otherwise deny the allegations contained in Paragraph 196.

197. The Conversion was also marred by breaches of fiduciary duty. The Conversion was a self-interested transaction, and Rosen, Sperry, and Knickel breached their fiduciary duties to Bradley by pursuing a bad faith course of conduct to enrich themselves at Bradley’s expense. Rosen, Sperry, and Knickel also breached their fiduciary duties to Bradley by failing to disclose that the true purpose of the Conversion was to extinguish Bradley’s 25% membership interest and concomitant management rights in Kainos Manager. Rosen, Sperry, and Knickel similarly failed to disclose, in breach of their fiduciary duties to Bradley, that Rosen and Sperry had formed Defendant Kainos GP to exclude Bradley from participation in the management decisions of Kainos Capital LP, the investment manager following the Conversion.

**RESPONSE:** Paragraph 197 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 197.

198. The Conversion was further marred by Bradley’s unilateral mistake that the Conversion would not materially change her rights and interest in the

investment manager. Bradley exercised reasonable care in ascertaining the Conversion's purpose and impact, but her mistake was induced by representations from her fiduciaries regarding the Conversion's purpose and impact. Given the facts and equities here, it would be unconscionable for Defendants to retain the benefits of their deceptive and bad-faith conduct that induced Bradley's unilateral mistake.

**RESPONSE:** Paragraph 198 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 198.

199. The Conversion was also marred by duress. Bradley was told that she had to sign the Consent immediately because if she did not, the closing for Fund II could not occur. Defendants also knew that Bradley had mortgaged her home to make the required capital investment in Kainos, that much of her net worth was in Kainos, and that she was the major breadwinner for her family of six. Aware that her family's financial dependence on Kainos made her particularly susceptible to a threat that put her Kainos investment at risk, Defendants later brazenly used it as leverage to ensure their continued control of Kainos. Bradley was repeatedly told to either do what she was told, or she would be forced to leave Kainos and would lose her investment in and future at Kainos.

**RESPONSE:** The first sentence of Paragraph 199 asserts a legal conclusion to which no response is required. To the extent that a response is required, Defendants deny the allegation contained in that sentence. Defendants otherwise deny the allegations contained in Paragraph 199.

200. Finally, the Conversion was marred by Defendants' unjustified failure to perform under the LLC Agreement, which pursuant to Delaware law required payment of the fair value of Bradley's managing member membership interest within a reasonable time following the Conversion. Defendants materially breached the LLC Agreement by failing to pay the fair value of Bradley's 25% managing member membership interest in Kainos Manager within a reasonable time following the Conversion.

**RESPONSE:** Paragraph 200 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 200.

201. Even assuming *arguendo* that Defendants technically satisfied their express obligations under the LLC Agreement despite failing to pay Plaintiff fair value for her membership interest following the Conversion, Defendants breached the implied covenant of good faith and fair dealing in the LLC Agreement by procuring Bradley's signature on the Consent under false pretenses for the sole purpose of extinguishing her 25% membership interest in Kainos Manager, thus destroying Bradley's rights to receive the fruits of the LLC Agreement.

**RESPONSE:** Paragraph 201 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 201.

202. Bradley has no full and adequate remedy at law absent equitable rescission of the Conversion and related alterations to the investment manager's governance and ownership structure because an award of damages would not be adequate to restore Bradley to her original position. The parties can be restored to the *status quo ante* through (i) rescission of the Conversion and related alterations to the investment manager's governance and ownership structure; (ii) reinstatement of Bradley's membership interests in Kainos Manager as they existed just before the Conversion; and (iii) imposition of a constructive trust over all Management Fees, Transactional Fees, and Monitoring Fees paid to Kainos Capital LP by Fund I and Fund II, along with any distributions made by the investment manager following the Conversion.

**RESPONSE:** Paragraph 202 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 202 and in particular deny that Bradley is entitled to any relief.



203. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

204. If the Conversion were legally valid (which it was not), Defendants received benefits as a result of the Conversion at Bradley's expense. Specifically, Rosen and Sperry consolidated management power over the post-Conversion investment manager Kainos Capital LP through their control of its general partner, Kainos GP, including the ability to re-allocate limited partnership interests at will to protect their own interests while marginalizing Bradley. Rosen and Sperry have also received distributions from Kainos Capital LP on account of these ill-gotten interests. Upon information and belief, Knickel also received benefits for his bad-faith conduct in carrying out the Conversion scheme in the form of increased bonus payouts and a limited partnership interest in Kainos Capital LP.

**RESPONSE:** The first sentence in Paragraph 204 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in that sentence. Defendants otherwise deny the allegations contained in Paragraph 204, except Defendants admit that Rosen and Sperry have received distributions from Kainos Capital LP.

205. It would be against equity and good conscience for Defendants to retain the benefits of their deceptive and bad-faith conduct. Accordingly, Bradley is entitled to recover the amount by which Defendants have been unjustly enriched, to be proven at trial.

**RESPONSE:** Paragraph 205 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 205 and in particular deny that Bradley is entitled to any relief.

206. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

207. Alternatively, assuming *arguendo* that the Amended LP Agreement is effective despite the presence of fraud, mistake, and duress, the Amended LP Agreement contains an implied covenant of good faith and fair dealing. Where a contract contemplates that a party exercise discretion in performing its duties thereunder, the implied duty of good faith and fair dealing includes a promise that a party will not act in bad faith exercising that discretion.

**RESPONSE:** Paragraph 207 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 207.

208. The general partner of Kainos Capital LP under the Amended LP Agreement is Kainos GP, an entity controlled by Rosen and Sperry, who are themselves limited partners of Kainos Capital LP.

**RESPONSE:** Defendants admit that Kainos Capital, LLC is the general partner of Kainos Capital LP, that Rosen and Sperry are members of Kainos Capital, LLC, and that Rosen and Sperry hold limited partnership interests in Kainos Capital LP. Defendants otherwise deny the allegations contained in Paragraph 208.

209. Section 3.6 of the Amended LP Agreement states: “The General Partner in its sole discretion determines the Percentage Interest of each Limited Partner. A Limited Partner’s Percentage Interest may be reduced, and additional Percentage Interests may be issued, by the General Partner at any time in its sole discretion.”

**RESPONSE:** Paragraph 209 purports to quote from the amended and restated limited partnership agreement of Kainos Capital LP, and Defendants respectfully refer the Court to that agreement for a complete and accurate statement of its contents. To the extent that the allegations contained in Paragraph 209 are inconsistent with that agreement, Defendants deny such allegations.

210. Kainos GP breached the implied covenant of good faith and fair dealing in the Amended LP Agreement by arbitrarily, capriciously, and unreasonably exercising their discretion to reduce Bradley's interest in the investment manager, destroying Bradley's right to receive the fruits of her bargain. And when Bradley asserted her right to an interest in the investment manager reflective of her status as a Kainos co-founder and vital fundraiser, Defendants Sperry and Rosen informed her of their retaliatory plan to use their control of Kainos GP to further reduce Bradley's interest, and are threatening to eliminate it altogether in an effort to cow Bradley into submission.

**RESPONSE:** The first sentence of Paragraph 210 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in that sentence. Defendants deny the allegations contained in the second sentence of Paragraph 210.

211. As a direct and proximate result of Kainos GP's breaches of the implied covenant of good faith and fair dealing in the Amended LP Agreement, Bradley has suffered and will continue to suffer substantial damages in an amount to be proven at trial.

**RESPONSE:** Paragraph 211 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the

allegations contained in Paragraph 211 and in particular deny that Bradley is entitled to any relief.

212. Plaintiff repeats and re-alleges each and every allegation contained above as if fully set forth herein.

**RESPONSE:** Defendants incorporate each and every one of the foregoing responses as if fully set forth herein.

213. Defendant Kainos Capital LP is in the best position to provide information related to the parties holding interests in the investment manager, as well as any distributions made on account of those interests since the Conversion.

**RESPONSE:** Paragraph 213 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 213.

214. Absent an accounting, Bradley is unable to ascertain the extent to which distributions that have been made since the Conversion accurately reflect the amounts that should have been distributed under operating agreements for the investment manager.

**RESPONSE:** Paragraph 214 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 214.

215. Despite requesting this information from Defendants, Defendants have refused to provide it. Any documents that Defendants were willing to provide have been redacted to remove any information that might identify other parties that may have received distributions from the investment manager since the Conversion.

**RESPONSE:** Defendants deny the allegations contained in Paragraph 215.

216. Because Bradley has no adequate remedy at law without additional detail regarding all distributions made since the Conversion, Bradley is entitled to an accounting.

**RESPONSE:** Paragraph 216 asserts legal conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 216 and in particular deny that Bradley is entitled to any relief.

### **Defenses**

As defenses, Defendants allege, assert, and aver the following, which apply to each and every cause of action asserted in the Complaint against each of the Defendants to which such defense is or may be applicable. Defendants do not intend by the statement of any defense herein to assume the burden of proof, persuasion, or production for anything as to which the appropriate law places the burden of proof, persuasion, or production on Bradley. Defendants do not concede that facts contrary to one or more of the averments that follow would support liability as to any Defendant.

#### First Defense

The Complaint fails to state a claim upon which relief can be granted.

#### Second Defense

In light of the facts and claims set forth in Defendants' Verified Counterclaims, Bradley's claims are barred by the doctrine of unclean hands.

### Third Defense

Bradley's claims are barred by the doctrine of laches. As described in Defendants' Verified Counterclaims, Bradley knew of the facts giving rise to her alleged claims no later than 2016, unreasonably delayed for years in suing on those claims, and the resulting delay has injured or prejudiced defendants, for, among other reasons, the reasons set forth in the Verified Counterclaims.

### Fourth Defense

Bradley's claims are barred by the doctrine of waiver. As described in Defendants' Verified Counterclaims, Bradley knew of her claimed rights and voluntarily and intentionally relinquished them in accepting the economic and governance changes reflected in the amended and restated limited partnership agreement for Kainos Capital LP.

### Fifth Defense

Bradley's claims are barred by the doctrine of estoppel. For the reasons described in Defendants' Verified Counterclaims, Defendants lacked knowledge or the means of obtaining knowledge that Bradley had purportedly not accepted the economic and governance changes that are reflected in the amended and restated limited partnership agreement for Kainos Capital LP. Defendants reasonably relied upon Bradley's conduct reflecting acceptance of these changes and suffered

a prejudicial change of position as a result of their reasonable reliance upon that conduct.

#### Sixth Defense

Bradley's claims are barred by the doctrine of acquiescence. As described in Defendants' Verified Counterclaims, Bradley had knowledge of her claimed rights and the material facts no later than 2016, but sat on those claimed rights for years, freely took action that amounted to recognition of the complained-of acts, and acted in a manner inconsistent with her recent repudiation, leading Defendants to reasonably believe that Bradley had approved of the complained-of acts.

#### Seventh Defense

Bradley's claims are barred by the doctrine of ratification. As described in Defendants' Verified Counterclaims, with respect to the Conversion and the changes to Kainos's economic and governance structure reflected in the amended and restated limited partnership agreement for Kainos Capital LP, Bradley had actual or imputed knowledge of all material facts and took affirmative and voluntary action reflecting her assent, including by accepting the benefits that the Conversion and the amended and restated limited partnership agreement for Kainos Capital LP conferred on her.

#### Eighth Defense

In light of the facts and claims set forth in Defendants' Verified Counterclaims, Bradley's claims are barred by Bradley's own improper, unlawful, inequitable conduct and Bradley's own breaches of fiduciary duties.

#### Ninth Defense

For the reasons described in Defendants' Verified Counterclaims, Bradley has not sustained any damages compensable as a result of any act or omissions of Defendants.

#### Tenth Defense

For the reasons set forth in Defendants' Verified Counterclaims, the Complaint fails to state facts that would entitle Bradley to attorneys' fees or costs.

#### Additional Defenses

At this time, the Complaint does not describe the claims made against Defendants with sufficient particularity to allow Defendants to determine all of their defenses, and Defendants therefore lack sufficient knowledge to form a belief as to the existence and availability of additional affirmative defenses. Defendants reserve the right to assert additional affirmative defenses as they discover them through discovery or other investigation.



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Dated: March 26, 2019

CERTIFICATE OF SERVICE

I hereby certify that on March 26, 2019, the foregoing was caused to be served upon the following counsel of record via File & Serve*Xpress*:

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