EFiled: Apr 02 2018 08:15AM EDT
Transaction ID 61861089
Case No. 2018-0234-

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

In re BAY HILLS EMERGING PARTNERS I, L.P.; BAY HILLS EMERGING PARTNERS II, L.P.; BAY HILLS EMERGING PARTNERS II-B, L.P.; and BAY HILLS EMERGING PARTNERS III, L.P., Delaware limited partnerships.	C.A. No. ____-____-___

VERIFIED COMPLAINT PURSUANT TO 6 DELAWARE CODE §§ 17-110 AND 17-111

A. Thompson Bayliss (#4379)
David A. Seal (#5992)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000
(302) 778-1001 (fax)

Attorneys for Plaintiffs BHEP GP I, LLC; BHEP GP II, LLC; BHEP GP II-B, LLC; BHEP GP III, LLC; and Bay Hills Capital Management, LLC

OF COUNSEL:

James C. Rutten
Erin J. Cox
Eric P. Tuttle
John B. Major
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071-3426
(213) 683-9100
(213) 687-3702 (fax)

Kevin M. Gallagher (#5337)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7692
(302) 651-7701 (fax)

Attorneys for Plaintiffs / Nominal Plaintiffs Bay Hills Emerging Partners I, L.P.; Bay Hills Emerging Partners II, L.P.; Bay Hills Emerging Partners II-B, L.P.; and Bay Hills Emerging Partners III, L.P.

OF COUNSEL:

Mark Goodman
BAKER & MCKENZIE LLP
Two Embarcadero Center, Suite 1100
San Francisco, California 94111
(415) 576-3080
(415) 374-2499 (fax)

TABLE OF CONTENTS

Plaintiffs BHEP GP I, LLC (the "Fund I GP"), BHEP GP II, LLC (the "Fund II GP"), BHEP GP II-B, LLC (the "Fund II-B GP"), BHEP GP III, LLC (the "Fund III GP," and together with the Fund I, II, and II-B GPs, the "Fund GPs"), Bay Hills Emerging Partners I, L.P. ("Fund I"), Bay Hills Emerging Partners II, L.P. ("Fund II"), Bay Hills Emerging Partners II-B, L.P. ("Fund II-B"), Bay Hills Emerging Partners III, L.P. ("Fund III," and together with Funds I, II, and II-B, the "Funds"), and Bay Hills Capital Management, LLC ("Bay Hills") bring this action pursuant to 6 Delaware Code §§ 17-110 and 17-111.

NATURE OF THE ACTION

1. This case arises from the efforts of Defendant Kentucky Retirement Systems ("KRS") to wrest control of four highly profitable investment Funds from a boutique investment firm, and to seize more than $20 million in value to which KRS is not entitled.

2. KRS is a massive $16 billion public pension plan that once was a standard in the industry as one of the most successful pension plans in the United States. In 2000, its retirement plans were fully funded, and boasted an actuarial surplus of $4.4 billion. Today, KRS's retirement plans are teetering on the edge of insolvency—with an actuarial deficit of at least $27 billion—as a result of, among other things, market losses, lack of legislative funding, and what its recently appointed board chair called "[a]ggressively wrong" assumptions, "math errors,"

and a board that was not "paying attention." Adam Beam, *Kentucky's Retirement Debt Soars After Pessimistic Outlook*, Associated Press (May 18, 2017) (quoting KRS board chair); John Cheves, *Troubled Kentucky Pension System Might Need Billions More Than Assumed*, Lexington Herald Leader (Feb. 16, 2017) (same). KRS has been and continues to be under enormous pressure to correct these issues and extract itself from the deficit in which it has been operating. It has embarked on a mission to "reduce[] the number of outside investment consultants" and "lower management fees"—both of which KRS can accomplish by wresting control of investment portfolios from the outside firms that built them, whether or not KRS is entitled to do so under the governing contracts. KRS Board Chair, *Board Busy Doing "No Harm"*, Courier-Journal (Mar. 5, 2017).

3. Bay Hills is a San Francisco-based investment firm with eight employees. It created the Funds pursuant to the Delaware Revised Uniform Limited Partnership Act to be "funds of funds," *i.e.*, investment funds that invest in underlying private equity funds (the "Underlying Funds"). Bay Hills serves as investment advisor to the Funds. Four Bay Hills-related entities, the Fund GPs, serve as the Funds' respective general partners. KRS is the Funds' sole limited partner.

4. Bay Hills' and the Fund GPs' expertise, diligence, and hard work, particularly in the Funds' early years, have turned the Funds into enormously

successful investments today. The parties have invested a total of $139 million in the Funds, and Bay Hills' and the Fund GPs' efforts have created more than *$335 million* in investment returns and investment value, including some $117 million in cash distributions to KRS to date. In 2015, "two [of the] Bay Hills funds" were singled out by KRS's investment consultant as "key value-drivers" because they had "outperformed versus the other strategies in [KRS's] portfolio." (*Customized Portfolio Solutions Presentation to KRS* at 24, 27, 52 (Aug. 10, 2015).) In 2017, another of KRS's consultants hailed Fund II as the second-strongest performer out of 93 assets in KRS's alternative investments portfolio.

5. The Funds also stand to generate substantial additional returns in the coming years. Investment funds tend to perform along a so-called "J-curve," meaning that in their early years (corresponding to the left and bottom parts of the J), returns tend to be negative due to up-front expenses before flattening out; and in the later years (the right part of the J), returns turn positive and typically increase exponentially, with the expectation that this stage of the funds' lifecycle will yield significant returns for the partners in the funds. Here, Funds I, II, and II-B were established in 2007, 2009, and 2010, respectively, have come through the early years when up-front work and costs resulted in negative returns, and currently are generating significant positive returns. Fund III is less than five years old and is poised to begin generating positive returns as it enters the later stages of its

lifecycle and the part of the J-curve where maximum returns on investment are realized.

6. Now that the work and expenses of the early years are over, and the Funds are extraordinarily well positioned, KRS has launched a campaign to oust Bay Hills and the Fund GPs and to seize control of the Funds, all in derogation of the Funds' limited partnership agreements ("LPAs") and basic principles of equity and fairness.[1] By doing so, KRS is seeking to capture for itself over $20 million in future management fees and "carried interest" (*i.e.*, investment returns to which the Fund GPs are contractually entitled by virtue of their service as general partners).

7. In June 2016, Bay Hills shared projections of the Funds' future performance with KRS's now-fired chief investment officer David Peden—revealing to him precisely how profitable the Funds were expected to become. A few months later, Mr. Peden said that KRS intended to move all of the Funds' investments in-house to KRS. Shocked, Bay Hills informed him that the Funds' LPAs precluded him from doing so.

8. On May 10, 2017, KRS served a Notice of Removal of the Fund GPs, attempting to manufacture various grounds for "Cause" for removal as defined in and required by the LPAs. KRS alleged, for example, that the Fund GPs engaged

[1] The LPAs for Funds I, II, II-B, and III are attached hereto as Exhibits 1 through 4, respectively.

in "willful and reckless disregard" of KRS's rights by "terminat[ing the Fund's auditor] and hir[ing] a replacement auditor . . . without consulting or obtaining the approval of KRS." (May 10, 2017 Ltr. from KRS (Ex. 5 hereto) at 5.) In fact, KRS had no grounds on which to make such a claim: On October 28, 2015, its personnel specifically approved replacing the Funds' auditor with an auditor that had more experience in the private equity space—as proven by contemporaneous documentary evidence.

9. Similarly, KRS purported to have "Cause" to remove the Fund III GP on the ground that it "manipulated the [Fund III] overhead expenses." (*Id.* at 4.) In fact, it was KRS that had pushed for the challenged expense structure when negotiating the Fund III LPA as a tradeoff for unusually low management fees. Bay Hills actually contacted KRS in November 2014 to confirm that KRS approved of the methodology employed, and KRS approved it—again as demonstrated by contemporaneous documentary evidence.

10. KRS also tried to use a purported error in a spreadsheet that had resulted in paying carried interest to the Fund I and II GPs sooner than allegedly due (an issue that, in any event, would have self-corrected over time). Though KRS had been told in writing that the Fund I and II GPs would repay all monies owed as a result of the alleged error—which they since have done—KRS used this alleged error as a pretext for trying to seize control of Funds I and II, improperly

accusing the Fund I and II GPs of "gross negligence," "reckless disregard," and a "deliberate attempt . . . to misappropriate" assets. (*Id.* at 2.) As KRS well knew, however, a simple spreadsheet error (let alone one that has been rectified) does not come close to satisfying the stringent contractual standard for "Cause" for removal of a Fund GP as required by the parties' contracts.

11. Unable to substantiate its accusations of "Cause," KRS withdrew its Notice of Removal in July 2017. But KRS continued to try to manufacture other ways to wrest control of the Funds from the Fund GPs.

12. Fund III—in which investment returns are poised to skyrocket—has been the focal point of many of KRS's efforts. In October 2016, Fund III experienced a so-called "Key Person Event" when an important employee departed Bay Hills, and this gave KRS the contractual right to dissolve the partnership. Given that Fund III's performance had been and was expected to remain strong, a typical limited partner would have reached out to the general partner and the investment advisor about how best to address the issue, with a view to continuing the partnership. But KRS, without so much as trying to consult with the Fund III GP or Bay Hills to resolve the issue, elected to dissolve the partnership and began attempting to transfer Fund III's assets to KRS, and later, to an entity controlled by KRS.

13. Fund III, however, does not hold investments that can be freely transferred, even in dissolution. Rather, it primarily holds limited partnership interests in Underlying Funds, and any transfers of such interests require the Underlying Funds' consent. Particularly given that KRS is one of the most mismanaged and scandal-wracked public pension plans in the country, all but two of the Underlying Funds have been unwilling to consent to the transfers that KRS has demanded; many have indicated that they do not want to become direct partners with KRS or a KRS-controlled entity. Notwithstanding the actual reasons for the failure to transfer investments, KRS has attempted to blame Bay Hills and the Fund III GP for the Underlying Funds' refusal to consent to the transfers KRS desires.

14. On February 8, 2018, KRS served a *second* Notice of Removal of all the Fund GPs. KRS's second removal notice, like its first, takes a kitchen-sink approach, attempting to transform every disagreement about how to interpret and apply the LPAs into misconduct by the Fund GPs and Bay Hills, and "Cause" for removal. Among KRS's many specious contentions, it accuses the Fund III GP of "material breach of the agreement" by being "lukewarm" to KRS' desired transfer of Fund III's assets, and by not "enthusiastically endors[ing] that course of action." (Feb. 8, 2018 Ltr. from KRS (Ex. 9 hereto) at 5.) KRS has no basis for claiming either that the Fund III GP did not do enough to endorse KRS's choice of action or

that not "enthusiastically endorsing" KRS's desires is a breach of the LPA. In fact, nothing in the LPA requires the Fund III GP to "enthusiastically endorse" a course of action, much less one that it believes to be impracticable, or to imperil its credibility by urging the Underlying Funds to associate directly with an entity that has proven itself to be a poor business partner.

15. Despite the Fund GPs' and Bay Hills' extensive and good-faith efforts to resolve the parties' disputes, KRS seems bent on seizing control of the Funds. It has refused to withdraw the second removal notice, which purports to become effective within 60 days thereof, *i.e.*, by April 9, 2018. KRS thus has left Plaintiffs with no choice but to seek relief from the Court.

JURISDICTION

16. The Court has jurisdiction over this action pursuant to 6 Delaware Code § 17-110, which provides in pertinent part: "Upon application of any partner, the Court of Chancery may hear and determine the validity of any . . . removal . . . of a general partner of a limited partnership, and the right of any person to become or continue to be a general partner of a limited partnership . . . ; and to that end make such order or decree in any such case as may be just and proper . . . . In any such application, the limited partnership shall be named as a party . . . ."

17. The Court also has jurisdiction over this action pursuant to 6 Delaware Code § 17-111, which provides in pertinent part: "Any action to

interpret, apply or enforce the provisions of a partnership agreement, . . . or the duties, obligations or liabilities among partners or of partners to the limited partnership, or the rights or powers of, or restrictions on, the limited partnership or partners, or any provision of this chapter, or any other instrument, document, agreement or certificate contemplated by any provision of this chapter, may be brought in the Court of Chancery."

THE PARTIES

18. Plaintiff BHEP GP I, LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. It is the sole general partner of Fund I.

19. Plaintiff BHEP GP II, LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. It is the sole general partner of Fund II.

20. Plaintiff BHEP GP II-B, LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. It is the sole general partner of Fund II-B.

21. Plaintiff BHEP GP III, LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. It is the sole general partner of Fund III.

22. Bay Hills Emerging Partners I, L.P. is a limited partnership organized under the Delaware Revised Uniform Limited Partnership Act with its principal place of business in San Francisco, California. It is a Nominal Plaintiff as to Count 1 and a Plaintiff as to Count 2.

23. Bay Hills Emerging Partners II, L.P. is a limited partnership organized under the Delaware Revised Uniform Limited Partnership Act with its principal place of business in San Francisco, California. It is a Nominal Plaintiff as to Count 1 and a Plaintiff as to Count 2.

24. Bay Hills Emerging Partners II-B, L.P. is a limited partnership organized under the Delaware Revised Uniform Limited Partnership Act with its principal place of business in San Francisco, California. It is a Nominal Plaintiff as to Count 1 and a Plaintiff as to Count 2.

25. Bay Hills Emerging Partners III, L.P. is a limited partnership organized under the Delaware Revised Uniform Limited Partnership Act with its principal place of business in San Francisco, California. It is a Nominal Plaintiff as to Count 1 and a Plaintiff as to Count 2.

26. Plaintiff Bay Hills Capital Management, LLC is a limited liability company organized under the laws of the State of Delaware with its principal place of business in San Francisco, California. Through its eight employees, it serves as investment advisor to the Funds.

27. Defendant Kentucky Retirement Systems is a statutorily created entity that manages and administers the retirement systems of the Commonwealth of Kentucky. It is the sole limited partner in each of the Funds. According to its annual report for the fiscal year ending June 30, 2017, KRS has net assets of more than $16.7 billion.

28. Defendant Kentucky Retirement Systems Pension Fund is a statutorily created entity with responsibilities related to certain pension plans that KRS oversees and manages. The LPAs for the Funds provide that KRS's investments in the Funds shall be allocated in part to Kentucky Retirement Systems Pension Fund, and Kentucky Retirement Systems Pension Fund is listed in at least some of the Funds' subscription documents as a subscriber in the Funds. Kentucky Retirement Systems Pension Fund therefore has an interest in this lawsuit, and in whether the declaration sought herein shall be issued.

29. Defendant Kentucky Retirement Systems Insurance Fund is a statutorily created entity with responsibilities related to certain insurance plans that KRS oversees and manages. The LPAs for the Funds provide that KRS's investments in the Funds shall be allocated in part to Kentucky Retirement Systems Insurance Fund, and Kentucky Retirement Systems Insurance Fund is listed in at least some of the Funds' subscription documents as a subscriber in the

Funds. Kentucky Retirement Systems Insurance Fund therefore has an interest in this lawsuit, and in whether the declaration sought herein shall be issued.

FACTUAL ALLEGATIONS

A. The Funds Are Created

30. Bay Hills is a boutique investment firm with eight employees, some of whom are part-time. What it lacks in size it makes up for in investment acumen. Bay Hills has a vast network of relationships in the private equity space, an established track record of building "funds of funds" into highly profitable enterprises, and a sterling reputation in the investment community. In 2017, Preqin, an industry private equity benchmark provider, included Bay Hills in its Top 17 "Most Consistent Top Performing Private Equity Fund of Funds Managers," out of 92 managers and 987 funds considered. Preqin gave Bay Hills its third-highest average quartile ranking. Because of Bay Hills' hard-won standing in the industry, it has been able to gain access to sought-after private equity investments that many other investors, such as KRS, cannot access.

31. Bay Hills created Fund I in 2007, and created the Fund I GP to be its sole general partner. KRS is the sole limited partner in Fund I.

32. The parties' roles and responsibilities in Fund I are set out in the Fund I LPA. Bay Hills serves as investment advisor to the Fund. The Fund I GP runs the day-to-day business of the Fund through personnel who are employees of

Bay Hills. The Fund I GP has "exclusive management and control of the affairs of the Partnership and [has] the power and authority to do all things necessary or proper to carry out the purposes of the Partnership." (Fund I LPA § 6.1.) KRS, by contrast, is a passive investor; it "take[s] no part in the management or control of the Partnership business, and . . . [has] no right or authority to act for the Partnership." (*Id.* § 7.1.)

33. The parties' basic economic bargain is expressly set out in the LPA and reflects the parties' mutual intent and very different roles. Bay Hills earns a "management fee" for its investment advisory services. (*See id.* § 6.5(b).) Both the Fund I GP and KRS make capital contributions to the Fund (in the Fund I GP's case, through a note in favor of the Fund). Both the Fund I GP and KRS share in the Fund's gains and losses, but their respective shares of the gains do not entirely correspond to their respective capital contributions. Rather, because the Fund I GP has a much more active role, it is entitled in certain circumstances to payment of "carried interest" or "carry"—that is, the Fund I GP is entitled to a portion of the investment returns that is over and above its proportionate stake in the partnership. (*See id.* § 5.2(b)(iii), (b)(iv)(B).)

34. After launching Fund I in 2007, Bay Hills created Fund II in 2009, Fund II-B in 2010, and Fund III in 2013. Each of these Funds likewise has its own separate general partner (the Fund II GP, the Fund II-B GP, and the Fund III GP,

respectively). And in each of these Funds, KRS is the sole limited partner, and Bay Hills serves as investment advisor. The Funds' LPAs are similar, insofar as relevant here, with respect to the basic roles and responsibilities of the parties, and the basic economics of the partnerships, as summarized immediately above.

35. The LPAs for all four Funds contain broad exculpatory provisions running in favor of their respective general partners and of Bay Hills. They provide that "[n]either the General Partner nor [Bay Hills] will be liable to any Limited Partner . . . for any act or omission taken or omitted . . . except in the case of the General Partner's or [Bay Hills'] . . . own bad faith, gross negligence, willful misconduct or [breach of fiduciary duty] under this Agreement," or in Fund III, "material breach of this Agreement," "in each case as determined by a final judgment." (Fund I, II, & II-B LPAs § 6.4; Fund III LPA § 7.4.)

36. The LPAs' provisions limit and modify any fiduciary or other non-contractual duties the Fund GPs otherwise might owe, and expressly permit the Fund GPs to rely on those provisions:

> Pursuant to Section 17-1101(d) of the [Delaware Revised Uniform Limited Partnership] Act, to the extent that, at law or in equity, the General Partner has duties (including fiduciary duties) and liabilities relating thereto to . . . another Partner, the General Partner acting under this Agreement shall not be liable to . . . such other Partner for its good faith reliance on the provisions contained in this Agreement. Such provisions, to the extent that they expand or restrict the duties and liabilities of the General Partner otherwise existing at law or in equity, are agreed

> by the Partners to modify to that extent such other duties and liabilities of the General Partner.

(Fund I, II, & II-B LPAs § 12.10; Fund III LPA § 13.10.)

37. The LPAs do not permit KRS to remove the general partner except in sharply circumscribed circumstances. They narrowly define "Cause" for removal, insofar as relevant here, as "the commission by the General Partner of any act of gross negligence or reckless or willful misconduct which, in each case, materially and adversely affects the Partnership, . . . or the commission by the General Partner [or in Fund III, any member of the General Partner] of a material violation of applicable United States federal securities laws." (Funds I, II, & II-B LPAs § 7.4(a); Fund III LPA § 8.4(a).) The LPA for Fund III, but not the LPAs for the other Funds, also defines "Cause" to include "a material breach of this Agreement by the General Partner or a breach of fiduciary duty." (Fund III LPA § 8.4(a).) Each of the LPAs provides "the General Partner [with] sixty (60) days from receipt of [a] notice [of removal] to remedy or otherwise cure such Cause for removal." (Funds I, II, & II-B LPAs § 7.4(a); Fund III LPA § 8.4(a).)

38. Accordingly, if KRS wishes to establish "Cause" for removal, it must prove at least three things. First, it must prove that the relevant Fund GP committed *at least* gross negligence or a federal securities law violation (or in Fund III, a breach of the LPA or of fiduciary duty), and in doing so, KRS must overcome the fact that the LPAs expressly permit the Fund GPs to rely in good

faith on the LPAs' provisions. (*See* Fund I, II, & II-B LPAs § 12.10; Fund III LPA § 13.10.) Second, KRS must prove that the gross negligence, securities violation, or other breach was material. And third, KRS must prove that the issue was not cured within 60 days of the removal notice.

B. <u>The Funds Become Massively Profitable For KRS</u>

39. When a fund of funds is formed, it exists as little more than a piece of paper filed with the Delaware Secretary of State. Turning the fund into a profitable enterprise requires an enormous amount of expertise, hard work, and economic sacrifice on the part of the investment advisor and the general partner.

40. Much of this work and corresponding expense occur in the early years when the fund is being built and investments are being pursued. One of the most difficult parts of constructing a fund of funds is identifying and successfully making investments in high quality private equity funds. Such funds tend to be over-subscribed, making it hard to get into them. A firm with a reputation like Bay Hills is able to gain such access—thereby indirectly opening doors for entities like KRS—though there is a tremendous amount of work and expense associated with doing so.

41. The investment advisor and general partner undertake this work and economic sacrifice because of and in reliance on the expectation of positive investment returns, including carried interest, in the fund's later years. Bay Hills

and the Fund GPs never would have undertaken the work or sacrifice required to create and manage the Funds if, once the Funds were profitable or poised to become profitable, KRS could oust the Fund GPs, fire Bay Hills as investment advisor, and capture all the profits entirely for itself.

42. Here, Bay Hills' and the Fund GPs' diligence, expertise, and economic sacrifice have made the Funds highly successful for KRS. Bay Hills and the Fund GPs identified potential investments. They contacted managers of underlying funds. They performed due diligence and analysis. They rejected some investments and pursued others. Bay Hills and the Fund GPs negotiated the terms of the investments, sometimes at considerable length and corresponding cost.

43. Because the Funds invest in other private equity funds, which typically also are organized as limited partnerships, the Funds' investments consist almost entirely of limited partnership interests in those Underlying Funds. Accordingly, the Fund GPs and Bay Hills, in assembling the Funds' portfolios, had to ensure that they would be good "fits" with the Underlying Funds and their managers—that the partnerships were likely to be good ones.

44. In that same vein, the Underlying Funds had to get comfortable with the Funds in order to allow them to invest. They wanted their limited partner investors to be sophisticated with a demonstrated track record of success and harmonious partnerships. The Underlying Funds did not want to onboard, for

example, a limited partner investor that has demonstrated incompetence, or that is surrounded by scandals, or that has a history of creating problems for its partners. The Underlying Funds here are high quality funds that generally are over-subscribed, with the luxury of turning investors away. Over time, the Underlying Funds got comfortable with the Funds becoming their limited partners because of, among other things, Bay Hills' investment sophistication, proven track record, and strong reputation in the industry.

45. The Funds have been enormously successful for KRS. In August 2015, one of KRS's outside consultants noted that the Funds' investment strategy was "one of the Pension's best performing segments," and had "generally outperformed versus the other strategies in the portfolio." (*Customized Portfolio Solutions Presentation to KRS* at 20, 52 (Aug. 10, 2015).) KRS's consultant further reported that although "all segments [of KRS's portfolio] somewhat underperformed the industry median," KRS's fund-of-funds segment was "the one exception given absolute performance of two Bay Hills funds." (*Id.* at 24.) It concluded with respect to Funds I, II, and III and a few unrelated funds: "We believe these funds represent the key value-drivers." (*Id.* at 27.)

46. In 2017, one of KRS's new consultants, Wilshire Consulting ("Wilshire"), ranked Fund II as the second-strongest performer out of 93 assets in

KRS's alternative investments portfolio based on investment multiples, and the sixth-strongest performer based on internal rates of return ("IRR").

47. The following chart provides a snapshot of the Funds' performance by setting forth the Funds' paid-in-capital, cash distributions, market value, investment multiples, and IRRs as of September 30, 2017:

	Paid-In Capital	Distributions	Market Value	Total Value Per $ Paid In	Net IRR
Fund I:	$51,254,261	$70,428,255	$28,628,647	1.93×	13.3%
Fund II:	$36,741,983	$25,238,584	$76,177,874	2.76×	28.5%
Fund II-B:	$45,532,873	$7,309,578	$61,397,546	1.51×	13.9%
Fund III:	$57,437,104	$0	$67,116,244	1.17×	12.0%
TOTAL:	**$139,711,960**	**$102,976,417**	**$233,320,311**	**-**	**-**

48. Since the foregoing performance snapshot, KRS has received additional distributions, bringing its total cash distributions to date to more than $117 million.

C. KRS's Disastrous Investment Performance Elsewhere, And Its Numerous Highly Publicized Scandals, Put Pressure On The KRS Board To Boost Returns

49. KRS has not had such good fortune in other areas of its portfolio. According to KRS's audited financial statements for the fiscal year ending June 30, 2000, the various retirement plans it administers were fully funded at that time, and indeed, enjoyed a *$4.4 billion actuarial surplus*. But according to its annual report

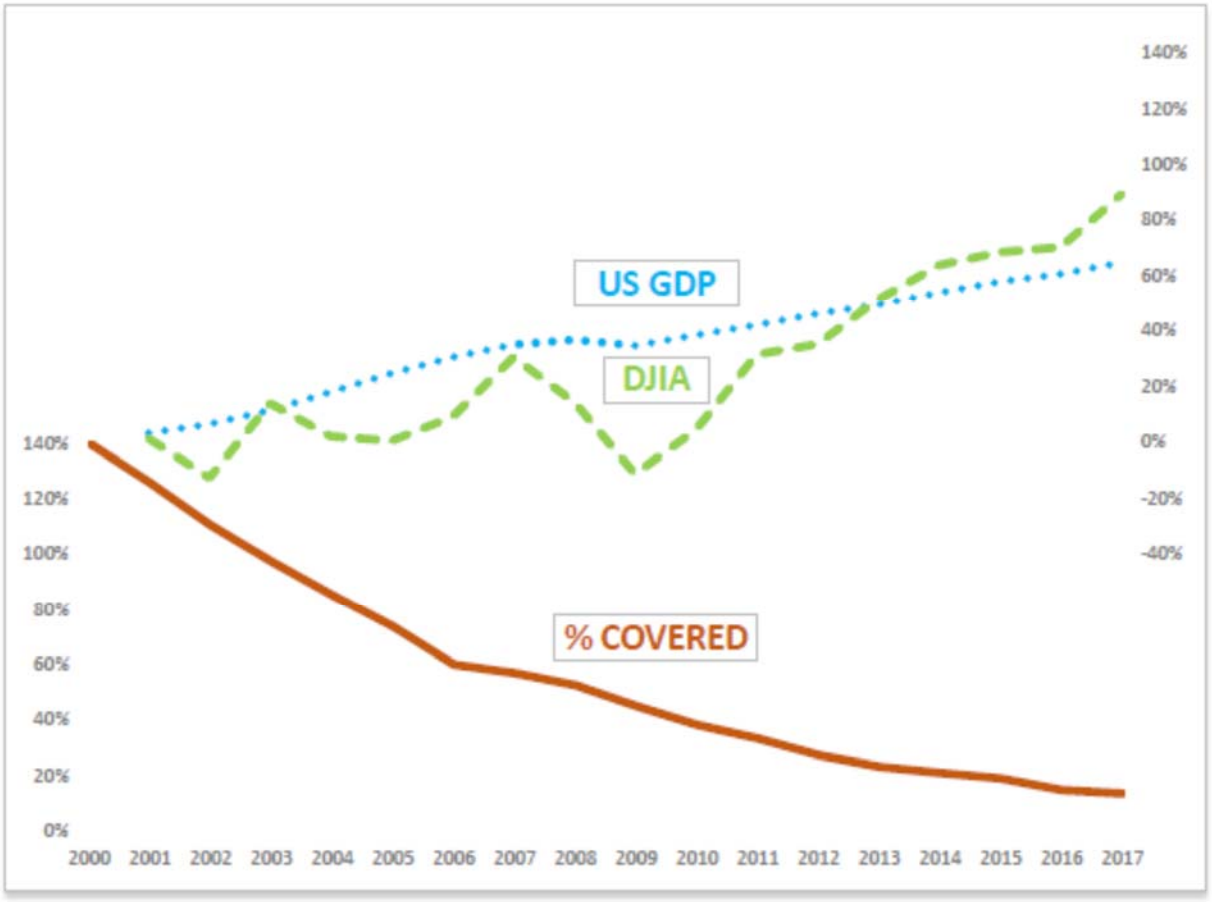
for the fiscal year ending June 30, 2017, that surplus has vanished over the course of the years, replaced by a *$27 billion actuarial deficit*.

50. According to KRS's recently appointed board chair, the meltdown was caused by more than general market performance and a slowdown in legislative funding. Rather, he pointed the finger squarely at KRS: "We have been aggressive in our assumptions for many, many years. Aggressively wrong." Adam Beam, *Kentucky's Retirement Debt Soars After Pessimistic Outlook*, Associated Press (May 18, 2017) (quoting KRS board chair). He also wondered aloud how unspecified "math errors" could have been missed if the board had been "paying attention":

> KRS made serious math errors in recent years by relying on overly optimistic assumptions about its investment returns, the growth of state and local government payrolls, and the inflation rate, [the] KRS board chairman . . . told his fellow trustees [at a February 16, 2017] board meeting. . . . "It doesn't make any sense," said [the board chair] . . . . "We wonder why the plans are underfunded. It's not all the legislature's fault. It's the board's responsibility to [use] the correct numbers. . . . Were any of you [board members] paying attention?"

John Cheves, *Troubled Kentucky Pension System Might Need Billions More Than Assumed*, Lexington Herald Leader (Feb. 16, 2017).

51. The following chart contrasts (*i*) the Dow Jones Industrial Average and the United States Gross Domestic Product with (*ii*) the funding status of the largest of the retirement plans administered by KRS:



According to KRS's financial statements and 2017 annual report, the funding conditions of the other, smaller retirement plans it administers likewise have deteriorated from surplus positions in 2000 to underfunded conditions in 2017 ranging from 27.0% to 54.1%.

52. And then there were the scandals. In 2010, ethical questions swirled around KRS's use of so-called investment "placement agents." Rebecca Moore, *KY Audit Reveals Questionable Placement Agent Activities*, Plan Sponsor (June 29, 2011). In April 2011, with KRS undergoing a special state audit of its placement agent practices, "[t]he Kentucky Retirement Systems board . . . fired its executive

director and replaced the longtime board chairman," euphemistically saying "'it was time to make a leadership change.'" The State Journal, *KRS Fires Executive Director* (Apr. 8, 2011) (quoting the new board chair). According to a KRS board member, "'It's just the overall sense that there's too much stuff going on here, and we need to go in a different direction.'" Rebecca Moore, *KY Retirement Systems Fired Executive Director*, Plan Sponsor (Apr. 8, 2011). That same board member published an exposé two years later in a book entitled *Kentucky Fried Pensions: A Culture of Cover-Up and Corruption* (2013).

53. In March 2016, Timothy Longmeyer, a KRS board member from 2010 to 2015 and former head of the Kentucky Personnel Cabinet, was indicted for bribery in connection with a kickback scheme. *See* Marcus Green at al., *Ex-Kentucky Personnel Cabinet Secretary Tim Longmeyer Charged With Bribery*, WDRB (Mar. 25, 2016). He later pleaded guilty and was sentenced to 70 months in federal prison.

54. On May 19, 2016, the Governor of Kentucky "sent Kentucky State Police troopers to [a KRS board] meeting in order to arrest board chair Tommy Elliott if he participated." Ryland Barton, *KRS Director: Board Chair Threatened With Arrest*, WFPL News Louisville (May 23, 2016). The prior governor had appointed Mr. Elliott to the board, but the new Governor had fired him. The attorney general—who happened to be the son of the prior governor—issued an

official opinion holding that the new Governor had exceeded his authority in firing Mr. Elliott. *See* Ky. OAG 16-004 (Ky. A.G.) (May 17, 2016), *available at* 2016 WL 3029666. The new Governor apparently disagreed, and ordered "Kentucky State Police officers [to] st[and] inside the meeting room to prevent . . . Elliott from sitting at the conference table to participate in the day's business." John Cheves, *Turmoil at Kentucky Pension Agency Leads to State Police Presence*, Lexington Herald Leader (May 19, 2016).

55. The following month, the Governor of Kentucky dissolved the entire KRS board of trustees, finding that KRS had "not consistently been administered in the open, transparent and expert manner that current and future retirees . . . deserve and expect." (Exec. Order No. 2016-340 (June 17, 2016).) The Governor replaced the board of trustees with a board of directors, and "expanded [it] to include additional gubernatorial appointees." (*Id.*) The Governor later stated at an August 2017 gathering of civic leaders that the former head of KRS "should be in jail," and that "if this was a private pension plan he would be" because "[w]hat has been done in our pension systems has been criminal." Daniel DesRochers, *Former Head of Kentucky Retirement Systems "Should Be In Jail," Bevin Says*, Lexington Herald Leader (Aug. 24, 2017).

56. Needless to say, current and future Kentucky pensioners are none too happy, and the public pressure on the new KRS board to turn things around is enormous.

D. KRS Embarks On A Campaign To Oust The Fund GPs So As To Seize All Future Investment Value For Itself

57. For years, Bay Hills and the Fund GPs enjoyed an amicable and productive relationship with KRS and its personnel, given Bay Hills' expertise and the investment returns KRS enjoyed as a result. In 2016, however, the relationship began to sour under the leadership of KRS's then-chief investment officer David Peden, even though the Funds' performance remained strong.

58. Mr. Peden became KRS's interim chief investment officer in 2013, and later, its permanent chief investment officer. After he assumed this role, Mr. Peden said that he appreciated Bay Hills' investment strategy, reported that he liked the work Bay Hills was doing for KRS, and noted how exemplary the Funds' performance had been for KRS.

59. In early 2016, however, other KRS personnel disclosed to Bay Hills that Mr. Peden had begun to turn on Bay Hills for some reason. Mr. Peden reportedly did not want to allocate further investment dollars to the Funds, and instead wanted to "get creative," which included allocating investment dollars to a private equity vehicle launched by the firm where his wife worked. He even represented to Bay Hills that he lacked authority to deploy further dollars to Fund

III, when in fact KRS's investment committee had approved further investments in Fund III for several years into the future.

60. A KRS board member informed Bay Hills personnel that, in the summer of 2016, Mr. Peden delivered a very negative review of Bay Hills to the KRS investment committee—even though the Funds' performance was superb.

61. After KRS's board was replaced in 2016, KRS began publicly stating that it was going to attempt to squeeze value out of its portfolio in numerous ways. Its new board chair publicly stated, for example, that KRS had set about "reducing the number of outside investment consultants" and "lower[ing] management fees." KRS Board Chair, *Board Busy Doing "No Harm"*, Courier-Journal (Mar. 5, 2017). KRS can accomplish both of those goals by wresting control of investment portfolios away from the outside firms that built them, and depriving those firms of the amounts that they had expected to earn as part of their contracts with KRS.

62. In June 2016, Bay Hills gave Mr. Peden projections of the Funds' future performance, which showed him just how profitable the Funds were expected to become. In October 2016, Mr. Peden, on behalf of KRS, informed Bay Hills that, following a "Key Person Event" in Fund III (discussed below), KRS was electing to dissolve Fund III, and wanted to move its assets in-house to KRS.

63. Mr. Peden revealed that KRS also intended to move the *other* Funds' assets to KRS, claiming that KRS had "lost confidence" in Bay Hills. After he was told that the Funds' LPAs did not permit KRS to transfer the assets, he backed off, saying that KRS merely intended to "request" transfer of the assets. Apparently, however, KRS intended much more than that, for even after Mr. Peden was abruptly fired in January 2017, KRS continued to work to seize the Funds' investment portfolios.

1. KRS Serves a Notice of Removal of the Fund GPs, and Then Is Forced To Withdraw It After The Fund GPs Demonstrate That There Were no Grounds for Removal

64. In late 2016, Bay Hills and KRS personnel were reviewing certain spreadsheets together, and mutually identified a possible error buried in a formula that formed part of the carried interest calculations for Funds I and II. Although the Funds' independent auditors had audited carried interest payments many times, and although KRS presumably had been independently verifying the accuracy of the calculations, Bay Hills concluded that the formula may indeed have contained an inadvertent error, and that it may have resulted in paying carried interest to the Fund I and II GPs earlier than such carried interest was due. Although the early payment issue would have self-corrected over time, and already had self-corrected in part, the Fund I and II GPs committed to remedy the issue, and did so by paying KRS the relevant amounts.

65. KRS nevertheless used the purported error as an opportunity to try to gain control of the Funds. On May 10, 2017, KRS served a Notice of Removal accusing the Fund I and II GPs of getting their "hand [caught] in the proverbial cookie jar, misappropriating money from the Funds for other purposes." (May 10, 2017 Ltr. from KRS (Ex. 5 hereto) at 2.) The Fund I and II GPs responded by pointing out that any error in calculating carried interest had been made in good faith, did not rise to level of "Cause" for removal, and in any event had been cured:

> Bay Hills rejects your accusations that the supposed errors resulted from gross negligence or worse. Bay Hills also rejects your implicit assertion that the alleged errors had a material effect on investment funds with net assets estimated to be approximately $195,283,349 as of December 31, 2016 and total distributions to date for your client of approximately $88,251,417. In any event, Bay Hills now has cured any overdistribution that may have occurred, negating any "Cause" that KRS contends existed as a result of this issue.

(June 7, 2017 Ltr. from Fund GPs' Counsel (Ex. 6 hereto) at 3.)

66. KRS's Notice of Removal also included numerous additional assertions of "Cause," so as to apply in one way or another to *all four* Funds. Various of KRS's assertions were obviously manufactured out of thin air. KRS alleged, for example, that the Fund GPs engaged in "willful and reckless disregard" of KRS's rights by "terminat[ing the Fund's auditor] and hir[ing] a replacement auditor . . . without consulting or obtaining the approval of KRS." (May 10, 2017 Ltr. from KRS (Ex. 5 hereto) at 5.) In truth, KRS's personnel

specifically approved replacing the auditor on October 28, 2015 so as to use an auditor with more experience in the private equity realm, and the auditor was not replaced until after KRS had provided that approval.

67. Similarly, KRS purported to have "Cause" to remove the Fund III GP on the ground that it and Bay Hills had "manipulated the [Fund III] overhead expenses." (*Id.* at 4.) In truth, KRS's own personnel had advocated the challenged overhead expense structure as a tradeoff for unusually low management fees. Further, in 2014, Bay Hills' personnel reached out to KRS and obtained KRS's confirmation that it approved of the methodology being used.

68. KRS also attached a document from accounting firm Dean Dorton Allen Ford, PLLC ("Dean Dorton"), which purported to be an objective report but was really just a document created to discredit and harm Bay Hills. Dean Dorton claimed, for example, that the fees of an outside bookkeeper should be considered "overhead" allocable to Bay Hills rather than expenses allocable to the Funds, even though the bookkeeper is not employed by Bay Hills, is not officed at Bay Hills, does not hold herself out as an employee of Bay Hills, and has numerous other clients. Dean Dorton also manufactured a methodology for allocating the Funds' overhead expenses that nowhere appears in the contracts, and then argued that the Fund GPs were required to use that methodology. Although Dean Dorton had spent days in Bay Hills' offices, KRS hit Bay Hills with the report without either

Dean Dorton or KRS first raising these issues so that the parties could have a dialogue about them. Notably, Dean Dorton serves as KRS's supposedly independent auditor, and KRS never has explained how Dean Dorton can serve in that role while simultaneously acting as KRS's agent in leveling specious accusations at Bay Hills.

69. The Fund GPs' and Bay Hills' response letter demonstrated point-by-point that they had not committed an act amounting to "Cause" "in the course of building up the Funds into highly profitable investment vehicles for [KRS]." (June 7, 2017 Ltr. from Fund GPs' Counsel (Ex. 6 hereto) at 2.) The response letter also pointed out that the Fund GPs and Bay Hills "regard[] [KRS's] assertions to the contrary as the culmination of an effort — which the evidence will show began more than a year ago — to seize control of the Funds in breach of the implied covenant of good faith and fair dealing." (*Id.*)

70. KRS withdrew its removal notice on July 7, 2017.

2. KRS Tries To Obtain the Underlying Funds' Consent to a Transfer of Fund III's Investments to an Entity Controlled by KRS

71. While KRS withdrew its formal removal notice, it did not cease its efforts to take over the Funds. Instead, KRS just tried to manufacture another pretext.

72. As noted, a "Key Person Event" occurred in Fund III in October 2016 when an employee departed Bay Hills. The Fund III LPA provides that, upon the occurrence of a Key Person Event, "the Limited Partner may elect to dissolve the Partnership." (Fund III LPA § 4.3(b).) This does not mean that dissolution is always appropriate or necessary. Ordinarily, a limited partner investor in a strongly performing fund will contact the general partner and the investment advisor to determine how best to cure or otherwise address the Key Person Event, with a view to continuing the partnership. KRS, however, did no such thing. It never contacted Bay Hills or the Fund III GP to discuss any means by which to address the employee's departure (or even if the employee's departure needed to be addressed), and, instead, gave notice of its election to dissolve Fund III.

73. The Fund III LPA provides that, "[n]otwithstanding the dissolution of the Partnership," operations do not suddenly cease; rather, they are to be wound down in an orderly fashion through one or a combination of two means that "the General Partner . . . shall determine, with the prior approval of the Limited Partner": (*i*) "liquid[ation of] all or any portion of the assets or Securities of the Partnership," and/or (*ii*) a "distribut[ion of] such assets or Securities in-kind" to the partners (with the overwhelming majority of the assets going to the limited partner). (*Id.* § 11.2(b).) KRS stated that its preferred course was an in-kind distribution.

74. But this plan faced a practical barrier: Fund III is contractually prohibited from transferring its limited partnership interests in the Underlying Funds (whether to KRS or any other transferee) absent consent from the Underlying Funds, and most Underlying Funds are not going to want to become direct partners with KRS or an entity controlled by KRS. As noted, the Underlying Funds have investors clamoring to invest in them, and selected the Funds to be among their limited partner investors in part because of Bay Hills' reputation in the industry. Most Underlying Funds are not going to want to partner with KRS directly for a variety of reasons, not the least of which is that KRS is plagued by mismanagement and one very public scandal after another.

75. The Fund III GP and Bay Hills repeatedly informed KRS that seeking the Underlying Funds' consent would be futile. The Fund III GP and Bay Hills also repeatedly informed KRS that, if it really wanted out of Fund III, the most practicable way was to sell KRS's limited partnership interest to another entity—a so-called "secondary" transaction that would not require the approval of the Underlying Funds, because the investor in the Underlying Funds would continue to be Fund III. The Fund III GP and Bay Hills even obtained a bid for KRS's interest from a third party, transmitted the bid to KRS, and offered to work with KRS to get the third party to improve the offer.

76. KRS rejected these efforts and insisted on pursuing consent from the Underlying Funds to an in-kind distribution (initially to KRS directly, and later, to an entity controlled by KRS and run day-to-day by KRS's recently hired investment advisor, Wilshire). KRS asked Bay Hills to be involved in its communications with the Underlying Funds, and Bay Hills agreed to do so notwithstanding that Bay Hills thought the effort unlikely to be productive. Later, KRS changed its mind, instructing Bay Hills to stand aside while KRS pursued the discussions on its own, which Bay Hills did.

77. Although two of the 10 Underlying Funds consented to transfer after months of efforts by KRS, the rest did not. Some contacted Bay Hills to complain about KRS's conduct, describing KRS's communications with them as unprofessional and combative. Some complained of deceptive conduct by KRS in its efforts to convince the Underlying Funds to consent. For example, some Underlying Funds felt that KRS misrepresented its progress with other Underlying Funds to transfer, including by stating or insinuating—falsely—that all or almost all of the Underlying Funds would transfer. In one instance, KRS obtained a form transfer agreement under the pretext of wanting to see the Underlying Fund's standard form, and then used its possession of the blank form to suggest—falsely—that it and the Underlying Fund had reached an agreement in principle to

a transfer. Many of the Underlying Funds unequivocally told Bay Hills that they would not consent to a transfer to KRS or an entity controlled by KRS.

78. Having struck out with its unilateral efforts to persuade the Underlying Funds, KRS asked Bay Hills and the Fund III GP to inform the Underlying Funds that Bay Hills and the Fund III GP were willing to go along with a transfer if that is what the Underlying Funds desired. Accordingly, Bay Hills and the Fund III GP informed the Underlying Funds of their views of the matter, including that they were on board with the transfers KRS desired. Specifically, they told the Underlying Funds (*i*) that "[w]e are neutral to the idea of a distribution in-kind"; (*ii*) that although "[w]e think a secondary sale of all of KRS's interests in [Fund] III would be a comprehensive solution, yield more value for KRS, provide continuity for the underlying funds, and be easier to accomplish," "we want to be cooperative if a distribution in-kind is indeed what both KRS and you truly want"; and (*iii*) "Bay Hills is willing to accommodate that wish assuming that the terms and conditions of the transfer and related details are reasonably and appropriately resolved to the satisfaction of all parties."

79. Despite Bay Hills' and the Fund III GP's actual and stated willingness to support KRS's proposed in-kind distribution, the result remained exactly what Bay Hills and the Fund III GP had predicted from the beginning: Virtually none of

the Underlying Funds consented to become direct partners with KRS or an entity controlled by KRS.

3. KRS, Having Failed To Obtain the Underlying Funds' Consent, Serves a Second Notice of Removal

80. Whether KRS knew and intended from the outset that, as it had been warned, its efforts with the Underlying Funds would be futile, and intended to blame Bay Hills and the Fund III GP so as to gin up "Cause" for removal, remains to be determined. What is clear at this point is that, when KRS's efforts with the Underlying Funds predictably failed, KRS blamed Bay Hills and the Fund III GP.

81. On February 8, 2018, KRS served a second Notice of Removal, accusing the Fund III GP of "material breach of the agreement" by being "lukewarm" to KRS's proposed in-kind distribution, and by not "enthusiastically endors[ing] that course of action." (Feb. 8, 2018 Ltr. from KRS (Ex. 9 hereto) at 5.) KRS's accusation of breach is meritless; nothing in the LPA requires the Fund III GP to "enthusiastically endorse" a course of action it believes to be impracticable, or to imperil its credibility by urging the Underlying Funds to partner directly with an entity dogged by the sort of problems that perpetually surround KRS. Ironically, because KRS's removal notice calls into question the Fund III GP's continuing authority to act on behalf of the Fund, it effectively precludes the Fund III GP from effectuating any orderly wind-down of the Fund.

82. KRS's notice also purports to remove all the other Fund GPs, based on the proverbial kitchen-sink approach. For example, although KRS happily pocketed the money the Fund I and II GPs paid it on account of the allegedly erroneous carried interest calculations, KRS's second removal notice challenges the calculations again. KRS insists that the Fund I and II GPs are required to use what KRS calls "[c]onservative assumptions" that would amount to using a different "waterfall" (order of payment priorities) than the one set out in the LPAs. (*Id.* at 3.) KRS also alleges that Fund III improperly has been making "co-investments . . . post-dissolution"—a contention that KRS never has explained, and that appears to be entirely made up. KRS's notice also raises various other issues, including by resurrecting the dispute about the bookkeeper's charges and other allegations in the Dean Dorton report.

83. KRS's February 8, 2018 removal notice is attached hereto as Exhibit 9, and its contents are incorporated herein by reference.[2] Each and every allegation in that purported removal notice, as well as each and every allegation underlying it or explicitly or implicitly incorporated into it, is at issue in this action. Nothing in the removal notice, in the allegations underlying it, or in the allegations explicitly

[2] KRS's February 8, 2018 removal notice was preceded by a January 9, 2018 letter (Exhibit 7 hereto) previewing many of the allegations. Bay Hills and the Fund GPs refuted the points in that letter in a response dated January 16, 2018 (Exhibit 8 hereto).

or implicitly incorporated into it, remotely meets the stringent standard for "Cause" set out in the LPAs.

84. The Fund GPs and Bay Hills have made extensive efforts to reach a consensual resolution with KRS, but KRS has made clear it is not interested in any resolution other than KRS gaining control of the Funds and/or their investments. Accordingly, Plaintiffs have no choice but to seek the intervention of the Court.

COUNT 1
Declaratory Relief Pursuant to 6 Delaware Code § 17-110 and 10 Delaware Code § 6501

85. The Fund GPs re-allege the foregoing paragraphs of this Complaint as if fully set forth herein. The Funds incorporate the foregoing paragraphs of this Complaint by way of reference and background.

86. As set forth above, KRS served a Notice of Removal of each of the Fund GPs on February 8, 2018, which purports to become effective on April 9, 2018.

87. The Fund GPs allege that KRS lacks "Cause" for removal, as such term is defined in the Funds' LPAs, and that the Fund GPs therefore are not properly removable and have not been removed. KRS, Kentucky Retirement Systems Pension Fund, and Kentucky Retirement Systems Insurance Fund dispute this allegation so that a real and justiciable controversy currently exists.

88. The Fund GPs have a legal interest in a declaration that KRS lacks Cause for their removal, that they have the right to remain the general partners of their respective Funds, and that they do remain the general partners of their respective Funds. The Fund GPs have legal and financial interests in remaining general partners of their respective Funds. Additionally, the Fund III GP has an interest in a declaration that it has not been removed, because as long as the removal issue remains judicially unresolved, the Fund III GP cannot practicably pursue efforts to effect an orderly post-dissolution wind-down of the Fund.

89. The Funds have a legal interest in a declaration concerning whether KRS has Cause for removal of the Fund GPs, whether the Fund GPs have the right to remain as general partners of their respective Funds, and whether the Fund GPs do remain as general partners of their respective Funds. The Funds need to know who their respective general partners are.

90. The Fund GPs on the one hand, and KRS, Kentucky Retirement Systems Pension Fund, and Kentucky Retirement Systems Insurance Fund on the other hand, have a current, real, and adverse conflict over whether Cause exists for the Fund GPs' removal, whether the Fund GPs have the right to continue to be the general partners of their respective Funds, and whether the Fund GPs continue to be the general partners of their respective Funds.

91. The determination of whether Cause exists for removal, whether the Fund GPs have the right to remain as general partners of their respective Funds, and whether they do remain as general partners of their respective Funds, is ripe. "Cause" either exists or it does not.

92. Based on the foregoing facts and the terms of the LPAs, the Fund GPs are entitled to a declaration that (and the Funds are entitled to a declaration regarding whether) the February 8, 2018 removal notice is invalid because KRS lacks Cause for removal, that the Fund GPs have a right to remain as general partners of their respective Funds, and that the Fund GPs do remain as general partners of their respective Funds.

COUNT 2
Declaratory Relief Pursuant to 6 Delaware Code § 17-111 and 10 Delaware Code § 6501

93. The Fund GPs and Bay Hills re-allege the foregoing paragraphs of this Complaint as if fully set forth herein. The Funds incorporate the foregoing paragraphs of this Complaint by way of reference and background.

94. As set forth above, KRS (and through KRS, Kentucky Retirement Systems Pension Fund and Kentucky Retirement Systems Insurance Fund) accuse the Fund GPs and Bay Hills of gross negligence, breach of fiduciary duty, breach of contract, and other breaches of duty or law in connection with the Funds. The

Fund GPs and Bay Hills dispute these accusations so that a real and justiciable controversy exists.

95. The Fund GPs and Bay Hills have a legal interest in a declaration providing that they have not breached, materially or otherwise, any contractual duty or other legal duty in connection with the Funds. The Fund GPs and Bay Hills have such an interest because, among other reasons, (*i*) such a determination is one factor bearing on whether there is "Cause" for removal of the Fund GPs, and the Fund GPs have a legal and financial interest in remaining the Funds' general partners; (*ii*) if the Fund GPs are removed, KRS will terminate Bay Hills as investment advisor, thereby impairing Bay Hills' legal and financial interests; and (*iii*) KRS's accusations of breaches of duty affect and impair the business and reputational interests of the Fund GPs and Bay Hills.

96. The Funds have a legal interest in a declaration concerning whether the Fund GPs and Bay Hills have breached, materially or otherwise, any contractual or other legal duty in connection with the Funds. The Funds have such an interest because, among other reasons, (*i*) such a determination is one factor bearing on whether there is "Cause" for removal of the Fund GPs, and the Funds have a legal interest in knowing the identities of their respective general partners; (*ii*) KRS's accusations of breaches of duty by the Fund GPs and Bay Hills affect and impair, and/or threaten to affect and impair, the Funds' business and

reputational interests (including their continuing ability to consummate investments), given the Funds' close affiliation with the Fund GPs and Bay Hills; and (*iii*) the Funds need to know how distributions to their general and limited partners properly should be calculated so that the Funds can make appropriate distributions (issues that are entwined with whether there is "Cause" for removal, in that KRS makes such issues part of the basis for its February 8, 2018 Notice of Removal).

97. There is a real and adverse conflict between Plaintiffs and Defendants over whether the Fund GPs or Bay Hills have breached, materially or otherwise, any contractual or other legal duty in connection with the Funds.

98. The determination of whether the Fund GPs or Bay Hills have breached, materially or otherwise, any contractual or other legal duty in connection with the Funds is ripe. The Fund GPs and Bay Hills either have or have not done so.

99. Based on the foregoing facts and the terms of the LPAs, the Fund GPs and Bay Hills are entitled to a declaration under 6 Delaware Code § 17-111 and 10 Delaware Code § 6501 that they have not breached, materially or otherwise, any contractual, fiduciary, or other duties in connection with the Funds, and the Funds likewise are entitled to a declaration resolving that issue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

(*i*) Pursuant to 6 Delaware Code § 17-110 and 10 Delaware Code § 6501, the Fund GPs request a declaration that the February 8, 2018 removal notice is invalid because KRS lacks Cause, as defined in the LPAs, to remove the Fund GPs, that the Fund GPs have the right to remain the general partners of their respective Funds, and that the Fund GPs remain the general partners of their respective Funds.

(*ii*) Pursuant to 6 Delaware Code § 17-111 and 10 Delaware Code § 6501, the Fund GPs and Bay Hills request a declaration that (and the Funds request a declaration regarding whether) the Fund GPs and Bay Hills have not breached, materially or otherwise, any contractual, fiduciary, or other duties in connection with the Funds.

(*iii*) Plaintiffs request their attorneys' fees and costs of suit to the extent permitted by law.

(*iv*) Plaintiffs request such additional relief as the Court deems just and proper.

Respectfully submitted,

Dated: April 2, 2018

/s/ A. Thompson Bayliss
A. Thompson Bayliss (#4379)
David A. Seal (#5992)
ABRAMS & BAYLISS LLP
20 Montchanin Road, Suite 200
Wilmington, Delaware 19807
(302) 778-1000
(302) 778-1001 (fax)

Attorneys for Plaintiffs BHEP GP I, LLC; BHEP GP II, LLC; BHEP GP II-B, LLC; BHEP GP III, LLC; and Bay Hills Capital Management, LLC

OF COUNSEL:

James C. Rutten
Erin J. Cox
Eric P. Tuttle
John B. Major
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071-3426
(213) 683-9100
(213) 687-3702 (fax)

/s/ Kevin M. Gallagher
Kevin M. Gallagher (#5337)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
(302) 651-7692
(302) 651-7701 (fax)

Attorneys for Plaintiffs / Nominal Plaintiffs Bay Hills Emerging Partners I, L.P.; Bay Hills Emerging Partners II, L.P.; Bay Hills Emerging Partners II-B, L.P.; and Bay Hills Emerging Partners III, L.P.

OF COUNSEL:

Mark Goodman
BAKER & MCKENZIE LLP
Two Embarcadero Center, Suite 1100
San Francisco, California 94111
(415) 576-3080
(415) 374-2499 (fax)