COMMONWEALTH OF KENTUCKY
COUNTY OF FRANKLIN CIRCUIT COURT
DIVISION ____
Case No. 22-CI-_____

TIA TAYLOR, ASHLEY HALL-NAGY, BOBBY ESTES, and JACOB WALSON, as Members and Beneficiaries of Trust Funds of the KENTUCKY RETIREMENT SYSTEMS, Its Pension and Insurance Trusts for the Benefit of Those Trusts, — PLAINTIFFS

COMPLAINT BY TIER 3 MEMBERS OF THE KENTUCKY RETIREMENT SYSTEMS PLEADING BREACH OF TRUST/FIDUCIARY DUTY CLAIMS AND OTHER VIOLATIONS OF KENTUCKY LAW TO RECOVER DAMAGES FOR

vs. **THE TRUST FUNDS OF THE KENTUCKY RETIREMENT SYSTEMS**

DEMAND FOR JURY TRIAL

CALCATERRA POLLACK LLP, REGINA M. CALCATERRA, JANINE L. POLLACK, JUSTIN K. TERES, and VICTORIA A. HALE — DEFENDANTS

ELECTRONICALLY FILED

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I. INTRODUCTION AND OVERVIEW

1. Plaintiffs Tia Taylor, Ashley Hall-Nagy, Bobby Estes and Jacob Walson ("Plaintiffs") bring this action to recover damages for the various trusts (the "Trusts") of the Kentucky Retirement Systems ("KRS").[1] The KRS Board was at all relevant times the sole Trustee of those Trusts. This action asserts Plaintiffs' ***direct claims*** (not derivative claims) seeking damages and other relief for those Trusts based on Defendants' participation with the culpable Trustee in breaches of trust, fiduciary and other duties; aiding-and-abetting those breaches, as well as conspiracy, concerted-conduct and joint-enterprise conduct involving violations of Kentucky's Model Procurement Code, antitrust laws and other laws. Plaintiffs seek to recover, *inter alia*, all fees and expenses paid Defendants plus compensatory and punitive damages, equitable relief, plus attorneys' fees and pre- and post-judgment interest.

2. Plaintiffs are beneficiaries of the KRS Trusts and Tier 3 members of KRS, a classification of KRS members hired after January 1, 2014. None of their benefits are guaranteed by the Commonwealth. Their individual pension accounts and ultimate benefits depend on Trust investment returns and expense levels, and were reduced due to the expenses and damages complained of herein. They have each suffered harm, injury and damages due to the misconduct complained of, and they will benefit if it is remedied.

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[1] KRS was renamed the Kentucky Public Pension Authority ("KPPA") in 2021. References to "KRS" mean and include, as context requires, Kentucky Retirement Systems, KPPA, CERS (County Employees Retirement System), KERS (Kentucky Employees Retirement System) and SPRS (State Police Retirement System) and the several trust funds overseen and managed by KRS as Trustee. The KRS board was the legislatively-designated "Trustee" of the KRS trust funds.

Under Kentucky law, KRS's board is the Trustee of the KRS Trusts.

3. Defendants are a New York-based law firm, two of its partners, one of its associate attorneys and one KRS official. Each Defendant and others identified as "Additional Actors":

(a) induced the Trustee (acting through certain KRS officers, employees, trustees and others) to breach trust and other duties by, *inter alia*, entering into a contract in restraint of trade and in violation of the Kentucky Model Procurement Code and KRS's own procurement rules;

(b) knowingly participated in the misconduct alleged herein for their selfish economic motives, personal benefit and gains at the expense of the KRS Trusts;

(c) aided and abetted each other; and

(d) pursued a conspiracy and common course of conduct and joint-enterprise, damaging Plaintiffs and KRS Trusts.

Defendants fixed the procurement process for the "Calcaterra Report" and produced a corrupt million-dollar investigation and report that cost $1.6 million. This was done in an attempt to try to shield Eager and his conspirators from liability for their breach of their duties to Plaintiffs and the KRS Trusts, and was part of the continuing co-operative wrongful conduct of the defendants as pleaded in *Taylor v. KKR & Co. L.P.*, Case No. 21-CI-0645 (Ky. Cir. Ct. Franklin Cnty.).

4. Regina M. Calcaterra — a New York-based lawyer and political operator — was a known "fixer." Before getting the KRS "independent" investigation contract her prior "independent" investigation was New York's 2013 Moreland Commission to Investigate Public Corruption, where Calcaterra was Executive Director, but acted as lawyer/investigator/evaluator. That investigation was terminated prematurely and

"attracted heavy criticism" amid charges of political influence and cronyism. What started as a supposedly "independent investigation" of corruption in New York state government ended with federal prosecutors carting off the Commission's files and opening an investigation ***of how the investigation was conducted under Calcaterra's leadership***. According to public reports, Calcaterra:

- interfered with and obstructed the investigation to protect a subject of the investigation;
- improperly communicated and cooperated with the subject while the investigation was ongoing;
- blocked subpoenas the subject objected to;
- edited draft reports to eliminate material the subject objected to;
- vetoed an independent author for the "preliminary" report, arranging for an employee of the subject of the investigation to draft it; and
- altered the issued report by deleting the language objected to by the subject, even though the preliminary report contained such language.

5. Calcaterra has also been repeatedly sued by the New York Board of Elections for violations of campaign-finance laws, *i.e.*, failing to file required financial disclosures. She was disqualified from running for public office for not being truthful regarding her residency. And she has long been associated with dubious pension fund "pay-to-play" activities and key players — some of whom faced criminal investigations.

6. The public-relations spin around this investigation on behalf of KRS (or, as the underlying contract says, the Commonwealth and KRS) was that it was an "independent investigation" conducted by an "independent third-party law firm" with no agenda or pre-conceived result. But in fact, KRS's David Eager — who was deeply, personally implicated in the KKR/Prisma 2015–2016 self-dealing and related wrongdoing as a trustee and then as its Chief Executive Officer ("CEO") and Executive

Director ("ED") — was actively involved in the procurement of the contract and the preparation of the Report. Calcaterra enjoyed a long-time close personal relationship with a new member of KRS legal staff, Victoria A. Hale (also known as "Vicky Hale"), who, after having been hired by Eager in 2019, worked for him and did his bidding. The facts concerning the many serious criticisms leveled as to Calcaterra's performance and loyalties in connection with the Moreland Commission investigation were known to Eager, Hale, the KRS Trustees and other KRS personnel.

7. Calcaterra and Hale have known each other for years, even taken personal trips together. They met when Calcaterra was an attorney at the Denver Pension Fund, and Calcaterra "hustled" pension funds as clients to serve as plaintiffs in class actions. Here is a picture of Calcaterra and Hale partying together at a concert in Las Vegas:

8. Hale and Eager and other actors fixed the procurement process to assure Calcaterra got the contract, knowing she would do Eager's and her bidding. Calcaterra Pollack LLP (the "Calcaterra Firm") was newly formed in New York on April 1, 2020 —

less than seven weeks before it submitted an initial proposal to KRS. It needed business. Getting hired for a high-profile investigation was a huge "feather in her cap" — a huge "get" for a brand-new firm. This is especially so since neither the Firm nor its principals had ever done an investigation into pension-fund investment activities, or any "internal" corporate investigation.

9. Calcaterra's past was riddled with widely circulated and easily accessible examples of misconduct, yet KRS — the Trustee — corruptly influenced by Eager and Hale, and advised by Stoll Keenon Ogden PLLC, awarded her a purported "independent" investigation contract contracted for by the Commonwealth. It was not in spite of her background that Calcaterra was hired ***but because of it and because of her long association and close personal friendship with Hale***, KRS's new in-house lawyer. Hale who was hired and supervised by David Eager, the KRS CEO/ED. Hale badly needed the job and was completely loyal to Eager. She wanted and was willing to please him, since he would control her compensation and advancement at KRS. Hired as a low-level staff attorney in 2019, she was quickly made General Counsel — a promotion arranged by Eager as a reward — payoff — for her participation in the wrongdoing.

10. Eager and Hale caused the Trustee to hire the Calcaterra Firm knowing it was unqualified and unsuitable to undertake this "independent" investigation, knowing it was not independent and the investigation and report were intended to be used to exculpate Eager and defeat claims being asserted for KRS's Trusts against Eager in the *Taylor v. KKR & Co., L.P.* suit. Calcaterra knew what was coming because she, Hale and Eager put the plan together. Prior to June 2020, Calcaterra, Hale and Eager agreed that KRS would issue an Request for Proposal ("RFP") for an "independent investigation"

contract of the alleged investment improprieties at KRS. ***Calcaterra secretly submitted a proposal on June 19, 2020 to Hale and Eager for the investigation and report, so Defendants and other actors could agree on how to go forward.***

11. Calcaterra and her firm had no other business or business prospects in Kentucky. ***The Calcaterra Firm began to take steps to register with the Kentucky Secretary of State as a "foreign limited partnership" to conduct business in Kentucky on August 12, 2020 and was formerly registered on August 20, 2020 — four days before the Solicitation for the Contract was issued***! The timing of the Calcaterra Firm's registration was key to getting the contract because proof of registration to do business in Kentucky is a condition of bidding for the Contract, ***which had not yet been put out for bid, but Calcaterra knew was coming***. Calcaterra and Teres also registered for the Kentucky Bar Exam between May and July 2020. The Calcaterra Firm had an illegal "inside track" and was given improper preference and advantage. The procurement process was corrupt, rigged and violated Kentucky's Model Procurement Code, antitrust laws and KRS regulations.

12. The Calcaterra Report bid on the August 24, 2020 Solicitation from the Commonwealth of Kentucky to do an investigation into past KPPA/KRS investment activities to determine "if there are any improper or illegal activities on the part of the parties involved," and produce a detailed report. The Commonwealth's "Solicitation" for the KRS contract was issued on August 24, 2020 with a "close" date of September 14, 2020 — ***just a three-week period to submit a bid for a complex massive investigation covering over 10 years of alleged misconduct involving millions of documents and several third parties which would require***

substantial research and economic evaluation by any bidder, ***that could not reasonably be done in that tight timeframe***. This was done to give Calcaterra an unfair edge — advantage — part of fixing the process, so that other qualified and uncorrupt bidders would be disadvantaged and in practical effect excluded. The Calcaterra Firm proposal was submitted on September 10, 2020.

13. After the Calcaterra Report was completed, it was shared with the Kentucky Attorney General. Then despite false representations to the Franklin Circuit Court by KRS that the Report would be made public, Defendants worked with KRS and other actors to withhold it from the public. This was done to cover up Eager's misconduct and protect him financially and also because the Report basically blamed the KRS's near financial collapse on the Commonwealth — asserting it deliberately refused to properly fund KRS for years — conclusions that badly undercut the Attorney General's case by strengthening the *in pari delicto* defense defendants were already strongly asserting in the Attorney General's case for the Commonwealth.

14. Judge Shepherd made clear that it was the Tier 3 Plaintiffs that first exposed the apparent procurement production, corruption and attempted cover up via the Calcaterra investigation.[2] On August 25, 2022, Division I of this Court (Shepherd, J.) issued Opinions and Orders in *Cohen* which require public disclosure of the Calcaterra Report.[3]

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[2] *See* Tier 3 Plaintiffs' Memorandum in Support of Motion for Entry of an Order Requiring That Documents Regarding the Calcaterra Pollack "Investigation" Be Preserved and That the Calcaterra Report Be Provided to the Tier 3 Plaintiffs, filed in *Mayberry v. KKR & Co., L.P.,* Case No. 17-CI-1348 on May 3, 2011.

[3] Plaintiffs incorporate by reference the Opinion and Order in *Cohen v. Kentucky Public Pension Authority*, Civil No. 21-CI-0619 ("*Cohen* Action") and *White v. Kentucky Public Pension Authority*, Civil No. 22-CI-0016 ("*White* Action") dated August 25, 2022, ordering the release of the Calcaterra Report.

15. Judge Shepherd stated that the Calcaterra Firm had been hired by KRS to investigate "specific investment activities conducted by the Kentucky Retirement Systems to determine if there are any improper or illegal activities on the part of the parties involved" including hedge fund investments and related activities underlying the *Taylor* breach-of-trust action brought by the Tier 3 Plaintiffs. Based on documents Judge Shepherd required be produced to him *in camera*, he said KRS awarded the contract to the Calcaterra Firm (the "Calcaterra Contract") through a "**questionable bid solicitation process**."[4] Judge Shepherd noted:

- the Calcaterra Firm secretly submitted a proposal for an investigation on June 19, 2020 **before** KRS had issued an RFP for the work; and
- KRS's RFP was virtually identical to the secret Calcaterra proposal submitted prior to the RFP.

16. Judge Shepherd's understated conclusion that the bid process was "**questionable**" confirms the allegations in the Tier 3 Plaintiffs' breach of trust Complaint at ¶¶ 326–351, in which the Tier 3 Plaintiffs pleaded the details of this corrupt attempt to protect Eager and others. Judge Shepherd indicated that the Calcaterra Report was "commissioned" by KRS as a "**cover up**":

> In short, a full review of the CP Report gives rise to questions as to ***whether the purpose and intent of the CP Report was*** [***to***] ***fully expose all the relevant facts*** (***and to determine if the KPPA and its employees made mistakes***), ***or if the CP Report was commissioned to cover up or minimize those mistakes in an effort to convince the*** [***Office of the Attorney General***] ***to not pursue claims that could prove embarrassing to the current or former management of KPPA***.

[4] Unless otherwise noted, all emphases in quoted texts are added.

17. Judge Shepherd's concern about a "cover up" was spurred in large part by the fact that the Calcaterra Report **ignored** what the Court referred to as "**substantial, serious allegations**" contained in the Tier 3 Plaintiffs' Complaint, concerning the 2015-2016 secret "Advisory Services Agreements" entered into by KRS and KKR Prisma in which Eager was intimately involved as a KRS Trustee and then as KRS CEO/ED. These "substantial, serious allegations" are set out in detail at ¶¶ 289–325 of the Tier 3 Plaintiffs' Complaint, and are expanded upon here. The thrust of these allegations is that:

- the secret Advisory Services Agreements explicitly, but unlawfully allowed KKR/Prisma and its affiliates to **self-deal with KRS trust assets** in its role as gatekeeper to KRS's entire $1.2 billion hedge fund portfolio; and
- KKR and Prisma in fact did engage in illegal self-dealing with trust assets, with the knowledge and approval of top KRS management, including David Eager and David Peden benefiting by millions of dollars while the KRS Trusts were damaged.

18. Judge Shepherd expressed his concerns over the failure to investigate the Advisory Services Agreements (*i.e.*, Eager, who was at the center of this wrongdoing):

> The Court is concerned that this reluctance to "pursue unfavorable information or legal theories" may have influenced the KPPA/KRS Investigation. Indeed, in reviewing the KPPA/KRS Investigation, the Court could see areas in which the report fell short of the comprehensive analysis of "improper or illegal activities" purportedly sought under the contract. For example, an Advisory Services Agreement, which forms the basis for substantial, serious allegations by plaintiffs outside the Underlying Action [*i.e.,* the *Taylor* Tier 3 Plaintiffs], is mentioned only once in the KPPA/KRS Investigation. The Advisory Services Agreement itself, any amendments, internally-referenced side agreements, and any termination notice were omitted from the exhibits. In addition, fundamental assumptions in the report (*e.g.*, that certain KPPA/KRS employees report

to the Executive Director only on administrative matters) significantly narrow its focus and favor a limited investigation.

19. A timeline of key events from March 2019 to December 2020 is set forth below:

- March 2019 — Hale joins KRS as an entry level staff attorney
- April 2020 — Calcaterra Firm formed
- May–June 2020 — Calcaterra and Teres register for Kentucky Bar Exam
- June 8, 2020 — Hale "***likes***" New York Law Journal article on new Calcaterra Firm
- June 19, 2020 — Calcaterra secretly submits proposal for "independent" investigation to Hale, Eager and Additional Actors at KRS
- August 12–20, 2020 — Hale sends "***congratulations***" to Calcaterra Law Dragon award
- August 12–20, 2020 — Calcaterra registers Calcaterra Firm to do business in Kentucky
- August 24, 2020 — KRS/Commonwealth RFP issued for "independent investigation" into past investment activities
- September 8-16, 2020 — Calcaterra lists Hale as reference "qualified to evaluate [her] capacity to perform work for Nassau County, NY"
- September 20, 2020 — RFP closes
- October 2020 — Hale "***likes***" Calcaterra post re: children's event
- November 2020 — KRS awards Calcaterra the Contract
- December 2020 — Commonwealth approves award of Calcaterra Contract; Hale sends Calcaterra "***congratulations***"

In plain speak, the Report concealed and covered up Eager's involvement in this key part of the wrongdoing. The Calcaterra Report was released in early September 2022. It was immediately subject to scathing criticism.[5]

20. The claims asserted in this case are based on common law and trust law and certain Kentucky statutes. The relevant Kentucky Revised Statutes provide:

A) **367.175 Other Unlawful Acts**
(1) Every contract, combination in the form of trust and otherwise, or conspiracy, in restraint of trade or commerce in this Commonwealth shall be unlawful.
(2) It shall be unlawful for any person or persons to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce in this Commonwealth.

B) **45A.340 Conflicts of Interest of Public Officers and Employees**
No officer or employee of an agency ..., may be in ***any manner interested, either directly or indirectly***, ... ***in any contract for the performance of any work in the making or letting or administration of which such officer or employee may be called upon to act*** or vote. No such officer or employee may represent, either as agent or ***otherwise***, ***any person***, ..., ***with respect to any application or bid for any contract or work in regard to which such officer or employee may be called upon to act or vote***. Nor may any such officer or employee ..., or receive, ***either directly or indirectly***, any money ***or other thing of value*** as a .... means of influencing his vote or action in his official character. ***Any contract made and procured in violation hereof is void***.

C) **45A.455 Conflict of interest -- Gratuities and kickbacks -- Use of confidential information.**
It shall be a breach of ethical standards for any public employee or former employee knowingly to use ***confidential information for his actual or anticipated personal gain***, ***or the actual or anticipated personal gain of any other person***.

D) **45A.010 – Construction – Purposes and policies**
(1) This code shall be liberally construed and applied to promote its underlying purposes and policies.
(2) The underlying purposes and policies of this code shall be:
***

[5] *See, e.g.*, Yves Smith, *In Response to Court Order, Kentucky Retirement Systems Releases 2,256-Pages, Yet Incomplete, Investigation into Hedge Fund Shenanigans*, NAKED CAPITALISM (Sept. 8, 2022).

(d) To provide for ***increased public confidence in the procedures followed in public procurement***;
(e) ***To insure the fair and equitable treatment of all persons who deal with the procurement system of the Commonwealth***;
***
(g) To provide safeguards for the maintenance of a procurement system of quality and ***integrity.***

E) **45A.015 – General provisions of law applicable – Obligation of good faith**
Every contract or duty under this code shall impose an obligation of good faith in its performance or enforcement. "Good faith" shall mean honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

F) **45A.450 Statement of public policy**
(1) ***Public employment is a public trust.***
***
(3) ***Employees must discharge their duties and responsibilities fairly and impartially.*** They should also maintain a standard of conduct that will inspire public confidence in the integrity of the government of all local public agencies.

G) **45A.455 Conflict of interest – Gratuities and kickbacks – Use of confidential information**

It shall be a breach of ethical standards for any public employee or former employee knowingly to use ***confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person***.

H) **45A.460 Recovery of value of anything transferred or received in breach of ethical standards**
The value of anything transferred or received in breach of the ethical standards of KRS 45A.345 to 45A.990 or regulations or rules issued thereunder by … a nonemployee may be recovered from … the nonemployee.

I) **45A.990 Penalties**

(3) Any person who violates any provisions of KRS 45A.330 to 45A.340 shall be guilty of a Class B misdemeanor, and in addition he shall be adjudged to have forfeited any statutory office or employment which he may hold.
***
(5) Any person who willfully violates this code shall be guilty of a Class A misdemeanor.
(6) Any employee … who shall … receive … either directly or indirectly, any … thing of value, as an inducement or intended inducement, in the procurement of

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> business, or the giving of business, for, or to, or from, any person, partnership, firm ... shall be deemed guilty of a Class C felony.
> (7) Every person, firm...offering to ... give ... anything of value, as an inducement or intended inducement, in the procurement of business, or the giving of business, to any employee or to any official of the Commonwealth ... in his efforts to bid ... shall be deemed guilty of a Class C felony.

21. In undertaking the conduct complained of and committing the acts alleged herein, Defendants and Additional Actors, individually and collectively in connection with the Calcaterra Firm Contract and otherwise, combined, conspired and pursued a joint enterprise and/or aided and abetted one another to enter into a contract in restraint of trade and/or to monopolize or attempt to monopolize trade or commerce in Kentucky, violated their duty of honest services to KRS and its Trusts, the Kentucky Model Procurement Code and KRS internal procurement rules.

22. Defendants used or permitted use of confidential information for actual or anticipated personal gain for themselves, the Calcaterra Firm and others. Hale and Eager were interested in the Calcaterra Contract and took actions in connection with it. They represented and advanced the Calcaterra Firm's interests in the fixed/rigged bidding process as part of covering up Eager's involvement in the wrongdoing. They and others also directly or indirectly received value and/or benefit in so acting. Eager, Hale and other actors knowingly used confidential KRS information for their actual or anticipated personal gain of themselves and other persons, including the Calcaterra Firm. The Calcaterra Contract is and was void.

23. The Calcaterra Report is a farce — a complete waste of time, effort and money wasted to protect Eager the KRS CEO/ED and others at the expense of the KRS Trusts and its trust beneficiaries. On September 13, 2022, the Calcaterra Firm issued a press release falsely claiming that "we prioritized thoroughness and impartiality,"

quoting Regina Calcaterra, who contended that "we ensured that this comprehensive investigation be independent and free of undue influence." These were lies to try to cover up that the contract procurement was fixed and the Report was corrupt. In fact, the Report was a violation of Defendants' duties to KRS and its Trusts including the duty of honest services. It is useless in any legal proceeding. It is high level public corruption involving millions of dollars.

- The Calcaterra Firm ***never contacted the people who were most knowledgeable about the alleged wrongdoing*** — the people who uncovered it, investigated it and pleaded it in the first place, steps that the Kentucky Supreme Court stated exposed "significant misconduct," and Judge Shepherd said alleged "breaches of fiduciary obligations which depleted the Trust beneficiaries retirement savings by investments that included self-dealing, exorbitant fees, conflicts of interest and risky non-prudent investment strategies," the hedge fund managers and officers and directors and advisers must be held accountable under the law and that those factual allegations "should be adjudicated on the merits."
- Despite extolling the Calcaterra Firm's experience and qualifications to get the Contract, the Calcaterra Firm did not have adequately trained and experienced personnel to do this work. ***The Firm used eight part-time contract attorneys***, ***none of whom who had any known experience in internal corporate or pension fund investigations***. This was done to use low-cost labor and maximize the personal profits of the Calcaterra Firm's partners.

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- ***None*** of the information obtained by the Calcaterra Firm during the so-called investigation was under oath. ***The Firm had no subpoena power***. Many knowledgeable parties refused to speak with the "investigators". What the Firm got from third parties was only what third parties would ***voluntarily*** provide them. And any information they got from third parties that is in the Report is ***information third parties consented to be placed in the Report***.
- The Report admits that there were several instances of suspected payoffs, kickbacks or undisclosed benefits to KRS insiders or others which others had alleged as part of the conflicted investments in 2010—2011 and 2015—2016, but absent subpoena power the investigators were powerless to pursue these matters because of the lack of court compulsion.
- The Calcaterra Report is riddled with obvious substantive errors. For instance, the Report completely ignores documentary evidence that was available of the corrupt influence of Buchan/PAAMCO on Tosh (KRS's outgoing Chief Investment Officer ("CIO")) fired for his connection to the placement agent "kickback" scandal and the new KRS incoming CIO Carlson that led to the original $400 million investment in PAAMCO's Hedge Fund as part of the $1.5 billion Black Box plunge.
- The investigation's efforts to discover the undisclosed, grotesque and obscene fees — charged by the hedge funds is facially inadequate because it ignores the fees charged by the sub funds of the parent "Black Box" hedge funds, *i.e.*, the "Black Boxes" themselves. Everybody knows these sub fund fees were very large and likely larger than fees charged by the top-level

funds. Thus, the Report understates the actual fees paid to the Hedge Funds — likely by 100%.

- The investigators never contacted the new KRS Trustees who came in 2016 and with the help of state officials who were knowledgeable, experienced and financially sophisticated did a "deep dive" to what had occurred. They then condemned the decade-plus of wrongdoing they found in no uncertain terms and terminated the hedge fund involvement as quickly as that could be legally done.
- The bottom line is the fixed, corrupt Calcaterra Report is nothing more than public corruption involving millions of dollars of public monies and KRS trust funds. "***The cover up is always worse than the crime***."

24. The conduct resulted in unfair and inequitable treatment of other qualified persons who could have bid on the contract, and performed it honestly and in good faith, wasted $1.6 million in KRS trust funds plus substantive follow-on expenditures — undercutting public confidence in, and the integrity and quality of, Kentucky's procurement system.

25. In their actions concerning the award of and administration and performance of the Calcaterra Contract, Defendants and other actors did not act in honesty and good faith and/or aided and abetted and conspired with others who also did not do so. They acted to advance their own personal interests, benefits and gains, violating reasonable commercial standards of fair dealing, and violating the public trust. Eager, Hale and the Additional Actors did not discharge their duties and responsibilities

honestly, fairly and impartially or maintain a standard of conduct that would inspire public confidence and the integrity of government procurement.

26. The actions of Eager, Hale and the Additional Actors and those who assisted and/or conspired with them constituted breach of fiduciary duties and their duties of honest services and a fraud on the KRS Trusts and the public — crimes, *i.e.*, Class A and B misdemeanors, and a Class C felony, which overcome any assertion of any evidentiary privilege regarding the matters alleged herein, and require Hale and Eager be fired and forfeit any and all "compensation" they received while employed by KRS and the Calcaterra Firm forfeit any fees or expenses received from KRS, in addition to any other liabilities for other damages alleged.

II. EVENTS LEADING TO FILING OF THIS LAWSUIT

27. In December 2017, a derivative action on behalf of KRS and Kentucky's taxpayers, captioned *Mayberry v. KKR & Co., L.P.*, No. 17-CI-1348 (Ky. Cir. Ct. Franklin Cnty.) (the "*Mayberry* Action"), was commenced in this Court by certain KRS members against numerous defendants. The "Companion Memo" filed on April 26, 2018 in that case in connection with the motion-to-dismiss proceeding provided extensive evidentiary support for the allegations. The original plaintiffs in the *Mayberry* Action asserted similar (but not identical) legal theories, based on many (but not all) of the facts alleged in this complaint.

28. In November 2018, this Court upheld the substantive claims contained in the first amended complaint filed in the *Mayberry* Action. On interlocutory appeal, in July 2020, the Kentucky Supreme Court reversed, solely on a pleading technicality that the plaintiffs, all Tier 1 KRS members, lacked "constitutional standing," because their pension benefits were guaranteed by the Commonwealth *via* the so-called "Inviolable

Contract." *Overstreet v. Mayberry*, 603 S.W.3d 244, 253–54 & n.22 (Ky. 2020). The Supreme Court concluded that, despite well-pleaded allegations of "***significant misconduct***" by defendants and huge investment losses suffered by KRS, these individuals had suffered "no injury in fact." *Id*. at 266. Tier 3 Trust beneficiaries and KRS plan members were explicitly exempted from this ruling. *Id*. at 253 & n.21.

29. Upon remand, certain plaintiffs moved to file an amended derivative complaint asserting, among other things, alternate grounds to support constitutional standing. This Court denied the motion as a matter of discretion. This Court, however, permitted the Kentucky Attorney General to intervene (with an intervening complaint copied almost *verbatim* from the *Mayberry* and Tier 3 derivative complaints):

> The intervening Complaint tendered by the Attorney General ***mirrors the original claims of the Plaintiffs that allege extremely serious violation of fiduciary and other common law duties on the part of certain KRS Board members and advisors and the defendant hedge fund managers engaged by the Board to manage these retirement investments***. ***If those allegations are true***, ***thousands of public employees have had their retirement savings depleted by investments that included self-dealing***, ***exorbitant fees***, ***conflicts of interest***, ***and risky non-prudent investment strategies***.
>
> ***Under the law***, ***the hedge fund managers and officers***, ***directors and advisors to the Kentucky Retirement Systems***, ***who allegedly breached their fiduciary duties to the public***, ***must be held accountable***. ***Any party that breached its fiduciary duties and engaged in reckless conduct***, ***conflicts of interest or sel***f-***dealing should be held accountable under the law***.
>
> * * *
>
> This Court does not believe that the Kentucky Supreme Court intended its ruling in *Overstreet* to be applied so as to provide a free pass, or "get out of jail free" card, for fiduciaries who breached their duties to the public and the taxpayers.

* * *

> … [T]he Court notes that while the Original Plaintiffs lack standing to pursue their claims … ***each iteration of their Complaint contains allegations of severe misconduct and breaches of fiduciary duties of Defendants related to management of KRS assets***. ***The Kentucky Supreme Court observed as much in Overstreet***, ***recognizing*** that "***Plaintiffs allege significant misconduct***." *Overstreet*, 603 S.W.3d at 266. Fiduciary duties exist in all circumstances where there is a "special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the one reposing confidence." *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 485 (Ky. 1991) (quoting *Security Trust Co. v. Wilson*, 210 S.W.2d 336, 338 (Ky. 1948)).
>
> ***Serious breaches of fiduciary duties have been alleged in this case***, ***and the Court believes that statutes***, ***case law***, ***the Civil Rules***, ***as well as principles of equity and public interest***, ***require that the factual allegations in this case — and the defenses asserted by all Defendants — should be adjudicated on the merits***.

30. Tier 3 KRS members (Plaintiffs herein), whose benefits are not guaranteed by the Inviolable Contract, later sought to intervene in the Kentucky case to continue to assert the ***derivative*** claims on behalf of KRS. In June 2021, without addressing their constitutional standing, this Court denied the Tier 3 motion, noting that the Attorney General sought to recover "any and all damages for any claims that might otherwise be brought derivatively by pension fund beneficiaries (regardless of whether such beneficiaries are classified as Tier 1, Tier 2, or Tier 3),"[6] and thus that additional derivative claims or claimants were unnecessary.

[6] Attorney General's Amended Intervening Complaint ¶ 3; *see also* ¶ 1, to the same effect. Moreover, any attempt by the Attorney General to assert those direct claims, or to attempt to foreclose them through claim or issue preclusion or otherwise, would meet serious conflicts of interest, due process concerns and other Constitutional impediments.

31. This action is not a derivative action on behalf of KRS or its trusts. This is a direct action by trust beneficiaries against culpable third parties — a direct action by beneficiaries to recover damages for themselves and the Trusts. The action is not on behalf of KRS. The Attorney General has not asserted and cannot assert these direct claims that are personal to trust beneficiaries. Any attempted assertion of the claims ***directly by KRS or the Commonwealth*** would implicate constitutional concerns and would greatly diminish their value or defeat them because of *in pari delicto*, imputation of knowledge/conduct and contractual defenses not applicable to this direct action by trust beneficiaries. Nor have the Plaintiffs previously attempted to state direct (as opposed to derivative) claims for the damage to the KRS's trusts suffered as a result of the wrongdoing alleged. The claims now being asserted by the Attorney General in what was the *Mayberry* Action cannot and will not provide full and complete relief for the damages suffered by KRS's Trusts and sought from these Defendants.

32. Where, as here, the Trustee is culpable and has committed a breach of trust, trust beneficiaries may prosecute an action directly against third parties who, for their own financial gain or advantage, induced the Trustee to commit the breach of trust; actively participated with, aided or abetted the trustee in that breach; or received and retained trust property from the trustee in knowing breach of trust. In other words, third parties who induce the trustee to commit a breach of trust incur liability ***directly to the trusts and its beneficiaries***; it is primarily the beneficiaries who are wronged and they are entitled under long-standing common law principles to sue directly for the trusts without making any demand on the Trustee. No demand on the Trustee to sue is required. The Tier 3 Trust Plaintiffs — trust beneficiaries — (whose pension and other benefits are not guaranteed by the Commonwealth and whose benefits vary based on

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investment returns and plan expenses) have suffered both injury in fact and damages. They file this action as trust beneficiaries ***to recover wasted assets***, ***improper fees, compensatory***, ***treble and punitive damages*** for the KRS trusts. The facts pleaded prohibit the assertion of the attorney-client privilege, and qualify for the "fraud-crime" exception to any privilege.

III. SUBJECT-MATTER JURISDICTION AND PERSONAL JURISDICTION; NON-REMOVABILITY AND STATUTE OF LIMITATIONS

A. Subject-Matter Jurisdiction and Venue

33. This Court has subject matter jurisdiction of the claims stated herein, via KY. REV. STAT. § 23A.010. Venue is proper in this Court because the claims asserted herein arose in Franklin County, Kentucky.

B. Personal Jurisdiction

34. The Court has personal jurisdiction over each Defendant. Each Defendant has purposefully availed itself or themselves of the privilege of doing business in Kentucky on a regular, systematic and persistent basis, directly and through its or their agents, obtaining large amounts of fees, commissions and personal economic benefits over a period of several years. The Court has personal jurisdiction over those Defendants not residing in Kentucky pursuant to KY. REV. STAT. § 454.210, as each meets the statutory definition of a "person," and these claims arise from the actions of each "directly or by an agent" in that each Defendant regularly transacted and/or solicited business in the Commonwealth and/or derived substantial revenue from goods used or consumed or services rendered in the Commonwealth and/or contracted to supply goods or services in the Commonwealth and/or caused injury by an act or omission in the Commonwealth and/or caused injury in the Commonwealth by an act or

omission outside the Commonwealth. In addition, the exercise of specific personal jurisdiction over any defendant resident outside Kentucky is consistent with the U.S. Constitution's Due Process clause.

A. Not a Class Action — Suit Not Removable

35. This action is not removable to federal court for many reasons, including:

- There is not complete diversity of citizenship. All Plaintiffs and Defendant Hale reside in, and are citizens of, the Commonwealth of Kentucky.
- This suit involves a local controversy vital to Kentucky workers and trust beneficiaries over the Kentucky Retirement Systems and its Trust Funds, and the public employee pension and insurance trusts it oversees: The Kentucky Employee Retirement System, County Employees Retirement System and State Police Retirement System.
- This action is not a class action. Nor is it a mass action. There are less than 100 named plaintiffs. The suit does not seek any damages for the named Plaintiffs individually or any KRS members or trust beneficiaries individually or collectively as a class. The action is to recover damages for KRS's trust funds. Over 93% of the beneficiaries of the KRS trusts live in Kentucky.
- The injuries pleaded by Plaintiffs are not damages for which recovery is sought for them or could be sought for them in this action brought for the benefit of KRS's trusts. The Plaintiffs' injuries, harm and/or damages are pleaded to establish standing only.
- Plaintiffs assert only claims arising under Kentucky law, including Kentucky's trust law. Plaintiffs do not assert any claims under federal law or regulation, and to the extent any claim or factual assertion herein may be construed as stating a federal claim, or to assert class action claims, Plaintiffs disavow such claims. KRS, its trustees and its Funds are not subject to federal regulation.
- The alleged breaches of duty and misconduct occurred in Kentucky and involve the operations and functioning of pension and insurance trusts located in and organized under Kentucky law.

36. Defendants cannot in good faith claim or produce any evidence suggesting that more than one-third of the KRS members/trust beneficiaries — all present or former Commonwealth employees — live outside Kentucky.

37. The named Plaintiffs are individual members of KRS and trust beneficiaries of the trusts KRS oversees. They do not have the means to sue in New York. Plaintiffs want to sue where they live, to achieve effective relief in as inexpensive way as possible.

B. Statute of Limitations/Laches

38. The statute of limitations has been tolled, equitably and because of Defendants' continuing false statements and reassurances, and because the illegal conduct has been and is continuing. The claims are not barred by laches.

39. The wrongs complained of are continuing and ongoing. Defendants and the Additional Actors have actively concealed their wrongdoing and violations of law for years. The statute of limitations cannot run against claims for KRS's trust when the Trusts have been under the control of wrongdoers or under the influence of its CEO Eager and long-term director Fulkerson and Additional Actors, *i.e.*, alleged co-conspirators with Defendants who have continued to try to cover up for and protect them well into 2020–2022. This action was filed within five years of discovery of the violation of the rights of KRS and its trusts.

IV. PLAINTIFFS

40. Plaintiffs are:

(a) Tia Taylor became a member of KRS and a beneficiary of its trust in March 2019 and is a member of the KERS-NH plan, entitled to Tier 3 benefits. She is in the Tier 3 KRS Hybrid Cash Balance Plan which is not

a defined benefit plan. She has an individual retirement account within the KRS plans. She contributed her own funds to KRS. Her pension and insurance benefits are not protected by any inviolable statute, and her pension benefit depends upon KRS's stewardship and investment performance, which impact the end value of her individual pension account. Taylor's "upside sharing" pension benefits have been diminished due to the decreased returns and increased expenses to KRS post January 1, 2014 as a result of the misconduct — wasted Trust funds, excessive fees etc., complained of, and will continue to be diminished going forward. This has and will damage her by thousands of dollars.

(b) Ashley Hall-Nagy became a member of KRS and a beneficiary of its trusts in November 2016 and is a member of the KERS plans, entitled to Tier 3 benefits. She is in the Tier 3 KRS Hybrid Cash Balance Plan which is not a defined benefit plan. She has an individual retirement account within the KRS plans. She contributed her own funds to KRS. Her pension and insurance benefits are not protected by any inviolable statute and her pension benefit depends upon KRS's stewardship and investment performance, as that impacts the end value of her individual pension account. Hall-Nagy's "upside sharing" pension benefits have been diminished due to the decreased returns and increased expenses to KRS post January 1, 2014 as a result of the misconduct — wasted Trust funds, excessive fees etc., complained of, and will continue to be diminished going forward. Her final pension benefit has been reduced. This has and will damage her.

(c) Bobby Estes became a member of KRS and a beneficiary of its trusts in August 2015 and is a member of the CERS-H plan, entitled to Tier 3 benefits. He is in the Tier 3 KRS Hybrid Cash Balance Plan which is not a defined benefit plan. He has an individual retirement account within the KRS plans. He contributed thousands of dollars of his own funds to KRS. His pension and insurance benefits are not protected by any inviolable statute and his pension benefit depends upon KRS's investment performance, as that impacts the end value of his individual pension account. Estes's "upside sharing" pension benefits have been diminished due to the decreased returns and increased expenses to KRS post January 1, 2014, as a result of the misconduct complained of, and will continue to be diminished going forward. This has and will damage him.

(d) Jacob Walson became a member of KRS and a beneficiary of its trust in 2019 and is a member of the plan, entitled to Tier 3 benefits. He is in the Tier 3 KRS Hybrid Cash Balance Plan which is not a defined benefit plan. He has an individual retirement account within the KRS plans. He contributed his own funds to KRS. His pension and insurance benefits are not protected by an inviolable statute, and his pension benefit depends upon KRS's stewardship and investment performance, which impact the end value of his individual pension account. His "upside sharing" pension benefits have been diminished due to decreased returns and increased expenses to KRS post January 1, 2014 as a result of the misconduct – wasted Trust funds, excessive fees etc., complained of, and will continue to be diminished going forward. This has and will damage him.

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41. All of the Plaintiffs are beneficiaries of one or more of KRS's Trusts. They are also residents and citizens of Kentucky.

V. DEFENDANTS AND ADDITIONAL ACTORS

42. KRS as Trustee of the KRS Trusts is guilty of culpable conduct as pleaded here but is not named as a defendant for tactical immunity reasons and because any recovery against it would harm the Trusts or members of the public. This action is brought to obtain relief and a recovery for Trusts of which KRS is the trustee, and in which KRS holds trust funds for several pension and health insurance plans for Kentucky workers:

> **KERS** (**Kentucky Employee Retirement System**): this system consists of two plans — **Non-hazardous and Hazardous**. Each plan is a cost-sharing multiple-employer benefit pension plan that covers all regular full-time members employed in positions of any state department, board, or agency directed by Executive Order to participate in KRS.
>
> **CERS** (**County Employee Retirement System**): This consists of two plans — **Non-hazardous and Hazardous**. Each plan is a cost-sharing multiple-employer benefit pension plan that covers all regular full-time members employed in non-hazardous positions of each participating county, city and school board, and any additional eligible local agencies electing to participate in CERS.
>
> **SRS** (**State Police Retirement System**): This system is a single-employer pension plan that covers all full-time state troopers employed in positions by the Kentucky State Police.

Other Additional Actors include, but are not limited to, KRS, the members of the KRS Board of Trustees during the relevant time period, the Stoll Keenon firm, Paul C. Harnice, Christopher E. Schaefer, Sarah J. Bishop and other outside advisors to the Trustee.

43. Defendant Calcaterra Pollack LLP is a law firm located in New York.

44. Defendant Regina M. Calcaterra is a partner in the Calcaterra Firm.

45. Defendant Janine L. Pollack is a partner in the Calcaterra Firm.

46. Defendant Justin K. Teres is or was an associate attorney at the Calcaterra Firm.

47. These Defendants are referred to as the Calcaterra Firm. Calcaterra, Pollack and Teres were each directly and personally involved in the wrongdoing alleged, including the fixed/rigged procurement process and writing the Calcaterra Report with the corrupt and improper involvement of Eager, Hale, and the Additional Actors.

48. Additional Actor Stoll Keenon Ogden PLLC is a law firm that has been outside general counsel to KRS for years and was very much aware of and involved in many of the events alleged as wrongdoing in the *Taylor v. KKR & Co., L.P.* action, charging KRS hundreds of thousands of dollars in fees each year. Additional Actors Paul C. Harnice, Sarah J. Bishop and Christopher E. Schaefer are top partners at Stoll Keenon. They are referred to as the Stoll Keenon firm. Harnice, Bishop and Schaefer are in charge of or do substantial work on the KRS account — one of the most important client accounts, generating large fees and prestige for Stoll Keenon and personally for Harnice, Schaefer and Bishop. This economic dependence is one reason these Additional Actors abandoned their duties to the KRS Trusts and their beneficiaries and accommodated and advanced the wrongdoing of Eager and others. They did it to protect Eager the ED/CEO of KRS and to curry favor with him and the KRS Board so they will continue to use Stoll Keenon for legal work — and more fees for the firm and profits for its partners. Each of the Stoll Keenon firm Additional Actors participated in hearings and reviewed and approved pleadings in *Cohen* and *White*. These Additional Actors were involved in the procurement process, knew it was improper and had been fixed yet approved it going forward and also helped to draft, write, review and approve

the corrupt Calcaterra Report, and wrote the pleadings and participated in the hearings in front of Judge Shepherd in *Cohen* and *White*. They also knew the Report was not independent — and was corrupted by the involvement of Eager, yet they reviewed and approved the Report and made efforts to keep the Report secret knowing its disclosure would expose the ongoing cover-up — and the inadequacy and corrupt nature of the Report, which was meant to further the conspiracy. The conduct of the Calcaterra Firm and Stoll Keenon firm Additional Actors violated Kentucky Rules of Professional Conduct 3.130 (1.2), 3.130(1.6), 3.130(3.3) and 3.130(8.3).

49. Defendant Victoria A. Hale is a lawyer employed by KRS. She is a long-term very close friend of Calcaterra. She was hired at KRS by Eager in 2019. She needed a job and was very loyal to him. Hale was hired as a "Staff Attorney" – a low level entry position – in 2019. By early 2022, Eager had arranged to have her made General Counsel of KRS, a very prestigious position with much higher pay. This was her reward for arranging the corrupt Calcaterra Firm investigation and Report. She played a key role in recruiting Calcaterra and in fixing the procurement of the Calcaterra Firm to do a purported "independent" investigation, but really intending to corrupt the process by fixing the procurement and helping guide the corrupt and dishonest preparation of the Calcaterra Report. Hale worked with Eager, the Calcaterra Firm and Stoll Keenon, KRS and the KRS trustees and Additional Actors in attempting to conceal the Report from the public. She also reviewed and approved the pleadings in *Cohen* and *White*, and was aware of the hearings in *Cohen* and *White*. Her conduct violated Kentucky Rules of Professional Conduct 3.130 (1.2), 3.130(1.6), 3.130(3.3) and 3.130(8.3).

50. The Calcaterra Firm and the Stoll Keenon firm each owed KRS, KRS's Trusts and their beneficiaries including the Plaintiffs, direct trust fiduciary duties of

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honesty, loyalty and to protect their interests which duties they intentionally and knowingly violated for their own gain. Each of these Defendants and Additional Actors by their actions and inactions, as alleged herein, acted in a dishonest manner, committing acts of fraud and failed to fulfill their statutory and other duties, including their fiduciary and trust duties. Each of Calcaterra, Teres, Harnice, Schaefer and Bishop knew of the ongoing ethical misconduct of each of the others and violated their duty to report such conduct to the Kentucky Bar Association.

51. Additional Actor J.T Fulkerson, a current and the longest-serving KRS Trustee who has been on the board since 2013, is a member of its key Investment and Finance Committees — committees involved in the alleged wrongdoing. He is a dominant force on the Board. He participated in the 2015–16 wrongdoing — involving Eager, Peden, KKR/Prisma and Cook — which violated KRS's conflict of interest policies and permitted the corrupt Calcaterra Report procurement process to go forward, the Calcaterra Firm to be hired, and allowed Eager to participate in the writing of the tainted report.

52. Additional Actor Steve Pitt — a political operative — secretly arranged the appointment of Additional Actor William Cook — a KKR/Prisma official — to the KRS Board to position him to continue the ongoing conspiracy and wrongdoing as a board member. Cook was deeply implicated in — and financially conflicted in — the 2015–2016 wrongdoing — the "Strategic Partnership" and the Advisory Services Agreement.

53. Additional Actor David Eager joined the KRS Board in May 2016. He joined the Investment Committee on May 3, 2016, was sworn in, ***and in his very first acts moved for the approval of not only the $300+ million upsizing of the Daniel Boone Fund, but additional new hedge fund investments***

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recommended by and benefitting KKR Prisma and its insiders as a result of the self-dealing provisions of the Advisory Services Agreement ("***ASA***") ***and Amended Advisory Services Agreement*** ("***AASA***"). He again moved for the approval of these conflicted investments at the May 29, 2016 full Board of Trustees Meeting — his first Board meeting as a trustee. When he did so, he knew that these transactions were conflicted, favored the interests of KKR Prisma over the interests of KRS and its Trusts and beneficiaries, were not done solely in the interests of KRS and its members, and violated KRS's Conflict of Interest Policy and Kentucky law. His participation and approval were part of — and an indispensable part of the success of — the scheme and conspiracy alleged in the *Taylor* Tier 3 Trust action.

54. Eager quickly left the Board in August 2016 to become CEO/ED of KRS where his ability to control and stage manage events was greatly enhanced since he was now in charge of KRS's day to day operations. In that role as the top and responsible officer of KRS, Eager did nothing to expose or put a stop to the conflicted self-dealing that had been secretly and unlawfully "approved" by the ASA/AASA. Eager publicly criticized the original *Mayberry* derivative lawsuit, claiming it made it more difficult to get qualified trustees and hindered KRS's access to sellers of investment products. Despite his conflicts of interest, KRS's and the misconduct surrounding the Calcaterra procurement, investigation and Report, the current Board of Trustees has continued to allow Eager to serve as KRS's CEO/ED and actively participate in matters, claims relating to the 2015–2016 misconduct he was personally involved in, and he has attempted to blunt, deflect and dilute the prosecution of valid claims that will benefit the KRS Trusts and to corrupt the Procurement, Investigation and preparation of the Calcaterra Report. Eager, as a trustee — and later as CEO — working with the Stoll

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Keenon firm failed to ensure that the conflicts of interest involving KKR Prisma, Cook, Rudzik, Reddy and Peden were vetted, disclosed, and/or dealt with by the Investment Committee or the Board. He permitted the unlawful ASA/AASA to govern the so-called Strategic Partnership without exposing its contents or subjecting it to scrutiny or a vote by the Investment Committee or the Board.

55. In 2020–2021 Eager, Hale, the other Defendants and Additional Actors, including the KRS Board of Trustees and the Stoll Keenon firm, caused KRS — the Trustee of the KRS Trusts — to undertake a supposed independent investigation — to cost $1.2 million into the alleged investment wrongdoing at KRS through a corrupted and illegal procurement process, and then participated in writing a report which attempts to cover up the then-alleged wrongdoing. This conduct was an ongoing part of the course of conduct conspiracy and common enterprise as pleaded and exposed in *Taylor v. KKR & Co., L.P.*

56. During 2020, Eager — the KRS CEO — who had been deeply involved in the 2015–16 KKR/Prisma self-dealing and abuse of KRS's trusts and was exposed to being named a defendant, wanted to try to undermine the prosecution of civil claims exposing his wrongdoing and protect himself and the Hedge Fund Sellers who together with him were facing actual or potential legal claims threatening them with huge liabilities, for which Eager had little if any insurance coverage. In order to try to prevent or defeat any claims, other KRS insiders/employees who worked at his direction, including Hale, misused their official positions and acted dishonestly and disloyally to the KRS Trusts and their beneficiaries including the Plaintiffs herein. Acting for the Trustee, they improperly and illegally procured a contract for a purported "independent investigation" into the alleged investment wrongdoing at KRS. Eager and others

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violated Kentucky law and KRS's own rules and regulations by ***fixing and corrupting the procurement process*** to assure a friendly, compliant and conspiring law firm, the Calcaterra Firm, and its controlling partner Regina Calcaterra, who had a known track history of fixing or influencing investigations to protect the investigated would be hired, and then working together with Defendants and Additional Actors created, wrote and/or approved a report to shield Eager and his hedge fund co-conspirators from wrongdoing. When the procurement irregularities surfaced and the lack of independence of the report became obvious, Eager, Hale, KRS (the Trustee) and the Additional Actors worked together to "hide" the report from KRS members and the public to try to cover up Eager's part of the continuing wrongdoing, and because the Report's main theme was that the Commonwealth, intentionally and knowingly, underfunded KRS for years — a conclusion that undermines the Attorney General's claims on behalf of the Commonwealth via *in pari delicto* and causation defenses.

57. In acting and failing to act as alleged herein, each Defendant or Additional Actor knowingly aided and abetted the breach of duties by Eager and the Trustee by committing overt acts, in an ongoing scheme, civil conspiracy, common course of conduct and joint enterprise, acting in concert with the Trustee, Defendants and Additional Actors including the KRS Board of Trustees to commit unlawful acts, including the violation of the mandatory duties imposed on each of them and Trustees by Kentucky laws, all to further his, her or their own personal and economic interests.

VI. OVERVIEW OF THE KRS DISASTER AND DAMAGE TO THE KRS TRUSTS AND THEIR BENEFICIARIES

A. Background, Summary of the Wrongdoing and the Near Destruction of KRS's Trusts

58. To protect Kentucky workers (who would be ***required*** to contribute their own monies to these pension trusts), Kentucky (i) created KRS to be overseen by Trustees via the Kentucky Pension Law ("KPL"), and (ii) designated KRS's pension assets as "***trust funds***," KY. REV. STAT. § 386B.10-020, and the Board as the Trustee.

59. In 2000–2001, the KRS pension and insurance Trusts (referred to variously as the "Pension Plans" or "Plans" or "Trusts," "Trust Funds" or "Funds") overseen and managed by KRS for 390,000 present and former state and local government employees — police officers, clerks, janitors, prosecutors, correction officers, social workers, librarians, *etc.* — ***were over 100% fully funded***, ***in part*** with ***a*** $***2 billion surplus***.

60. As of 2016–2017 the KRS Funds/Plans/Trusts were gravely impaired financially and in danger of failing. They had become the ***worst-funded public pension plans in the United States***. The largest of the Pension Plans (KERS non-hazardous), which was 139% funded in 2000, had only 13% of the money it needed to pay the billions of dollars it owed and a mere one-tenth of the funding it had. Its insurance trust had just 36% of the monies it needs to cover billions in insurance obligations. This fund's assets had fallen to just $1.9 billion, yet it has to pay out almost $1.0 billion in benefits each year going forward for decades. The overall KRS funding deficit of $29–30 billion was much larger than the Funds' total assets of $17 billion. The collective KRS $2 billion surplus was gone and had been replaced by a $29–30 billion deficit. It is very likely that one or more of the Plans/Funds will fail in the future, and

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that spill-over effects will further impair all KRS Plans and Trusts, leading to a systemwide restructuring and curtailments for all unprotected benefits, including the unguaranteed benefits of Tier 3 members.

61. KRS's executive director has admitted the KRS funds were in a "***death spiral***" which it "***cannot invest itself out of***." Another official admitted in 2017 that absent a massive taxpayer bailout, "***the funds will fail*** … ***the run-out date — the date when the fund would be depleted*** … ***has shrunk***." In 2019 the Kentucky Governor said the KRS Funds are "***essentially bankrupt***."[7] The Commonwealth of Kentucky is a major cause of this fiasco as it knowingly refused to make the legally required annual contributions to KRS and its Trusts for over a dozen years. By underfunding the KRS trusts by billions over more than a decade the Commonwealth drove the Trustee of KRS trusts into the arms of the voracious hedge fund sellers.

62. The long course of egregious misconduct of the Commonwealth officials, KRS trustees, officers and employees ("T/Os"), and Defendants caused the impaired financial condition — and severely underfunded status of the KRS funds — ultimately damaging the Tier 3 Trust Plaintiffs and all KRS trusts. Not only has it substantially increased the risk that one or more of the KRS plans/trusts will fail, creating and enhancing the risk of the entire plan defaulting, this misconduct has also caused the

[7] While the KRS trust funds remain badly financially impaired — some $30 billion underfunded and dangerously underfunded — complete collapse has been avoided for the time being because of ***vastly increased*** employer contributions and ***increased support*** payments by the Commonwealth, and because ***finally KRS halted its disastrous multi-billion-dollar hedge funds adventure***. As Eager has admitted, KRS "cannot invest itself out of the death spiral" that the misconduct Defendants participated in and/or tried to cover up was a substantial factor in causing.

named Plaintiffs and Tier 3 KRS members "injuries in fact" and monetary damages, while damaging the KRS trusts as well.

63. KRS currently administers plans or trusts with three differing benefit structures. Tier 1 and 2 Members are, in general, public employees hired before 2014. Tier 3 Members were hired after January 1, 2014. Persons who became KRS members after January 1, 2014 — about 100,000 individuals, 20+% of all KRS plan participants — receive Tier 3 benefits. ***They have suffered individual injury and damage***[8] ***caused by poor investment returns*** (***involving***, **inter alia**, ***defendants***' ***hedge funds***) ***and wasteful expenses that have reduced/lowered their yearly*** "***upside***" ***credit and their ultimate pension benefits***, ***all the result of the ongoing scheme***, ***conspiracy and common enterprise of Defendants as alleged herein — and already upheld by the Court***. In addition to the damage the Tier 3s have already suffered, they face a real risk of cuts in, or even the complete elimination of, ***all their pension and insurance benefits***, ***none of which are protected by*** "***inviolable contract***" ***statutes***.

64. Each named Plaintiff has ***already suffered individual injury and damage and is continuing to suffer injury and damage due to Defendants***' ***alleged misconduct that has caused damage to them as Tier 3 members and trust beneficiaries and all of the KRS trust funds well into 2018–20***.

[8] The Tier 3 Trust Plaintiffs do not seek to recover their individual damages in this case which seeks to recover damages for KRS's trusts. Tier 3 plaintiffs are pursuing individual damages in *Taylor v. KKR & Co. L.P.,* No. 21-CI-0020 (Ky. Cir. Ct. Franklin Cnty.), a class action for 88,000+ Tier 3 KRS members and trust beneficiaries. The Tier 3 damages are pleaded in this Complaint to establish constitutional standing only.

65. As KRS Plan participants and trust beneficiaries, the Tier 3 Trust Plaintiffs have contributed to and continue to contribute ***thousands of dollars of their personal funds*** to help fund KRS's ongoing operations and the KRS pension and insurance trusts. They are ***required*** to contribute between 5–9% of their pay annually into KRS's common investment pool. ***They are involuntary participants***. These Tier 3 employee contributions are comingled with KRS's other monies. Over the work career of a 20–30-year work life, these mandatory "contributions" of their own monies amount to many thousands of dollars. *See* KY. REV. STAT. §§ 61.560(1), 61.691(1). While the Tier 3 contributions are "matched" by their employer, the retirement benefits provided to the public workers of Kentucky are ***not gifts***.

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KRS Member Personal Contributions To Pension/Insurance Trusts Via Mandatory Payroll Deductions		
Yearly Gross Salary	Personal Contribution Percentage	30 Year Worker Total Personal Contribution
$40,000	5% $2,000	$60,000
	7% $2,800	$84,000
	9% $3,600	$108,000
$80,000	5% $4,000	$120,000
	7% $5,600	$168,000
	9% $7,200	$216,000
$120,000	5% $6,000	$189,500
	7% $8,400	$252,000
	9% $10,800	$324,000

66. Tier 3 Plan participants participate in a Hybrid Cash Balance Plan, which has characteristics of both a defined benefit plan and a defined contribution plan. This plan resembles a defined contribution plan because it determines the value of benefits

for each participant based on ***individual accounts***. However, the assets of the plan remain in the single, ***comingled investment pool*** like a traditional defined benefit plan. Their final individual account balance, and thus their pension, depends on the stewardship of KRS's trustees and KRS's investment returns (and expenses) over the years. Unlike Tier 1 and 2 members, KRS Tier 3 members in return for higher contributions and completely unprotected benefits — even vested benefits — receive a minimum 4% annual return, plus an annual "upside" of 75% of KRS's investment returns over 4% computed on a 5-year basis and credited to their accounts. ***The "upside" credits of Tier 3 plan participants have been diminished each year since 2015 as a result of the poor performance (losses) and excessive fees attributable to the "Black Box" and other hedge funds, i.e., the alleged wrongdoing in this case***. All Tier 3 members have ***already been injured due to the diminishment of their benefits as a result of the wrongdoing alleged***.

67. KRS became badly underfunded in significant part due to the failure of the Commonwealth to make its legally required annual contributions for several years. The Hedge Fund Sellers were constantly watching for underfunded public pension plans that they targeted knowing their trustees were generally unsophisticated and that the plans are not subject to state regulation, and the politically appointed trustees are or were often looking for high return vehicles to invest in to overcome funding shortfalls, so their political sponsors could avoid tax increases which were necessary to properly fund the Trusts. The hedge fund sellers spotted this slow deer, *i.e.*, KRS and moved in. With the help of complicit and disloyal KRS insiders, the Hedge Fund Sellers became "trusted advisors" — even before being finally selected by the KRS Board — to help KRS find a way out of its predicament. Over the next several years, they plundered the KRS funds,

sticking them with high-risk/low-return Black Box hedge funds and then later illegally taking control of KRS's entire hedge fund portfolio all while gorging on massive fees.

68. Now Plaintiffs and other KRS trust beneficiaries are stuck in the worst-funded public retirement funds in the United States, and as active members are ***forced to continue to "contribute" their own earnings into the smoldering remains of what were once fully-funded plans***.

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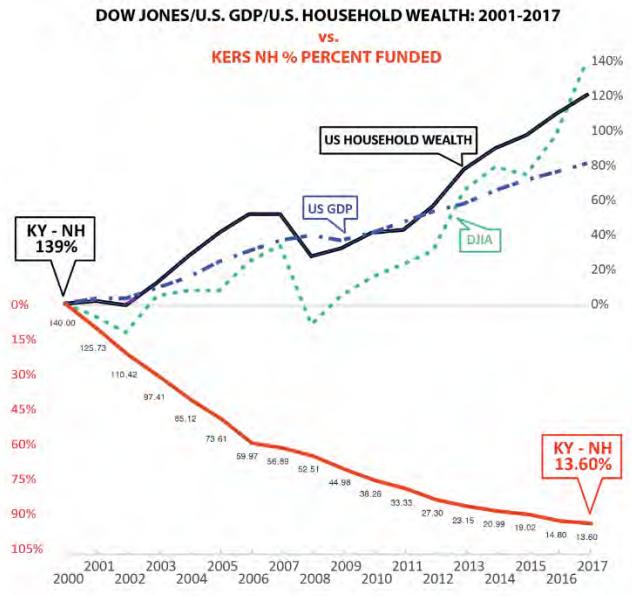
KRS-NH PERFORMANCE vs. OTHER PUBLIC PENSION PLANS

VISUAL 1



Pension Fund	% Funded	Pension Fund	% Funded	Pension Fund	% Funded
Connecticut Municipal	86%	Missouri Local EES	95%	Sacramento Co. ERS	87%
Delaware State EES	89%	Missouri PEERS	86%	South Dakota EES	100%
TENN	93%	Missouri Teachers	86%	South Dakota EES	100%
Florida Retirement System	85%	Montana County EES	92%	Texas County	88%
Houston Fire Fighters	86%	Nebraska School EES	90%	Texas Court EES	88%
Iowa PERS	84%	New York State Teachers	87%	Texas Teachers	86%
Los Angeles Fire and Police	94%	North Carolina Local	95%	Washington School EES /Teachers	88-92%
Louisiana State Parochial	99%	North Carolina EES	91%	Washington, DC P&F	110%
Maine Local Govt. EES	86%	Oklahoma PERS	93%	Washington, DC Teachers	91%
Milwaukee City ERS	95%	Oklahoma Police	99%	Wisconsin EES	100%
Minnesota Police and Fire	88%	Pennsylvania Municipal	100%	KERS NH	13.6%

69. Disregarding a 2010 warning that KRS "***fac*[*ed*] *an appreciable risk of running out of assets in the next few years*" *and could not invest its way out of the crisis by taking more investment risk***, the Trustee with the knowledge of Commonwealth officials took the very action they had been warned "***risked the fastest depletion of the plan's assets***" and "***substantially increas*[*ed*] *the chances of the catastrophic event of depleting all assets in the near future***." The Trustee dramatically changed KRS's investment allocations to take on ***much more***

risk, and in 2010–2011, bet $1.5 billion on highly risky, extremely expensive and unsuitable hedge fund vehicles which were effectively "Black Boxes." The Trustee and its advisors had also been explicitly warned in 2009 of the need to conduct "***thorough***" and "***extensive due diligence***" into these new, exotic, untested vehicles ***and*** into the backgrounds of the sellers, including using "***private investigators***." They ignored that warning as well.

70. Instead, KRS bet big, putting 10% of KRS's assets — twice the 5% originally authorized — into what they told KRS members and Kentucky taxpayers were "***absolute return***" investments that would be "long-term driver[s] of Fund performance," with "***tremendous potential to exceed the Plan's actuarial return assumptions and historical returns***," expected net long-term returns of 7.5% or more, which could "***lower*** [***KRS's***] ***risks***" through "equity-like returns with bond-like volatility." These were highly risky Black Box hedge fund bets. And they lost big. They never achieved the expected returns for KRS over any 5-year period (but did deliver spectacular returns for the Hedge Fund Sellers). In just a few years, terrible Black Box returns (and losses exceeding $100 million in one year), plus "exorbitant fees," brought about the warned-against catastrophe, pushing KRS to the edge of insolvency. KRS had handed over $1.5 billion in trust funds to Wall Street hedge fund sellers with "***checkered pasts***" — ***littered with fraud and breach-of-duty lawsuits and a record of cheating their investors and partners***. This was directly contrary to the portentous 2009–10 warnings, and it was also a breach of the T/Os' duties to safeguard and prudently invest KRS's trust funds.

71. ***By 2011–2012***, ***the KRS funds were the worst funded in the United States***, with funding ***deficits nearing*** $***30 billion***, ***a situation caused***

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by the course of misconduct complained of in this complaint, ***including years of underfunding by the Commonwealth***. On February 6, 2013, *Lanereport.com* reported:

> **Kentucky Pension Shortfall A Potential Bankruptcy Bomb**
>
> Kentucky Retirement Systems (KRS) is underfunded by more than $30 billion ***and falling further behind***.
>
> ***
>
> According to the Institute for Truth in Accounting, the funding gap for the retirement systems has grown by roughly $3 billion in the past year alone, and the shortfall for the Kentucky Retirement Systems' six groups is over $30 billion .... A recent Pew Center on the States study describes the commonwealth's pension situation as "***unsustainable***" due to this liability and because KRS is paying out more than it is taking in.

72. The financial problems at, and the threat of failure of KRS, resulted in the creation of a new Hybrid Cash Balance Plan (Tier 3) with lower and ***entirely unprotected benefits***, ***but higher employee contributions of their own funds/earnings***.

73. As a result of the possible failure of the KRS Trusts, the legislature enacted major legislation impacting KRS, the KRS Trusts, and the existing benefits all Plan members were entitled to. New state hires post-January 1, 2014 were involuntarily placed in a new Hybrid Cash Balance Plan ***required to pay increased personal contributions and denied inviolable contract protections for all of their benefits — pension and insurance — even vested benefits***.

74. KRS members and trust beneficiaries, ***including the new Tier 3 members***, were assured by the Commonwealth that these legislative enactments

changing the KRS benefit structure would fix the problems. After the 2013 Legislation was passed, then-Governor Steve Beshear referred to the new legislation as:

> … a bipartisan agreement to solve the most pressing financial problem facing our state — ***our monstrous unfunded pension liability and the financial instability of our pension fund***.
>
> ***
>
> As a result of this legislation, we fully honor the commitments made to state workers and retirees; address the financial uncertainty that threatened our state's credit rating.

75. However, due to the Trustee's ongoing misconduct and the Commonwealth's continuing violations of its legal duty to properly fund KRS, KRS's funded status continued to decline. In late 2016, it came out that KRS's "absolute return" [Black Box] investments had ***lost over*** $***100 million in less than 12 months***. Independent eyes came on the KRS Board of Trustees, curtailed the hedge fund misadventures, and exposed years of false statements, assurances and concealments as well as deliberate manipulation of financial and actuarial assumptions, which had long masked its true financial condition.[9]

76. In 2016–2017, certain new trustees conducted a "***deep dive***" into what had been going on inside KRS and were "***shocked***" by what they discovered. Based on their investigation, Commonwealth officials and new trustees confirmed years of misconduct, including:

- that "***payroll growth, investment return and inflation***

[9] As discussed in more detail below, even the 2016 "deep-dive" failed to discover or to publicize the continuing misconduct and significant wrongdoing by KKR Prisma and its associated Defendants — along with former Chief Investment Officer Peden, former ED Thielen and current ED David Eager — in connection with the secret and unlawful ASA and AASA, which allowed KKR Prisma and KKR to self-deal with KRS assets for their own profit, a key part of the scheme and conspiracy and discovery of which was required to be able to properly, ethically plead a RICO claim.

assumptions were "***ridiculously high***, ***blatantly incorrect or wildly overstated***";

- that "***fantasyland numbers***" helped "***hide the true pension costs and liability from Kentucky taxpayers***" as the "lack of realistic and rational actuarial assumptions ***helped obscure the distressed financial status of the plans***";

- that "***past assumptions were often manipulated***" and "[t]he result was to provide a ***false sense of security*** and justify smaller than necessary contributions to the pension plan — ***a morally negligent and irresponsible thing to do***";

- that "[w]e have been aggressive in our assumptions for many, many years — ***aggressively wrong***," which "led to this, accumulation of billions in unfounded liability" because the prior Board "***was too afraid of the political consequences to use the accurate numbers for these assumptions***"; and

- that "[***w***]***hat has been done in our pension system has been criminal … irresponsible and it is shameful***."

AFTER OUSTER OF CULPABLE TRUSTEES
***DEEP-DIVE, FRESH EYES* REVELATIONS**

VISUAL 3

ACTION
DEEP DIVE INTO THE NUMBERS

RESULT
WE HAVE BEEN AGGRESSIVE IN OUR ASSUMPTIONS FOR MANY, MANY YEARS – AGGRESSIVELY WRONG

- KRS... "payroll growth, investment returns and inflation assumptions

"Actuarial assumptions ***ridiculously high***

blatantly incorrect or wildly overstated

- When you use re… …en used for the last 10 years -- not **fantasy land numbers** the numbers are gonna go up"

Exorbitant fund fees

fantasyland numbers

March 5, 2017

"... most important, is that the actuarial assumptions are realistic ... the Board's No. 1 responsibility is to set the rates on investment returns, payroll growth and inflation. These three numbers determine the actual liability and required actuarial payments by the legislature"

"On… …oard] did was to undertake an examination of 10-year historical rates. We … …tuarial assumptions used by the previous board were 30% to 60% perce… …orical averages."

* * *

"The board is required by law to estimate the numbers, so the actuaries can calculate required payments. …or

shocked

too afraid of the political consequences to use the accurate numbers for these assumptions

June 18, 2018 By John R. Farris

The new leadership…terminated [ACTUARY] … after discovering that is was using

helped hide the true pension costs and liabilities from Kentucky taxpayers

STATE CONTROLLER

"In the past, a lack of realistic and rational actuarial assumptions helped obscure the distressed financial status of the plans and contributed to the long-term unsustainability of the plans...

lack of realistic and rational actuarial assumptions helped obscure the distressed financial status of the plans

February, 2017

Nearly all of [The $800 million per year increased tax payer payments] is because the board of trustees believes the state will earn less money on its investments and have fewer employees contributing to the system over the next three decades. **Board chairman ... Farris says the numbers, while more expensive, are more realistic.**

Our role [is] to calculate these numbers correctly and give them to the legislature. Previous boards didn't do that

December 7, 2017

New Actuaries … found that the systems have … unfunded liabilities of $26.75 billion, … — the result of KRS replacin…

fantasyland numbers

"EXORBITANT" HEDGE FUND FEES

- "Exorbitant Hedge Fund Fees"–Farris, June 25, 2018/Feb 24, 2017

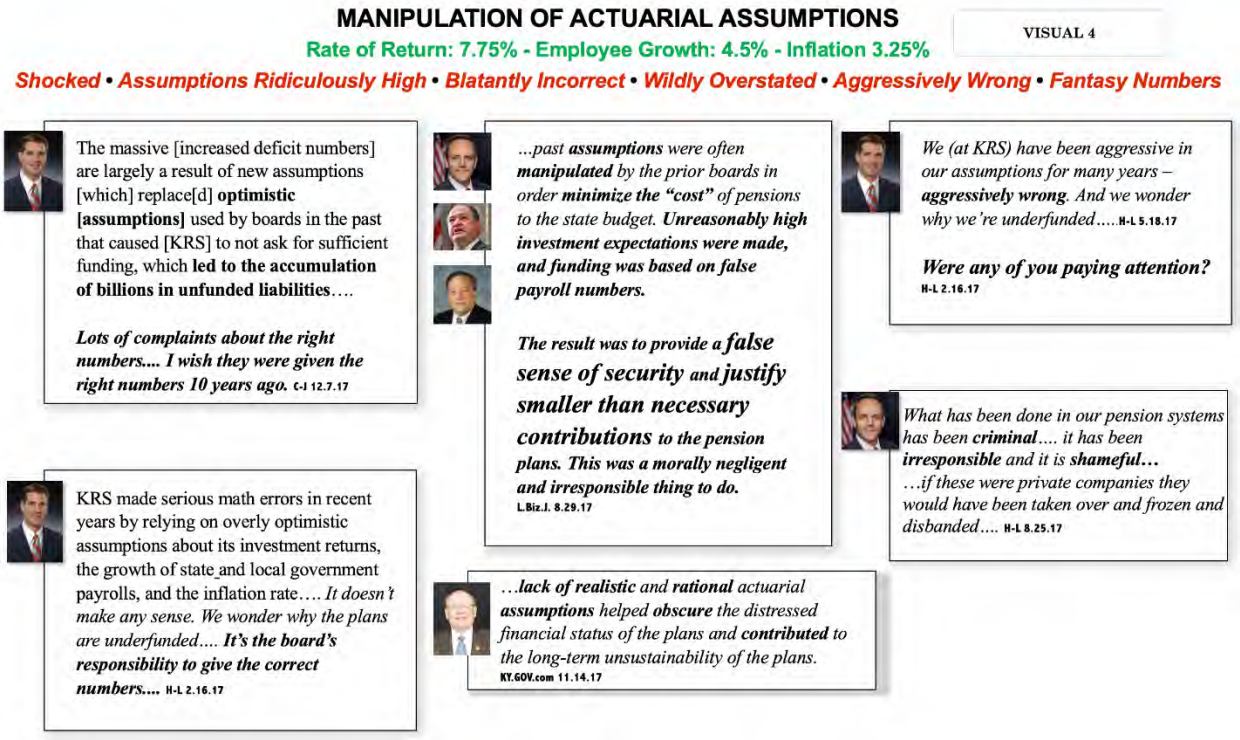
Exorbitant Hedge Fund fees

…ic pension plans. Corporate plans are too smart to pay these outrageous fees. **The only stupid people are the taxpayers of Kentucky for letting these people get away with this."**

- CEM Benchmarking -- KRS annual investment expenses in 2014 were **100 percent higher** than reported: $126.6 million instead of the $62.4 million.

77. The Commonwealth's three highest elected officials laid bare the misconduct by the KRS Trustees:

> The biggest cause of the shortfall was erroneous actuarial assumptions made by past members of the [B]oards …, which led to significant underfunding …. [P]ast assumptions were often ***manipulated*** by the prior pension [B]oards in order to minimize the "cost" of pensions to the state budget. Unreasonably high investment expectations were made and funding was based on ***false*** payroll numbers.
>
> The result was to provide a false sense of security …. ***This was a morally negligent and irresponsible thing to do***.



78. The KRS plans/trusts have never recovered. Today, they remain among the worst funded plans in the United States — because of the course of misconduct and concerted action complained of in the *Taylor* action and underfunding by the

Commonwealth beginning in 2009 or earlier that decimated and damaged KRS's trusts, almost destroying them.

B. Investment Losses and False Actuarial Assumptions Plunge KRS into a Crisis in 2009–2010

79. Between 2001 and 2009, the funded status of the KRS Funds declined due to large investment losses, which severely damaged KRS's investment portfolio and demonstrated that the 7.75% Assumed Annual Rate of Investment Return ("AARIR") the Trustee had been using for years was unrealistic and would never be consistently achieved. By 2009–2010, the Trustee was facing accelerating retirements, requiring KRS to pay out increasing amounts to longer-living retirees while slowing government hiring — meaning fewer new hires, *i.e.*, less new money coming into the Plans. Billions in investment losses and deteriorating demographics had hurt the funds. The T/Os were trapped in a financial/demographic vise.

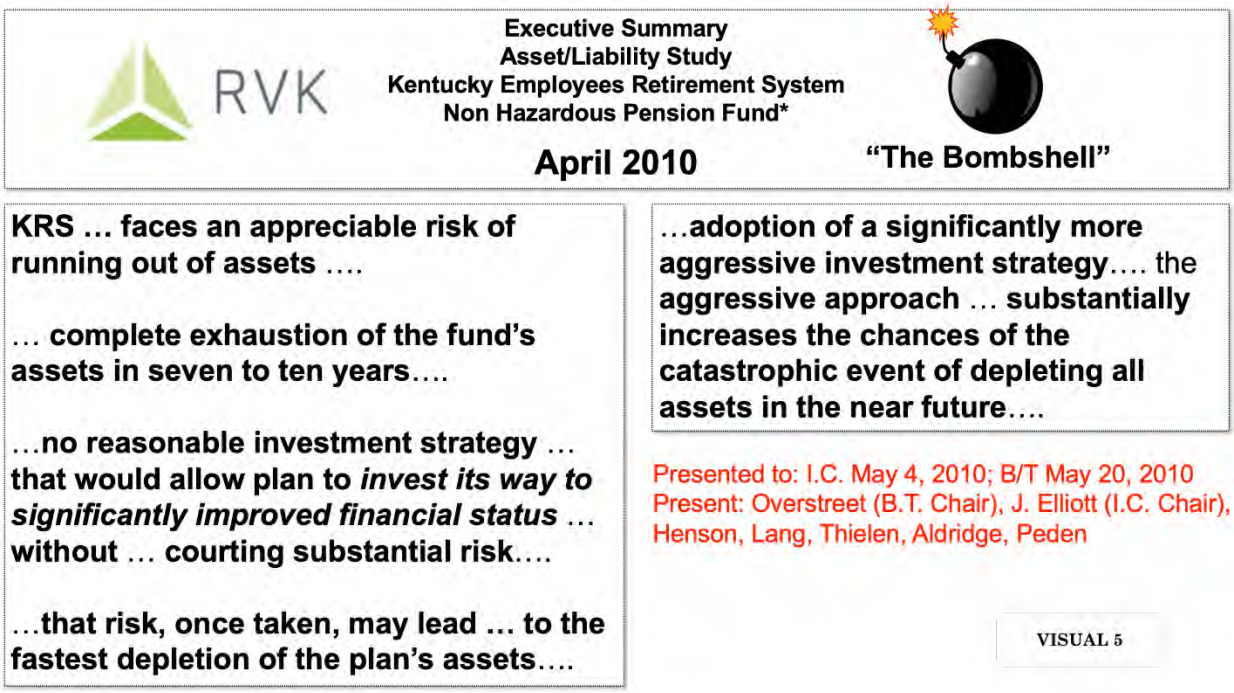
80. In the midst of the 2009–2010 crisis, KRS was also engulfed by the infamous placement agent kickback scandal,[10] which would result in firings and demotions of KRS insiders implicated in these dubious activities. Audits uncovered $13 million in "***suspicious payments***" to "***placement agents***" who had received kickbacks in return for getting KRS investment monies placed. Exposure of this unsavory practice at public funds erupted into a national scandal. Several pension fund figures and fixers went to jail. In Kentucky, Park Hill Group — controlled by Blackstone and/or some of its executives — received one of the largest "suspicious payments," over

[10] Crit Luallen, *Examination of Certain Policies, Procedures, Controls, and Financial Activities of Kentucky Retirement Systems*, June 28, 2011, *available at* https://kyret.ky.gov/About/Internal-Audit/Documents/2011%20State%20Audit.pdf (last visited Sept. 14, 2022).

$2 million. As a result of this scandal, KRS's CIO (Tosh) and CEO/ED were both fired or forced out. Overstreet, longtime Board Chair, was demoted.

81. This scandal, and related firings, gutted KRS's staff and deprived the Trustees of the kind of staff support needed at this critical time. ***The sophisticated Hedge Fund Sellers were already stalking the KRS funds because their business plans focused on underfunded public pension plans and they knew the Trustees were dealing with internal turmoil and staff turnover*** [***as well as***] ***new***, ***inexperienced investment staff and would be unusually dependent upon their expertise and sophistication***.

82. Confronting KRS's threatened financial status in the midst of this "suspicious payments" scandal and personnel pandemonium, the Trustees received a liquidity study. That April 2010 "***Bombshell***" report warned that KRS "***faces an appreciable risk of running out of assets in the next few years***," and there was "***no prudent investment strategy that would allow KRS to invest its way to significantly improved status***." It warned that increasing the risk level of investments to try to invest KRS out of the hole ***"substantially increases the chances of the catastrophic event of depleting all assets in the near future***." The Hedge Fund Sellers learned of the contents of the Bombshell report.



83. Notably, in evaluating investments a few years earlier, the KRS Board's Investment Committee ("I.C.") — then headed by Susan Horne (who left the Board) — had rejected hedge funds as an unsuitable investment for the life savings of the Kentucky workers and taxpayer funds the Trustees were sworn to protect. The I.C. concluded KRS was "***not interested in hedge funds***" from a "***fiduciary standpoint***" due to "***red flags***" including "***higher risk***."

KRS REJECTS HEDGE FUNDS IN 2006

VISUAL 6

April 24, 2006
KRS INVESTMENT COMMITTEE MEETING

- *Need to be concerned about the **PERCEPTION** from members, legislators, or other public officials.*
- *Concern from **FIDUCIARY STANDPOINT** - hedge funds **UNCONSTRAINED**.*
- ***FUNDS WILL NOT TELL INVESTORS WHAT THEY DO** [or] **WHAT POSITIONS THEY HOLD**.*
- **SELL ASSETS THEY DO NOT OWN.**
- **HAVE HIGHER RISK AND EXPOSURE.**

Present: Overstreet, Henson, Thielen, Aldridge

- ***ENOUGH RED FLAGS ABOUT HEDGE FUNDS – NO NEED TO GO ANY FURTHER.***
- **[KRS] *NOT INTERESTED IN HEDGE FUNDS***

84. Defendants in the *Taylor* action worked together to overcome — reverse — this prudent decision to not get involved in hedge funds so that they could exploit KRS's financial distress by selling their purportedly "high yield" "safe" hedge funds. Working together with others, those defendants exploited the Trustee's disregard of both the Bombshell report's warnings and the prior decision to avoid hedge funds. The "***catastrophic event of depleting all assets in the near future***" came very close to occurring in due course, and that grave danger remains today.

C. The Forecasted Financial Catastrophe Followed the Trustees/Officers' 2011 Purchase of $1.5 Billion in High-Risk Black Box Hedge Funds

85. As the Trustees searched for a way out of that financial and actuarial vise, and while in the midst of internal scandal and disorganization, KRS presented a tempting "honeypot" for the high-powered Hedge Fund Sellers. The Hedge Fund Sellers knew the Trustee was dealing with a much more serious situation than was known by the public. They targeted KRS to sell it risky and expensive "Black Boxes." They

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custom-designed "Black Box" fund-of-funds vehicles for KRS and named them the "Henry Clay Fund," the "Daniel Boone Fund" and the "Newport Colonels Fund."

86. Ignoring the Bombshell report's dire warnings, the Trustee turned to these Wall Street financial houses who targeted underfunded public funds as unsophisticated targets. They sell high-fee, high-risk hedge funds and pocket large annual management fees *regardless of investment performance*, in addition to large "incentive fees." These Hedge Fund Sellers targeted KRS as part of their business plans, which focused on public funds — especially underfunded funds.[11] They did this due to the combined factors of little government oversight of public funds, the relative lack of sophistication of public fund trustees and officers, and the huge amount of monies available for "investment," *i.e.*, the "honey pot."[12] A former KRS trustee said: "These funds can't get [high fees] from anywhere besides public pension plans. Corporate plans are too smart to pay these outrageous fees."

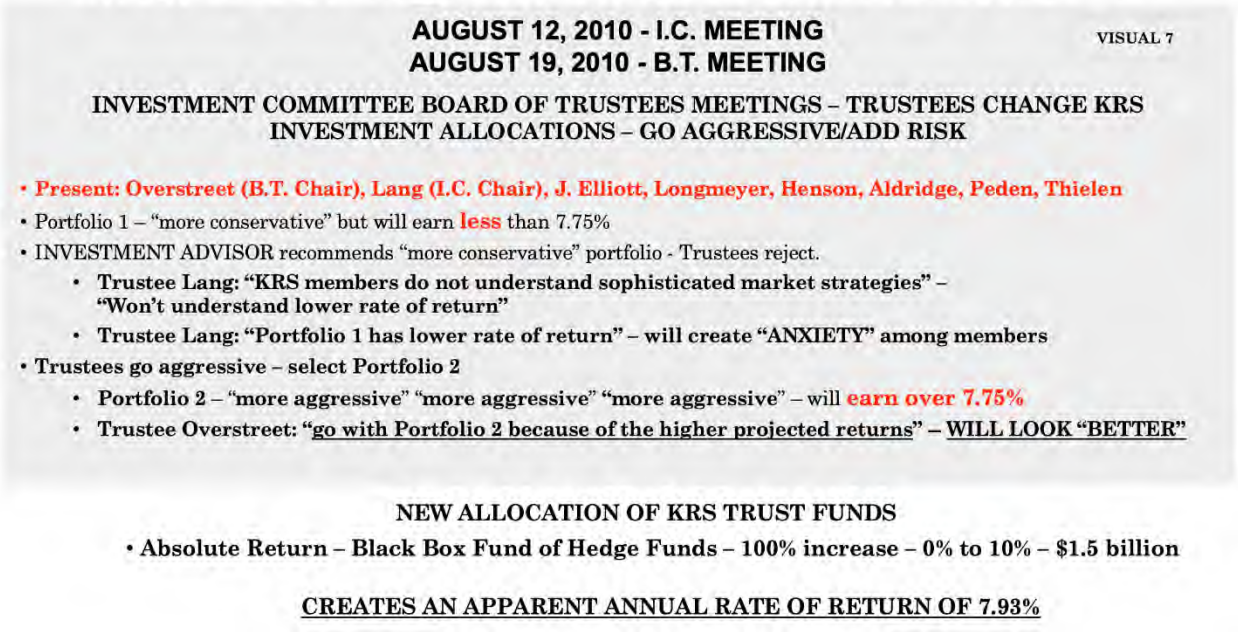
87. At the instigation of and ***with the assistance of the Hedge Fund Sellers***, in August 2010, the KRS officers (Aldridge, Peden, Thielen) and the Hedge Fund Sellers got the corrupt Trustee to dramatically change KRS's investment allocations to allow them to take on much more risk. The Trustee rejected a "more conservative" portfolio because it would not project out future investment returns at

[11] *See* Gary Rivlin, *The Whistle Blower: How a Gang of Hedge Funds Strip-Mined Kentucky's Public Pensions*, THE INTERCEPT, Oct. 21, 2018, *available at* https://theintercept.com/2018/10/21/kentucky-pensions-crisis-hedge-funds/ (last visited Sept. 14, 2022).

[12] *See* Gary Rivlin, *A Giant Pile of Money: How Wall Street Drove Public Pensions into Crisis and Pocketed Billions in Fees*, THE INTERCEPT, Oct. 20, 2018, *available at* https://theintercept.com/2018/10/20/public-pensions-crisis-wall-street-fees/ (last visited Sept. 14, 2022).

7.75%, fearing that since KRS "***members do not understand sophisticated market strategies***," "***they won't understand a lower rate of return***" which "***will create anxiety***." So, the Trustee picked a "***more aggressive***" strategy "***with higher projected returns***" that projected out investment returns over 7.75% — even though they knew that was impossible to achieve — because it would "***look better***" — and (more to the point) because it would camouflage and thus forestall the need for increased taxpayer funding.

KRS Investment Allocations Changed to Accept Hedge Fund Sellers' High-Risk/High-Fee Blackbox Hedge Funds

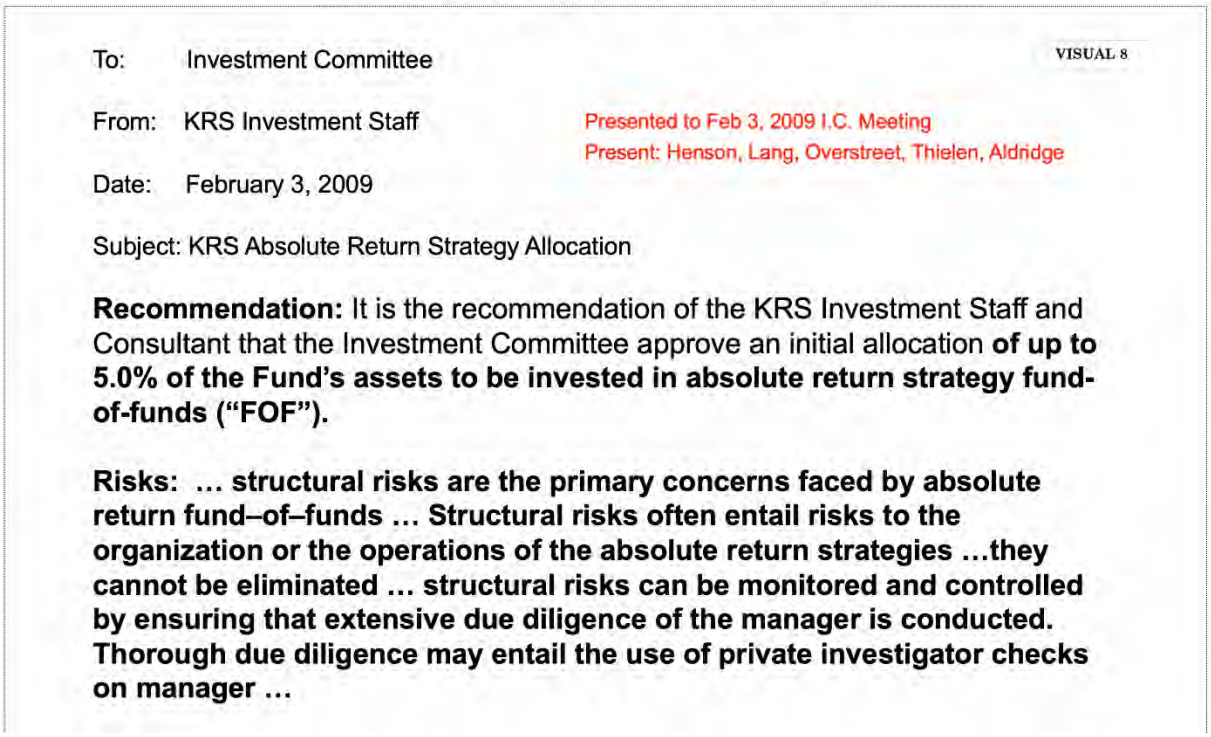


88. The Trustee then sold off much of KRS's solid income-producing investments to fund these highly risky, super-expensive "absolute return" hedge fund purchases. The Trustee sold off 34% of KRS's good stocks, 53% of its fixed-income investments and 100% of its U.S. Treasuries. This giant $1.5-billion bet — 10% of KRS's funds — resulted in, by far, the largest single and riskiest investment KRS ever made

and it turned out to be a disaster which helped cripple the KRS pension and insurance Plans/Trusts.

89. The T/Os recklessly gambled, and chose to cover up the true extent of the KRS financial/actuarial shortfalls and take longshot imprudent risks … to try to catch up for the Funds' prior losses. In 2009, the Trustee had been warned that these new exotic "absolute return" products and their sellers required "***thorough***," "***extensive due diligence***."

THE 2009 WARNING REQUIRING EXTENSIVE THOROUGH DUE DILIGENCE INTO ABSOLUTE RETURN VEHICLES AND SELLERS



To: Investment Committee

VISUAL 8

From: KRS Investment Staff

Presented to Feb 3, 2009 I.C. Meeting
Present: Henson, Lang, Overstreet, Thielen, Aldridge

Date: February 3, 2009

Subject: KRS Absolute Return Strategy Allocation

Recommendation: It is the recommendation of the KRS Investment Staff and Consultant that the Investment Committee approve an initial allocation **of up to 5.0% of the Fund's assets to be invested in absolute return strategy fund-of-funds ("FOF").**

Risks: … structural risks are the primary concerns faced by absolute return fund–of–funds … Structural risks often entail risks to the organization or the operations of the absolute return strategies …they cannot be eliminated … structural risks can be monitored and controlled by ensuring that extensive due diligence of the manager is conducted. Thorough due diligence may entail the use of private investigator checks on manager …

90. In 2010, the Trustee had put over $100 million into the first "absolute return" vehicle Arrowhawk, a startup, which folded quickly under a cloud of controversy. A second speculative "investment" in Camelot collapsed when the owner was indicted. As these two speculative plunges blew up, a "tip" about payoffs in return

for investments led to the 2009–10 special audit that uncovered that millions of the "suspicious" payments were connected to these "investments."

91. In spite of this "absolute return" test run blowup, the "suspicious payments" scandal and the disruption of the KRS Board and staff, the Trustee and its assistors and co-conspirators acted in direct defiance of the April 2010 report's explicit warnings. In August-September 2011, they greatly increased the risk of KRS's Trusts' investment portfolios by betting $1.5 billion in trust funds (10% of the Trusts' assets) on "Black Boxes" — opaque vehicles that had *no prior investment performance*. The Trustee bet on the most exotic, risky, toxic and expensive type of hedge funds — ***funds that invest in other hedge funds***. They are called "Black Boxes" because the investor does not know what downstream hedge funds invest the money in, or what the true fees are or how they are computed or shared among the various funds involved. The investor does not have any way to monitor the investing practices of the downstream funds or accurately value the holdings. "Black Boxes" are secretive because downstream funds claim their methods and strategies and fees are "proprietary" and will not share them. This was one reason certain trustees had rejected hedge funds earlier and considered them unsuitable investments for trust funds.

92. The Hedge Fund Sellers have admitted in governmental filings ***that the Black Boxes were the riskiest products they had to sell***.

[The remainder of this page is deliberately left blank.]

93. Due to the efforts of Buchan/PAAMCO — working with KRS's then Chief of Investment Officer Tosh during 2009–2010, and Cook's and Peden's efforts as well to become "***trusted advisors***" to KRS, the prior veto of hedge funds was overcome and Hedge Fund Sellers were successful in getting KRS to buy $1.5 billion of their Black Box Hedge Funds. The initial $1.5 billion in Black Box sales in 2011 were also polluted by serious conflicts of interest — illegal acts under Kentucky law. Cook (a hedge fund seller for Aegon/Prisma who would later in 2016 become a KRS Trustee as the course of misconduct and conspiracy progressed) was a key actor from the outset. Based in Louisville for Aegon for years, Cook became a partner in Wall Street-based Defendant Prisma (which later combined with KKR), and specialized in selling Black Boxes. Cook led the initial $1.5 billion hedge fund sales effort to KRS in 2010–11. KRS could not possibly have put an entire $1.5 billion in the hands of a single hedge fund seller. So, the Hedge Fund Sellers worked to get a shared "kill" — working together with Cook on the ground in Kentucky leading the effort to get KRS to commit $1.5 billion which the

Hedge Fund Sellers split equally between them. David Peden was Cook's friend who worked for years with Cook at Aegon and Prisma before going inside KRS in 2009 as a fixed-income investment officer. Nevertheless, Peden was quickly involved in selecting Prisma and handing over close to $500 million to Cook/Prisma for their single-investor "Daniel Boone Fund." At the time of the 2010–11 Black Box sales to KRS:

- Board Chair and I.C. member, Jennifer Elliott, was a partner at Louisville-based Stites and Harbison, lawyers for Aegon — which owned 68% of Prisma. Cook, who had been a senior executive at Aegon with long-time connections to Elliott and her firm — was in 2010–11 a top executive at Prisma based in Louisville and leading the Black Box sales effort; and

- Peden, a new KRS investment officer whose duties did not involve "alternative investments," but rather stodgy fixed income, was intimately involved in selecting Prisma and KRS's purchase of its risky/exotic "Daniel Boone Fund"; he had worked with Cook at Aegon and Prisma for years and was Cook's friend.

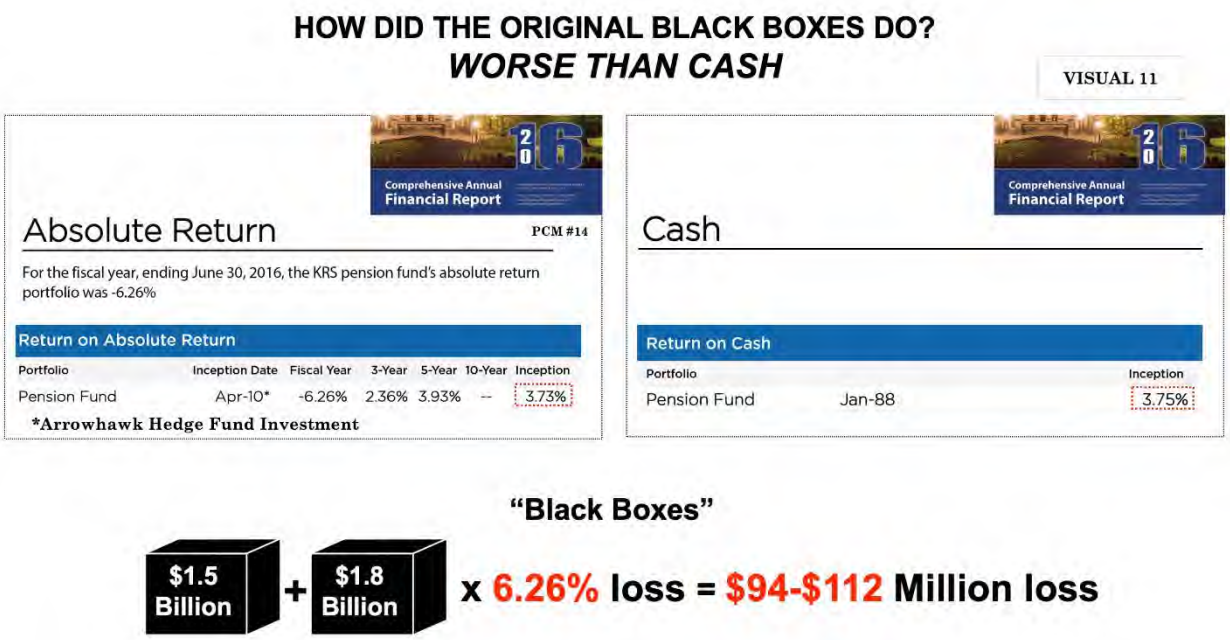
94. According to an August 2, 2011 KRS internal memo regarding the proposed sale of Prisma's Daniel Boone Black Box to KRS:

> Prior to joining Prisma, Cook was the head of the capital market strategies group at Aegon … focusing on alternative investments [hedge funds]. Also at AEGON USA, Cook was the head of the derivatives group ….
>
> * * *
>
> Conflicts of Interest — There are three known relationships between KRS Trustees/employees and Prisma Capital Partners; 1) KRS Board of Trustees Chair Jennifer Elliott's employer, Stites & Harbison, PLLC (but not Ms. Elliott), has provided legal work for Prisma co-owner Aegon Group; … and 3) KRS Fixed Income Director David Peden was previously employed by both Aegon Group and Prisma Capital Partners.

95. These relationships were flagged internally in September 2011 as "***conflicts of interest***." No further investigation took place. ***The conflicts were never cleared***. It was concealed. The tainted Black Box hedge fund transactions went

forward — a key step in the course of misconduct that would go on for several years, enriching the Hedge Fund Sellers by hundreds of millions of dollars, ultimately injuring the Tier 3 Trust Plaintiffs, while damaging the KRS Trusts.

D. The $1.5-Billion Black Box Plunge Was a Financial Disaster, Helping Push KRS's Funds/Trusts to the Brink of Insolvency



96. The speculative Black Box plunge was a big loser. By 2016, despite the "exorbitant fees" paid to the Hedge Fund Sellers, these super expensive Black Boxes earned just 3.73% over their 5-6 year lives — ***less than the 3.75% KRS historically earned on its cash*** in the bank, and ***less than fixed income*** over comparable periods — ***during a time when the S&P 500 went up over 350%***. Then these funds lost over $100 million in less than 12 months in 2015–2016. Then they lost hundreds of millions more (–2.3%) in 2016–18 — ***as the S&P soared by another 30%***. The 2020 KRS Annual Report reflects that ***Absolute Return investments lost (0.13%) for the 5-year period ended June 30, 2020*** — a period during which these investments consisted primarily of Prisma's Daniel Boone Fund and direct hedge

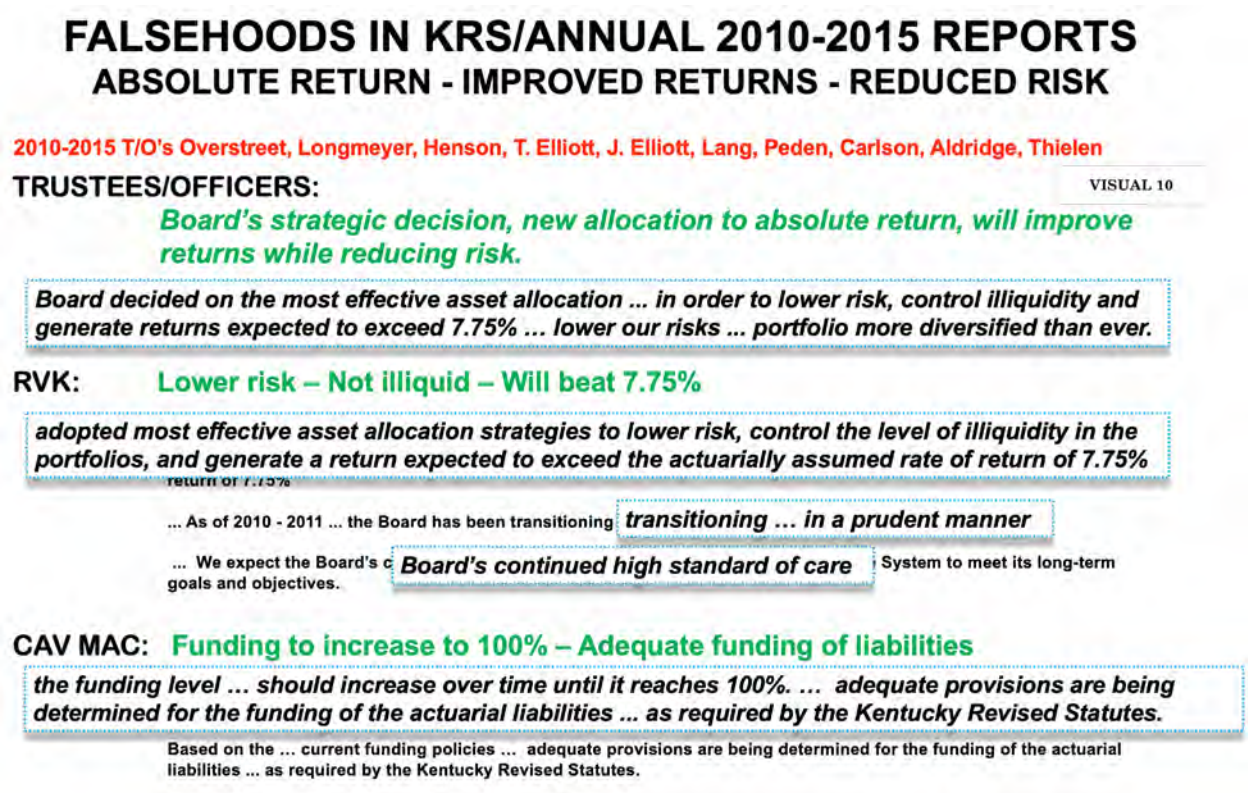
fund investments selected or approved by KKR Prisma — and underperformed even the Core Fixed Income investments over that period by almost 4%.[13] These were the exact sort of losses the "hedges," with their supposed "reduced volatility" and "safe diversification," were supposed to protect against. Along the way they consumed hundreds of millions of dollars in "exorbitant" fees. The investment opportunities missed because they were displaced by the hedge fund misadventure harmed KRS finances. All of this exacerbated KRS's underfunding, helped push it to the edge of insolvency, and damaged its trusts and the Tier 3 Trust Plaintiffs.

97. Certain of the Hedge Fund Sellers' predation continued into 2015–2016. The course of misconduct, aiding and abetting, common enterprise and conspiracy that came together in 2010–11, when William S. Cook (then a senior executive of Prisma) and David Peden (then a member of the KRS investment staff) worked together to help engineer the initial Black Box purchases, including the conflicted $400+ million Prisma Daniel Boone Fund, continued in 2015–2016 when KKR Prisma's Cook and Michael Rudzik worked in concert with Peden, by then KRS's CIO, Thielen (CEO/ED) and Eager (as Trustee and as CEO/ED) to ***deliver control over KRS's entire $1.6 billion hedge fund portfolio to KKR — a Wall Street behemoth whose numerous interests conflicted with the interests of KRS and its members — and then allow KKR Prisma and its top executives to leverage that position for their own self-interested benefit, all to the damage of the Tier 3 Trust Plaintiffs***.

[13] The 2020 Annual Report also reflects that ***Absolute Return trailed KRS's own U.S. Equities portfolio by almost 10% over the prior 10-year period*** (3.18% *versus* 12.95%) — a huge difference and a huge difference-maker.

E. The Trustees/Officers, Their Advisors/Assistors and the Hedge Fund Sellers Lied to KRS's Members and Kentucky Officials

98. The Trustee reported the financial/actuarial status of KRS's funds via Annual Reports. KY. REV. STAT. § 61.645(19)(m). During 2010–2015, the T/Os issued false and misleading Annual Reports and made other statements. This created a "false sense of security" while covering up the course of misconduct and without which the scheme and conspiracy could not have gone on — and without which the Tier 3 Trust Plaintiffs would not have been damaged.



99. Not only did these reports fail to disclose the truth, they deliberately misled KRS Trusts beneficiaries and the public, about what the Trustee, the Hedge Fund Sellers and their assistors misleadingly described as new "absolute return" investments, suggesting they always provided positive returns — which they most certainly did not. False assurances were made that decisions had been taken "to diversify this portfolio to

improve returns while reducing risks," "adopted [the] most effective asset allocation strategies to lower risk," that the new "absolute return" investments would "lower [KRS's] risks," "reduce volatility," "control [the] level of illiquidity," thus making KRS's "portfolio … more diversified than ever," and were "expected to exceed the actuarial/assumed rate of return of 7.75%."

100. The Trustee furthered the "false sense of security" by extolling its own "continued high standard of care," assuring KRS members, Kentucky taxpayers and the Legislature that "adequate provisions are being determined for the funding of actuarial liabilities" as required by law and "the funding level should increase over time until it reaches 100%." None of this was true. These false statements were part of the course of misconduct made to cover up defendants' actions and false presentation of KRS finances and to permit the scheme and conspiracy of defendants in the *Taylor* action to continue — allowing them to profit more.

F. The 2016–17 Disclosures and Near Collapse of the KRS Plans

101. The 2013 legislation, curtailment of certain benefits, and creation of the new Tier 3 plan benefit levels did not halt the financial decline of the KRS funds, in part because the Commonwealth continued to refuse to make its legally required annual payments to KRS's trusts. By 2016–17, the KRS Pension Plans/Trusts were $28+ billion underfunded and facing collapse. After an internal "deep dive" in February 2017, the ***new Chair*** of the KRS Board, John Farris, was quoted as saying:

> KRS made serious math errors in recent years, relying on overly optimistic assumptions about its investment returns, the growth of state and local government payrolls. We have been aggressively wrong in our assumptions for many years ….

> It doesn't make any sense ... We wonder why the plans are underfunded. It's not all the legislatures' fault. It's the board's responsibility to give the correct numbers. ...
>
> Payroll growth was negative and you assumed 4% growth? Were any of you paying attention?

102. When the KRS year-end June 30, 2017 financial results were released, it was reported:

> "The massive dollar amounts came as no surprise and are largely a result of new assumptions ... lowering projections on how much the plans will earn on investments and on how much government payrolls are expected to grow."
>
> John Farris, [The New] Chairman of the Board, said the new assumptions replace optimistic ones used by boards in the past that caused Kentucky Retirement Systems to not ask for sufficient funding which led to the accumulation of billions in unfunded liabilities.
>
> "Now we're giving the right numbers. Lots of complaints about the right numbers. I understand it ... I wish it wasn't that way. I wish they were given the right numbers 10 years ago."

103. At the time these results were released, the State Budget Director stated:

> "In the past, a lack of realistic and rational actuarial assumptions helped obscure the distressed financial status of the plans and contributed to the long-term unsustainability of the plans ....

104. On February 16, 2017, the *Lexington Herald Leader* reported:

> **TROUBLED KENTUCKY PENSION SYSTEM MIGHT NEED BILLIONS MORE THAN ASSUMED**
>
> Kentucky Retirement Systems ... might be in far worse financial shape than previously thought.
>
> * * *
>
> 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 rates, KRS board chairman John Farris told his fellow trustees ....

For example, KRS assumed that it would earn an average of 6.75 percent to 7.5 percent on money it invested, but it earned an average of 4.75 percent, Farris said. KRS assumed that public payroll would grow by 4 percent a year through pay raises or more government hiring — a larger payroll means larger pension contributions by employees — but public payroll has dropped overall because of repeated budget cuts, he said.

"***It doesn't make any sense***," said Farris .... "***We wonder why the plans are underfunded***. ***It's not all the legislature's fault***. ***It's the board's responsibility to give the correct numbers***."

105. On May 18, 2017, the *Lexington Herald Leader* reported:

KENTUCKY'S PUBLIC PENSION DEBT JUST GOT BILLIONS BIGGER

Kentucky's public pension debt just got a few billion dollars bigger.

Under the new numbers presented to the board, KRS' official unfunded pension liability of $18.1 billion will increase by somewhere between $3.6 billion and $4.5 billion ....

* * *

Following Thursday's board vote, the primary state pension fund operated by KRS — known as the Kentucky Employees Retirement System (Non-Hazardous) — has only 13.81 percent of the money it is expected to need in coming years.

* * *

"***The most important function of our board is to give correct numbers to the legislature***," Farris said. "***If we don't do that***, ***if we continue to rely on aggressively optimistic assumptions***, ***then we will continue to fall behind***."

* * *

KRS had assumed that it would earn from 6.75 percent to 7.5 percent on money it invested; it assumed that public payroll would grow by 4 percent a year; and it assumed an inflation rate of 3.25 percent. All of those numbers look unrealistic.

* * *

> "***We*** (***at KRS***) ***have been*** "***aggressive***" ***in our assumptions for many years — aggressively wrong***," Farris said. "***And we wonder why we're underfunded***."

106. During late 2016–2017, independent eyes got to look at what had gone on inside KRS for the past several years when the PFM investigation of KRS was commissioned by the Executive Branch. In September 2016, PFM issued the "PFM Report," which was described in media reports as follows:

> **KENTUCKY'S PENSIONS ARE WORST-FUNDED IN U.S., STUDY SHOWS**
>
> A new study shows that Kentucky has the worst funded pension system in the nation.
>
> And from another media report:
>
> The PFM Group today presented an alarming report to the Public Pension Oversight Board detailing the factors that made Kentucky's pension systems the worst funded systems in the United States. The report revealed that the systems have had a combined $6.9 billion negative cash flow since 2005 as benefits paid to retirees plus program expenses greatly exceeded appropriated funding. According to the report, if this negative cash flow is not corrected, the ability to make payments to current and future retirees is at risk … "PFM's analysis is the most comprehensive and detailed look at the many factors that contributed to the massive unfunded pension liabilities crippling our state," stated John Chilton, Kentucky's State Budget Director.

107. The Executive Branch of the Commonwealth has stated:

> ***The KRS and TRS plans have taken on significantly more investment risk over the last decade in order to chase unrealistically high investment returns***.
>
> When compared to other public plans, the KRS plans have had an allocation to riskier alternative investments that nearly double the peer average. Unfortunately, significant exposure to market risks still remains."
>
> * * *
>
> Billions in pension debt are growing in perpetuity … even if the plans earn their expected investment return ….

108. On August 24, 2017, the *Lexington Herald Leader* reported:

> **FORMER HEAD OF KENTUCKY RETIREMENT SYSTEMS 'SHOULD BE IN JAIL,' BEVIN SAYS**
>
> Gov. Matt Bevin told a gathering of Kentucky's city and county leaders Thursday that the former executive director of the financially ailing Kentucky Retirement Systems ***deserves to be in jail***.
>
> * * *
>
> "***Bill Thielen should be in jail and that's a fact***. And I don't know who's here from the media but if this was a private company, if this was a private pension plan he would be."
>
> "It has been negligent, it has been irresponsible and it is shameful".
>
> "***What has been done in our pension systems has been criminal***," ***Bevin said*** … "***if these were private companies they would have been taken over and frozen and disbanded and the payouts of benefits would have been stopped by law***."[14]

109. In 2017, three of the highest elected officials of the Commonwealth, the Governor (Matt Bevin), the House Speaker (Jeff Hoover) and the Senate President (Robert Stivers) jointly wrote:

> "The biggest cause of the shortfall was erroneous actuarial assumptions made by past members of the boards of these systems, which led to significant underfunding …
>
> … [P]ast assumptions were often manipulated by the prior pension boards in order to minimize the "cost" of pensions to

[14] Even then, there was no indication that Governor Bevin, Trustee Farris or PFM was aware of the secret terms of the ASA and the blatant self-dealing supposedly permitted thereunder. It remained a deep secret hidden well within KRS until plaintiffs' counsel in a related suit discovered it during 2018 in Kentucky litigation. To date, the extent and monetary value of the self-dealing in which KKR Prisma engaged through the ASA is unknown, as neither Prisma or KKR has made disclosures of the same. Nor is it known at this time whether any of the involved persons committed violations of KRS Ch. 521 in connection with the ASA.

> the state budget. Unreasonably high investment expectations were made and funding was based on false payroll numbers.
>
> The result was to provide a false sense of security and justify smaller than necessary contributions to the pension plans. This was a morally negligent and irresponsible thing to do."

110. As their assets dwindled and funding levels fell and benefit costs soared, straining their liquidity, the ability of the funds to invest in rational long-term investments that hold the potential for higher returns — as well-funded, liquid pension plans can do — was lost. KERS and SPRS now had to hoard dwindling resources — being more conservative and cautious. Their investment strategy became preservationist.

111. In May 2017, *Pensions & Investments* reported:

> **Kentucky Retirement Systems Lowers Return Assumption to 5.25%**
>
> Along with the assumption changes, KRS' investment committee ***is recommending more conservative asset allocations*** ….

112. At the KRS Board of Trustees meeting in May 2017, the Board received a report that explained why these funds' investment options were so severely limited.

> **ILLUSTRATIONS ARE FOR KERS NON-HAZARDOUS PENSION**
>
> - June 30, 2016 market value of assets = $1.9 billion
>
> - 2015–2016 benefit payments = $0.9 billion
>
> - Assets represent two years' worth of benefit payments
>
> - High liquidity needs
>
> - High funding needs

113. In February 2018, it was publicly reported:

Kentucky Retirement System Earmarks $270 Million, Cuts Hedge Fund Managers

> Kentucky Retirement Systems, … allocated up to $270 million total to three alternatives managers, said David Eager, interim executive director.
>
> ***
>
> ***The Kentucky Employees Retirement System non-hazardous pension plan and the State Police Retirement System were the only plans that did not participate in the new investments because they have low funding ratios and cannot afford to lock up capital ….***

G. The 2015–2016 "Strategic Partnership" and Secret Advisory Services Agreement Yields More Self-Dealing and Losses

114. The predation on the KRS trusts continued into 2015–2016. The course of misconduct, aiding and abetting, joint enterprise and conspiracy that came together in 2010–11, when William S. Cook (then a senior executive of Prisma) and David Peden (then a member of the KRS investment staff) worked together to help engineer the initial Black Box purchases, including the conflicted $400+ million Prisma Daniel Boone Fund, continued in 2015–2016 when KKR Prisma's Cook and Michael Rudzik worked in concert with Peden, by then KRS's CIO, Thielen (CEO/ED), to ***deliver control over KRS's entire $1.6 billion hedge fund portfolio to KKR — a Wall Street behemoth whose interests conflicted with the interests of KRS and its members — and then allow KKR Prisma and its top executives to leverage that position for their own self-interested benefit, to the damage of the Tier 3 Trust Plaintiffs and KRS's trusts***.

115. Defendant Eager joined the KRS Board in May 2016. He joined the Investment Committee on May 3, 2016, was sworn in, and in his very first acts moved for the approval of not only the $300+ million upsizing of the Daniel Boone Fund, but

additional new hedge fund investments recommended by and benefitting KKR Prisma and its insiders as a result of the self-dealing provisions of the ASA. He again moved for the approval of these conflicted investments at the May 29, 2016 full Board of Trustees Meeting — his first Board meeting as a trustee. When he did so, he knew that these transactions were conflicted, favored the interests of KKR Prisma over the interests of KRS, were not done solely in the interests of KRS and its members, and violated KRS's Conflict of Interest Policy and Kentucky law. His participation and approval were part of — and an indispensable part of the success of — the scheme and conspiracy. The same is true of Additional Actor Cook whose appointment to the KRS Board was improperly arranged — secretly behind the scenes — by Additional Actor Pitt, who was a top political aide/advisor to the Governor.

116. Eager quickly left the Board in August 2016 to become CEO/ED of KRS. In that role as the top and responsible officer of KRS, Eager did nothing to expose or put a stop to the conflicted self-dealing that had been secretly and unlawfully "approved" by the ASA/AASA. Eager publicly criticized the Kentucky derivative lawsuit claiming it made it more difficult to get qualified trustees and hindered KRS's access to sellers of investment products. Despite his conflicts of interest, KRS's current Board of Trustees has continued to allow Eager to serve as KRS's CEO and actively participate in matters, claims relating to the 2015–2016 misconduct he was personally involved in, and he has attempted to blunt, deflect and dilute the prosecution of valid claims. Eager, as a trustee — and later as CEO — failed to ensure that the conflicts of interest involving KKR Prisma, Cook, Rudzik, Reddy and Peden were vetted, disclosed, and/or dealt with by the Investment Committee or the Board. He permitted the unlawful ASA/AASA to govern

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the so-called Strategic Partnership without exposing its contents or subjecting it to scrutiny or a vote by the Investment Committee or the Board.

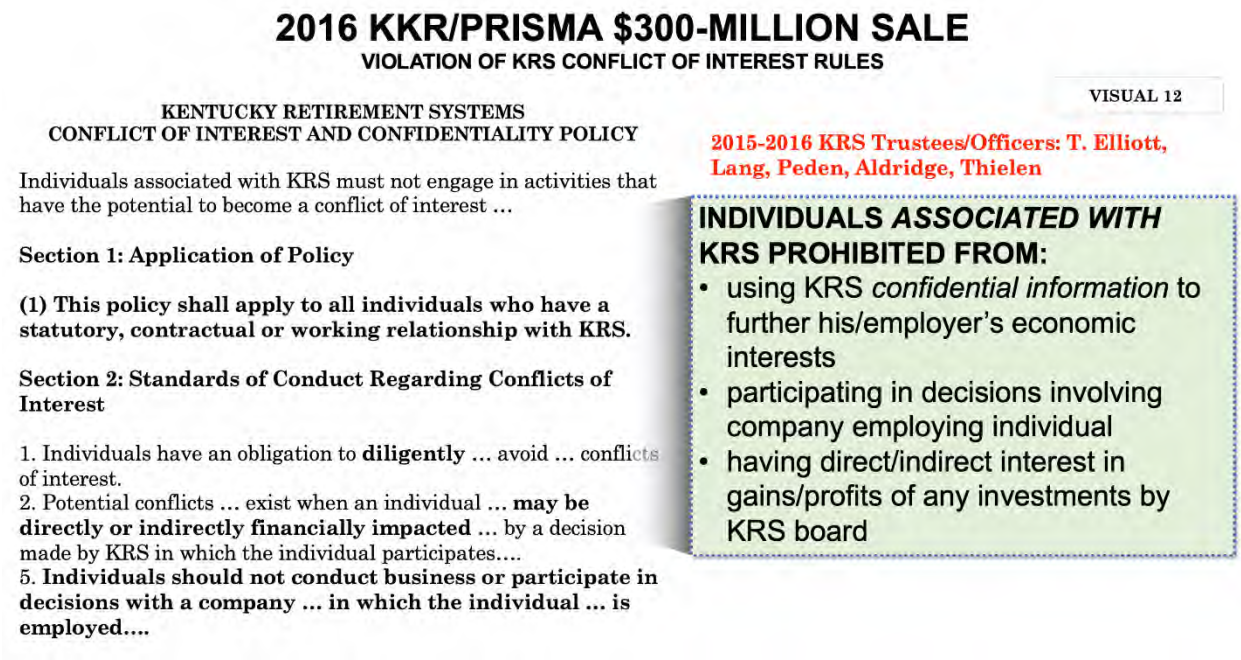
117. Cook, Peden and Thielen (CEO/ED) convinced the Trustees to have KRS enter into a "Strategic Partnership" with KKR Prisma, through which another KKR Prisma executive (Michael Rudzik) and his team were "seconded" to KRS — inserted inside KRS — ***while still on KKR's payroll*** to "help" KRS with its investments. This KKR Prisma team took over management and oversight of KRS's entire $1.6 billion hedge fund portfolio, answering only to the conflicted coconspirator Peden. And, under the secret (*i.e.*, confidential and non-public) ASA, KKR Prisma was allowed to use its fiduciary position and KRS assets for its own self-dealing profit, in violation of Kentucky law and KRS's Conflict of Interest Policy.[15]

118. With this KKR Prisma executive team ***illegally inside*** KRS and while other public pension funds were fleeing Black Boxes, KRS put $300 million more into the KKR Prisma Black Box (the biggest loser), and allowed the KKR Prisma team to manage KRS's other hedge fund investments and illegally profit from those activities. This was nothing less than a conflicted, insider-assisted takeover of KRS's absolute return investment portfolio, resulting in at least $***585 million*** in self-interested investments benefiting KKR Prisma.

119. By gaining the additional $300 million in its own losing Daniel Boone Fund, KKR Prisma helped itself at the expense of KRS at a time when the hedge fund industry was badly stressed and KKR Prisma needed more assets under management. Additionally, the transactions also benefitted Cook and Rudzik ***personally***, as they

[15] KRS policies are administrative regulations with the force of law.

stood to receive millions of dollars from contingent KKR performance-based payments because of KKR's prior acquisition of Prisma. This was fraud and self-dealing of the first order in blatant violation of the KRS conflict of interest policies.



120. All of this was also in violation of the KPL, including the "sole interest" fiduciary standard required of Trustees by KY. REV. STAT. § 61.650(1)(c). The investments were not made "solely" in the interests of the members and the beneficiaries of KRS's trusts, as required by the KPL, but to benefit KKR Prisma, Reddy, Cook, Rudzik, Kravis and Roberts. The additional $300 million Daniel Boone investment — just like the original purchase in 2010–11 — ***was a disaster***, ***losing some 2.3% over the next 2+ years versus a 30% gain for the S&P Total Return Index***. Moreover, because it had handed control of the entire $1.6 billion hedge fund portfolio over to conflicted hedge fund sellers, KRS stayed fully invested in hedge funds when other pension funds were rapidly divesting the asset class, to the detriment of KRS and its members and beneficiaries. The hedge funds continued to

underperform while charging large fees. The damage to the KRS trusts and to the Tier 3 members' individual retirement accounts was serious, lasting and continued well into 2020 and beyond.

121. Allegations of the 2015–2016 wrongdoing and Eager's participation in that wrongdoing surfaced. As KRS's CEO/ED, Eager, with the help and assistance of the other Defendants and Additional Actors, caused KRS's Board, the Trustee, to commission and procure a contract for a purported "independent" investigation of prior investment wrongdoing at KRS, including the allegations that had been made by the original Mayberry plaintiffs in the Kentucky derivative suit for KRS and the Tier 3 plaintiffs in attempting to intervene and the Tier 3 breach of trust suit. The procurement process was fixed and rigged and designed to assure selection of a law firm headed by a lawyer who was Hale's close friend with a record for fixing investigations and other illegal conduct who could be relied upon to write a report that Eager and his co-conspirators wanted exonerating them. The founding partner of the law firm hired to do the investigation had a track record of dishonest conduct in past political investigations taking steps to protect the investigated, corrupting the investigation. After expending $1.6 million on the report (overrunning its initial $1.2 million budget), the Trustee allegedly "delivered" the "report" to the Attorney General while making promises and misrepresentations to the Court it would be made public. Then, after a series of non-public Board meetings decided to do nothing in connection with the *Mayberry* Action and clamped a tight lid on the contents of the report, refusing to make it public or produce it in response to open records requests, attempting to keep the report secret.

VII. SPECIFIC WRONGDOING OF DEFENDANTS IN CONNECTION WITH THE CALCATERRA REPORT

122. The Calcaterra Firm was led by Regina M. Calcaterra when hired by KRS. Calcaterra was a known "fixer." Her most high-profile investigation — New York's 2013 Moreland Commission, of which Calcaterra was Executive Director (*i.e.,* not as a lawyer/investigator/evaluator) — was terminated prematurely and, as reported by POLITICO, "attracted heavy criticism" amid charges of political influence and cronyism. What started as a supposedly "independent investigation" of corruption in New York state government ended with federal prosecutors carting off the Commission's files and opening an investigation ***of how the investigation was conducted under Calcaterra's leadership*** — and, not coincidentally, document-preservation issues that resulted in a document-preservation directive from Preet S. Bharara, then-U.S. Attorney for the Southern District of New York.[16] ***Both* The New York Times *and* The New Yorker *have detailed this scandal and Calcaterra's role in it***.

123. THE NEW YORK TIMES ("NYT") published a lengthy feature after its own three-month examination,[17] which concluded, among other things, that Calcaterra had placed her thumb on the scales in service of the governor who had appointed her to the Executive Director position (and others, before and after). Calcaterra worked to ensure

[16] Susanne Craig *et al.*, *Cuomo's Office Hobbled Ethics Inquiries by Moreland Commission*, THE NEW YORK TIMES, July 23, 2014 (cited as the "NYT Article") ("Even as Mr. Bharara spoke, he said, his investigators were on their way to box up and cart off the commission's files. Soon after, he directed Mr. Cuomo's office to preserve records related to its own involvement with the panel.").

[17] According to the NYT Article, investigative journalists "examin[ed] … hundreds of emails, subpoenas and internal documents and interview[ed] … more than three dozen commission members, employees, legislative staff members and other officials. Few of those interviewed agreed to be quoted by name for fear of antagonizing the governor or his aides." *See* NYT Article at 2.

that neither the investigation nor its preliminary report (no final report was ever issued) contained negative information about or created trouble for Governor Andrew M. Cuomo or his allies:

> Ultimately, Mr. Cuomo abruptly disbanded the commission halfway through what he had indicated would be an 18-month life. And now, as the Democratic governor seeks a second term in November, federal prosecutors are investigating the roles of Mr. Cuomo and his aides in the panel's shutdown and are pursuing its unfinished business.
>
> ***
>
> [T]he panel's brief existence — and the writing and editing of its sole creation, a report of its preliminary findings — was marred by infighting, arguments and accusations. Things got so bad that investigators believed a Cuomo appointee [Calcaterra] was monitoring their communications without their knowledge. Resignations further crippled the commission.
>
> ***
>
> … [T]he Times found that the governor's office interfered with the commission when it was looking into groups that were politically close to him. In fact, the commission never tried to investigate his administration.
>
> Beyond that, Mr. Cuomo's office said, the commission needed the governor's guiding hand because it was, simply, a mess: Its staff was plagued by "relationship issues" and was "mired in discord."
>
> At the center of the battle between independent-minded commissioners and Mr. Cuomo and his aides were two hard-charging lawyers: E. Danya Perry, a former federal prosecutor who was the panel's chief of investigations; and Regina M. Calcaterra, a former securities lawyer who, as the commission's executive director, routinely conveyed the wishes of the governor's office.

124. According to the NYT, Calcaterra blocked subpoenas aimed at the governor's political allies and so closely monitored the activities of the legal staff and professional investigators (allegedly as the governor's spy) that they kept important documents on their laptops rather than on a shared drive "so that Calcaterra would not

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be able to gain access to them." Because of these and other Calcaterra-related issues, "[a] sense of paranoia spread through the office, where, one staff member said, the mood began to resemble that of a prison camp."

125. Calcaterra's alleged misconduct in helping Governor Cuomo quash the Moreland investigation was recently re-examined and affirmed by *The New Yorker*. See Ronan Farrow, *Andrew Cuomo's War Against a Federal Prosecutor*, THE NEW YORKER, Aug. 10, 2021.

126. According to these exposés, Calcaterra, as Executive Director of the Moreland Commission:

- interfered with and obstructed the investigation to protect a subject of the investigation;
- improperly communicated and cooperated with that subject while the investigation was going on;
- blocked subpoenas that subject objected to;
- edited draft reports to eliminate material that subject objected to;
- vetoed an independent author for the "preliminary" report, arranging for an employee of that subject of the investigation to draft it; and
- altered the issued report by deleting the language objected to by the subject, after the "preliminary" inadvertently contained such language.

127. Other media outlets and public-corruption watchdog groups also published investigative stories critical of the Moreland Commission and, in particular, Calcaterra, largely focused on charges that ***improper influence deprived the Commission of real independence and resulted in a whitewash***. One such story, subtitled "*Regina Calcaterra's Dubious Past in Politics Made Her a Questionable Choice to Lead Cuomo's Doomed Ethics Commission*," reported that "in her role serving on that first Moreland Commission, Calcaterra showed that she could do what it would

take to ensure a good outcome for the governor's office" and that (according to sources connected to the erstwhile ethics commission) "her primary motivation was to protect the governor and to display her loyalty to the executive branch." ***Calcaterra's main qualification for leading an ethics investigation — installed by Cuomo but nevertheless meant to act entirely independent of him — was that she had proved to be Cuomo's loyal subject while leading a previous investigation, taking orders from the governor's office and providing information to it.***

128. Calcaterra's questionable past conduct was not isolated to the Moreland Commission investigation. Calcaterra had been repeatedly sued — 17 times — by the New York Board of Elections for violations of campaign-finance laws, *i.e.*, failing to file required financial disclosures.[18] She was disqualified from running for public office for not being truthful regarding her residency. And she has long been associated with dubious pension fund "pay-to-play" activities and key players — ***some of whom faced criminal investigations and convictions***. She even admitted cheating on an exam to get a job she wanted.[19]

129. Calcaterra's past was riddled with widely circulated and easily accessible allegations of misconduct. Yet the KRS Trustee — influenced Eager and Hale — awarded Calcaterra an "independent" investigation requiring public confidence and trust. It was not in spite of her background that she was hired, ***but because of it and her long association and personal friendship with Vicky Hale*** — a KRS in-

[18] Kenneth Levett, *The Executive Director of Cuomo's Anti-Corruption Commission Was Sued 17 Times*, NEW YORK DAILY NEWS, July 29, 2013.

[19] *See* Post Staff Report, *I Was Homeless — Now I'm Fabulous*, NEW YORK POST, at 2, Aug. 6, 2013 ("It also helped to lie. I started making up stories[.]").

house lawyer. Eager and KRS hired Calcaterra knowing she was unqualified and unsuitable to undertake this "independent" investigation, knowing it was not independent and was intended to be used to defeat claims being asserted for KRS's benefit, and to protect Eager, the individual trustees and others *i.e.*, their co-conspirators. The Stoll Keenon firm Additional Actors participated in and approved this – the hiring of an unqualified corrupt firm, a fixed procurement process, the corrupt Report, the cover up, and the false court filings and false statements made to Judge Shepherd.

130. The public-relations spin around this "Investigation," on behalf of KRS (or, as the contract says, the Commonwealth and KRS), was that it was an "independent investigation" conducted by an "independent third-party law firm" with no agenda or pre-conceived result. But in fact, KRS's Eager — who was deeply and personally implicated in the KKR/Prisma 2015–2016 self-dealing and related wrongdoing — was actively involved. Calcaterra enjoyed a long-time relationship with a member of KRS legal staff, Vicky Hale, who works for Eager and does his bidding. The facts concerning the many serious criticisms leveled as to her performance and loyalties in connection with the Moreland Commission investigation were known to Eager, other KRS personnel, and the KRS Board.[20]

[20] The choice of a New York firm seems strange to conduct an independent investigation of investment wrongdoings here in Kentucky, especially where the top deep-pocket litigation targets are powerful ***New York*** hedge fund sellers and their principals, *e.g.,* Blackstone, Schwarzman, KKR, Kravis. Their New York influence and power among the New York elite is legendary. Schwarzman and Blackstone were contributors to an organization in which Calcaterra served on its Board of Directors, the Children's Council. Newsletter, *Children First*, NEW YORK SOCIETY FOR THE PREVENTION OF CRUELTY TO CHILDREN, Winter 2015. In the "Fabulous" Article, Calcaterra stresses her fundraising powers as part of her success, telling how she helped raised more money for an event than her organization ever raised in its history.

131. KRS staff attorney Vicky Hale was longtime close friends with Calcaterra. They have known each other for years, even taken personal trips together. Here is a picture of Calcaterra and Hale partying together in Las Vegas:

132. Hale and Eager fixed the procurement process to assure Hale's friend Calcaterra got the contract, knowing she would do Eager's and Hale's bidding. Calcaterra & Pollack, LLP (the "Calcaterra Firm") was formed in New York on April 1, 2020. Getting hired for a high-profile investigation was a huge "feather in her cap" — a huge "get" for a brand-new firm. Neither the Firm nor its principals had ever done an investigation into pension-fund investment activities, or any "internal" corporate investigation. It bid on an August 24, 2020 Solicitation from the Commonwealth of Kentucky to do an investigation into past KPPA/KRS investment activities to determine "if there are any improper or illegal activities on the part of the parties involved," and produce a detailed report.

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133. Hale and Calcaterra had a long professional and personal friendship and fixed/rigged the procurement process as the following chronology shows:

2004–2012	Calcaterra is a Partner/Pension fund business getter at class action firm Barrack Rodos targeting pension funds.
2006–2019 June 2017–2019 2018	Victoria Hale is General Counsel for Denver Pension Fund. Barrack Rodos is client via Calcaterra outreach. Calcaterra is a partner at class action firm Wolf Haldenstein as a pension fund business getter. Calcaterra & Hale Party together in Las Vegas
2019–2021 January–March 2019 Nov. 19, 2019 April 2020 May 2020–July 2020 June 8, 2020 June 19, 2020 Aug. 12–20, 2020	Victoria Hale "***likes***" LinkedIn Calcaterra posts Victoria Hale Leaves Denver to Become Staff Attorney in KY in March 2019 Victoria Hale writes "***Great job Regina***" in response to Calcaterra post re: charity work — Calcaterra replies "***miss you lady v***." Calcaterra Firm formed in New York — Resume extolls experience and success — stresses New York investigations Calcaterra Firm has no Kentucky clients and no Kentucky business Calcaterra and associate Teres register for the Kentucky Bar exam New York Law Journal article on new Calcaterra Firm — Victoria Hale "***likes***." ***Calcaterra secretly submitted proposal for "investigations" to***

	Eager and Hale to cost $1.2 million weeks before the August 24 RFP. Calcaterra gets Law Dragon award. Hale writes "***Congratulations***. ***You deserve this honor***" Calcaterra prepares, signs and files Registration to do business in Kentucky
Aug. 24–Sept. 14, 2020	KRS/Commonwealth RFP to conduct investigation — Solicitation Period opens Aug. 24, 2020 - Cassandra Weiss identified as *sole* permitted contact - Disclosure of bid/contract information forbidden - Registration to do business and bar admission required to be awarded contract
Sept. 8–16, 2020	Calcaterra Firm's Nassau County, NY bid/submission identifies the Kentucky contract ("similar services") — lists Victoria Hale (KRS staff attorney) as reference ("qualified to evaluate proposers' capability to perform this work").
Oct. 29, 2020 Nov. 23–25, 2020 Dec. 2020	Victoria Hale "***likes***" post re Calcaterra New York City children's event KRS awards Calcaterra contract Commonwealth of Kentucky approves Calcaterra Contract Crain's NY notable women in law article re: Calcaterra. Victoria Hale likes — "***Congratulations***"
Feb. 2021 Mar. 2021	KRS/SKO/David Eager/Hale begin to review drafts of Calcaterra report. Calcaterra/Teres admitted to Kentucky Bar

	Calcaterra Q/A article in Law Dragon. Calcaterra alludes to Kentucky contract Stresses work for the NY Investigation Commissions Victoria Hale ***"likes"*** posting of interview/article by Calcaterra
Mar. – June 2021	Drafts of Calcaterra Firm report continued to be revised — discussed with Eager/Hale Completed Report delivered to the Attorney General. Report secreted from any public disclosure despite promises it would be made public

134. The circumstances surrounding the award and implementation of the Contract to the Calcaterra Firm for the "independent third-party" investigation were corrupt, improper and part of the ongoing conspiracy, common enterprise pleaded in the *Taylor* breach-of-trust action and Defendants' continuing aiding and abetting one another. Neither Calcaterra nor her firm, nor any of its principals has ever performed an investigation into pension fund investment activities, nor an "internal" corporate investigation — a ***major*** "***scoring***" ***criterion*** for the contract award, as outlined below. There is also the information regarding her prior record, as detailed above, which has been publicly available for years, and was certainly available to the Commonwealth and KRS when they hired the Calcaterra Firm as "capable" of performing an "independent investigation" paid for with a not-insubstantial amount of "public" funds. Calcaterra and her firm had no other known business or business prospects in Kentucky other than the KRS investigation contract they were tipped off to what was coming.

135. The Solicitation and the Contract contain the following provisions:

- The Contract was not effective until approved by the Secretary of Finance and filed with the Legislative Research Commission's Contract Review Committee;
- The Contract is with the Commonwealth not just KPPA/KRS;
- The Solicitation required a "qualified" law firm be hired;
- Prior experience with public pension plans and prior "significant investigation" experience were the two most important factors to be "scored" to "evaluate'" any proposed law firm;
- A current resumé and extensive disclosures of both types of past activities were required — including a "detailed narrative" of past experience and any "grievances" in connection therewith;
- Non-lawyer Cassandra Weiss at KRS was mandated to be the "sole point" of contact during the procurement process. Any law firm bidding on the work "shall not communicate with any other Commonwealth staff concerning [the] RFP";
- Bidders were forbidden to disclose any portion of the proposed work prior to the contract award; and
- No modification or change of any provision of the contract could be made unless agreed to in writing by the Commonwealth. "Clarification" or "correspondence" cannot be construed as an amendment to the contract.

136. The Commonwealth's "Solicitation" for the KRS contract was issued August 24, 2020 with a "close" date of September 14, 2020 — ***just a three-week period to submit a bid for a massive investigation and very complex process which would require substantial research and evaluation by any bidder that could not reasonably be done in that timeframe***. This was done to give Calcaterra an unfair edge — advantage — part of fixing and monopolizing the process, so that other qualified and uncorrupt bidders would be disadvantaged and in effect excluded, and the ongoing cover up could continue. The Calcaterra Firm proposal was submitted on September 10, 2020. The Calcaterra Contract was agreed to by KRS

on November 23, 2020. Because the Contract is also with the Commonwealth — not just KRS — it required approval by the Finance Secretary, not just the KRS Board. The Contract was not effective until its approval by the Secretary of Finance in December 2020.

137. The ***only KRS contact person***, identified as the "***sole point of contact***" in the Solicitation, is Cassandra Weiss, a procurement person — not a lawyer. Disclosure of any Kentucky contract/proposal ***or*** any contact with any other KPPA/KRS staff person ***was forbidden during the procurement process***.

138. In September 2020, while the KRS investigation solicitation process was ***still open*** — and no contract had yet been awarded, in a separate bid submission for work with Nassau County, New York, Calcaterra was asked to:

> "Provide names and addresses for no fewer than three references for whom the Proposer ***has provided similar services*** or who are ***qualified to evaluate the Proposer's capability to perform this work***."

Ms. Calcaterra's answer included:

> Kentucky Retirement System
> Vicky Hale, Counsel
> 1260 Louisville Rd.
> Frankfort, KY US
> (502) 696-8800
> Victoria.hale@kyret.gov

139. In September 2020, the Calcaterra Firm had not yet been awarded the KRS Contract; the KRS Solicitation process had not closed until September 14, 2020. Yet the Calcaterra Firm knew it was going to get the KRS contract. ***Vicky Hale***, ***a staff attorney***, ***was listed as a*** "***reference***" ***who was*** "***qualified***" ***to evaluate Calcaterra***, ***when Hale was not identified in the KRS Solicitation papers and Weiss was designated the sole contact person***.

140. On March 8, 2021, LAWDRAGON published an interview with Calcaterra:

> **Lawdragon**: Regina, tell us about the firm you recently started. What practices are you focusing on? What work has come in so far?
>
> **Regina Calcaterra**: ***Based upon my prior government investigation experience, we were recently retained to conduct a complex investigation that taps into the firm's various practice areas***.
>
> ***
>
> ***My government executive roles include serving as executive director of two of New York Governor Andrew Cuomo's statewide investigations*** ….

On the day this article was published on LinkedIn, a social-networking site, Hale "***liked***" the article, which included references to both the Calcaterra Firm Contract with the Commonwealth/KPPA/KRS (but not identified as such) and the two New York investigations that provided Calcaterra with — her "wealth of experience" with investigations — her "***unique***" qualifications for the Kentucky Contract.

141. Calcaterra and the Calcaterra Firm and KRS secretly arranged for an investigation contract for a purportedly "independent" investigation. ***The Calcaterra Firm secretly submitted a proposal on June 19, 2020 to Hale and Eager so they could agree on what would occur going forward***.

142. ***CALCATERRA started to register the Calcaterra Law Firm with the Kentucky Secretary of State as a "foreign limited partnership" to conduct business in Kentucky on August 12, 2020 and got registered on August 20, 2020 just four days before the Solicitation for the Contract was issued***! Calcaterra and Teres registered for the Kentucky Bar Exam between May – July 2020. The Firm had no other business in Kentucky or other prospects for Kentucky business. The timing of the Calcaterra Firm's registration was key to get the contract

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because proof of registration to do business in Kentucky is a condition of bidding for the Contract, ***which had not yet been put out for bid***. ***But Calcaterra knew it was coming***.

143. The Calcaterra Firm had an illegal "inside track". The Calcaterra Firm was given improper preference. The procurement process was corrupt, rigged, involved attempted monopolization of commerce and violated Kentucky law and KRS regulations. Each Defendant knew that or recklessly disregarded those facts known to them that showed this.

144. The Calcaterra Firm Contract did not call for the Calcaterra Firm to specifically investigate the Tier 3s' claims asserted in the proposed derivative Complaint in Intervention or the separate free-standing complaint they filed at the same time because they had not been filed when the procurement process took place. Neither of those complaints existed when the Kentucky Contract was bid on or awarded. The Contract actually called for Calcaterra to:

> … investigate specific investment activities conducted by the Kentucky Retirement Systems to *determine if there are any improper or illegal activities on the part of the parties involved and produce a detailed report documenting their investigation and findings*.

145. However, in a March 2, 2021 filing with this Court, KRS stated:

> Before the Tier 3 Individuals sought intervention here, Kentucky Retirement ***hired an independent third-party law firm to investigate the allegations contained in the proposed intervening complaint***. ***Kentucky Retirement is investigating the allegations and will rely on the results of that investigation in choosing a path forward***.

KRS's March 2, 2021 Response to the Tier 3 Individuals' Motion to Intervene at 1.

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146. Eager has been a vocal critic of the litigation on behalf of KRS, which includes allegations of serious wrongdoing by him in collusion with Peden, Prisma, Cook, and KKR/Prisma with regard to alleged self-dealing in 2015–16, which is critical to the liability of KKR and Prisma.

147. As Defendants in this action and the Trustee/KRS Board were illegally procuring and corruptly, dishonestly and disloyally preparing the "independent" report intended to undermine and stop the Mayberry action — the Attorney General intervened and took over prosecution of those claims promising the Calcaterra Report would be made public. The Report was then secreted by KRS and the Attorney General because the disclosure of the Report would help expose and confirm the co-conspirator wrongdoing alleged and attribute much of KRS's financial problems to the decade of deliberate underfunding of the Trusts by the Commonwealth — thus undermining the Attorney General's claims providing support for an *in pari delicto* defense.

VIII. NO DEMAND ON THE CULPABLE TRUSTEE IS REQUIRED — THE KENTUCKY ATTORNY GENERAL HAS NOT AND CANNOT BRING THESE CLAIMS

148. Plaintiffs are members of the KRS Plans and beneficiaries of its Trusts, and were at the time of one or more of the breaches of duties complained of. No pre-suit demand on a culpable Trustee is required for trust beneficiaries to sue third-party wrongdoers because the Trustee participated in the wrongdoing. Prosecution of this action by private counsel independent of the current Board and the Kentucky Attorney General is in the best interest of KRS's trusts and trust beneficiaries.

149. As the members of KRS and as beneficiaries of the KRS Trusts, Plaintiffs have standing to assert claims for KRS's trusts, to affect a recovery for the trusts, because KRS and its Board as Trustees have improperly neglected to bring an action, or

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actions, against Defendants. This remedy is available to Plaintiffs in their status as trust beneficiaries regardless of whether a demand on the trustees or any other person, would have been futile. KRS trusts cannot help or protect themselves by bringing this litigation because KRS is controlled and influenced by alleged wrongdoers including Eager, Fulkerson and others.

150. Plaintiffs have not made a demand on the current KRS Board/Trustee to bring suit asserting the claims set forth herein because pre-suit demand on them is not required under trust law since they have neglected to bring these facially meritorious claims and the Board was involved in the wrongdoing. However, if demand were required as in a "corporate law" derivative suit, it is excused, as it would be a futile act. Eager influences and controls the Board as fulltime CEO/ED. Fulkerson dominates the Board as the longest serving trustee. They were both active wrongdoers breaching their trust duties. The Stoll Keenon firm is the chief legal advisor to the Trustee and is implicated and conflicted.

151. Given that the KRS Board cannot bring and has not brought the claims, the only way these facially meritorious and potentially valuable claims can be vigorously prosecuted and Defendants held accountable for their misconduct, is by this trust beneficiary action (i) prosecuted by experienced, competent, private lawyers on a contingent basis with litigation expenses advanced to assure a vigorous, independent, uncompromised prosecution of these claims (ii) under this Court's ongoing supervision where the resolution of this case is under the control of the Court; and (iii) where any recovery by settlement or otherwise can be placed under the control of a "special fiduciary" appointed by the Court to make sure any net recovery is used — as the KPL

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commands — "solely in the interests of the members and beneficiaries" and for the "exclusive purpose of providing benefits to members and beneficiaries."

152. The Trustee could not and will not sue Defendants because to do so necessarily would expose their own mistakes and misconduct and show that they are culpable co-actors, schemers, who were pursuing a common course of wrongful conduct with them. To think that under these circumstances the Trustee would undertake to sue is unrealistic in the extreme.

153. The Kentucky Attorney General cannot and will not bring these claims. He and his private counsel have been aware of the alleged wrongdoing by Eager and the Calcaterra Firm for months — even years — and has done nothing.

IX. CAUSES OF ACTION

Count I
Against Defendants for Breaches of Trust
Fiduciary Duties to KRS Trusts and Their Beneficiaries

154. Plaintiffs incorporate by reference the allegations set forth above in this Complaint. Defendants' conduct violated common law, trust law, KRS § 367.175(1)–(2) and the Model Procurement Code. The contract with the Calcaterra Firm was illegally procured with the knowledge and assistance of each Defendant and Additional Actors, was an illegal restraint of trade and an attempt to monopolize commerce in Kentucky and in violation of the Model Procurement Code.

155. The KRS trust funds have each sustained and will continue to sustain significant damages, as alleged in Count I. The damages alleged herein are applicable to each of Counts I, II, III and IV, and consist of any and all provable damages to KRS's trusts, which include, at a minimum, the following: (i) all fees and expenses incurred in connection with the Calcaterra Report including all legal fees and expenses incurred

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after that Report was received as a consequence of that report; (ii) damages for the losses incurred as a result of excessive plan expenses related to, *inter alia*, the Black Box and other hedge fund investments, unsuitable hedge fund investments, the loss of trust assets, the loss of prudent investment opportunities and the loss of positive investment returns and accumulations; and (iii) disgorgement of fees and compensation from appropriate Defendants, who each received from KRS and its trusts for any legal work they did in connection with the matters alleged in this action.

156. Defendants' actions and failures to act were a substantial factor in causing the damages alleged herein.

157. As a result of the misconduct alleged herein, all Defendants named in this Complaint are liable to the KRS trusts for damages in an amount to be proven at trial.

Count II
Against All Defendants for Participating in a Joint Enterprise and a Civil Conspiracy, Including a Scheme, Common Course of Conduct, Common Enterprise and Concerted Action

158. Plaintiffs incorporate by reference all the allegations set forth above in the Complaint.

159. Each Defendant knowingly played an important and indispensable part in a scheme, civil conspiracy, concerted action, common course of conduct, and joint enterprise for their own, and their joint, economic gain at the expense and to the detriment of the KRS Trusts. Defendants worked together, knowing the roles of the others and each taking the specific overt acts alleged herein within their special areas of expertise and knowledge to further the civil conspiracy. Each Defendant profited from participation in the scheme. In order for the scheme to succeed as it did, it required the continuing, conscious mutually supportive and overt acts of each Defendant. Had any

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one of them complied with their duties, the damages could have been mitigated or avoided.

160. The KRS Trusts have sustained and will continue to sustain significant damages, as alleged in Count I.

161. Defendants' actions and failures to act made with knowledge of the facts, and Defendants' actions and failures to act, were all substantial factors in causing the damages alleged herein.

162. As a result of the misconduct alleged herein, these Defendants are liable to the KRS trusts for damages in an amount to be proven at trial.

Count III
Against All Defendants
for Aiding and Abetting Breaches of Trust, Fiduciary and Other Duties

163. Plaintiffs incorporate by reference all the allegations set forth above in the Complaint.

164. Each Defendant knew that the Trustee and/or other Defendants owed fiduciary and other obligations to KRS and individual plan members and trust beneficiaries.

165. Each Defendant knew that the Trustee's conduct and/or other Defendants' conduct as alleged in this Complaint and in the original *Mayberry* action breached those duties to KRS's trusts and its trusts' beneficiaries.

166. Each Defendant gave the Trustee and/or other Defendants substantial assistance or encouragement in effectuating such Trustee and/or other Defendants' breaches of their fiduciary duties, by the actions or failures to act as alleged in this Complaint.

167. The overt acts of Defendants that constitute substantial knowing assistance are the same overt acts alleged as part of Defendants' participation in the scheme, civil conspiracy and concerted common course of conduct and enterprise detailed throughout this Complaint.

168. Defendants had actual knowledge of the existence of the Trustees' and Officers' duties to KRS and its member/beneficiaries, and knowingly provided substantial assistance to the Trustees in the breaches of their duties to KRS and its members/beneficiaries.

169. As a direct and proximate result of these Defendants' breaches of duty and of trust, aided and abetted by each other, the KRS trusts have been damaged.

170. The KRS trusts have sustained and will continue to sustain significant damages, as alleged in Count I.

171. As a result of the misconduct alleged herein, Defendants are liable to the trust and their beneficiaries/members for damages in an amount to be proven at trial.

Count IV
Against All Defendants for Punitive Damages

172. Plaintiffs incorporate by reference all the allegations set forth in the Complaint.

173. The acts and omissions of each Defendant constitute willful and wanton conduct, gross negligence, and/or malice and oppression, for which Plaintiffs are entitled to recover punitive damages due to the disregard for the rights of the KRS Trust and the Trust beneficiaries. In the alternative, each Defendant authorized, ratified or should have anticipated, the acts and omissions of his or her employees, agents, both actual and ostensible, and servants, all as alleged herein.

174. The Kentucky Attorney General has been notified of this proceeding.

175. As a direct and proximate result of these Defendants' willful, reckless and wanton conduct, the KRS Trusts are entitled to punitive damages, as determined by the jury.

X. PRAYER FOR RELIEF

WHEREFORE, the Tier 3 Trust Plaintiffs, demand judgment as follows:

1. Declaring that the Tier 3 Trust Plaintiffs may maintain this action directly to recover damages for KRS's Trusts.

2. Determining and awarding to KRS's Trusts, the damages sustained by them as a result of the violations set forth above from Defendant individually, proportionally and/or jointly and severally, together with interest thereon, as appropriate under Kentucky law.

3. In addition, or in the alternative, to damages, declare the Calcaterra Contract void, awarding to KRS's Trusts equitable relief, to include equitable monetary relief, making them whole, as appropriate including return of all excessive expenses and fees.

4. Ordering that KRS terminate Hale and Eager and recapture all compensation paid to them in connection with the alleged wrongdoing.

5. Determining and awarding punitive damages against Defendants.

6. Disgorgement of all fees and expenses paid to the Calcaterra Firm in connection with any work performed by them for KRS related in any way to the wrongdoing alleged in this case and the *Taylor v. KKR & Co., L.P.* breach-of-trust case.

7. Ordering a full and complete accounting of all fees or other payments made ***to or by*** any Defendant to any person in connection with compensation sharing, fee splitting or other economic arrangements relating to the matters alleged herein.

8. Awarding Plaintiffs' Counsel reasonable fees and expenses.

9. Awarding an incentive fee to the named Plaintiffs and other KRS members for their efforts uncovering the wrongdoing at KRS in the first place, having the courage to expose it in making this suit possible and for their service on behalf of the KRS's trusts and its members/beneficiaries.

10. Granting such further or other legal and equitable relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: September 14, 2022

Respectfully submitted,

s/ Michelle Ciccarelli Lerach

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