INTERNATIONAL CENTRE FOR DISPUTE RESOLUTION

International Arbitral Tribunal

In the Matter of the Arbitration Between

Mario M. Kranjac

Claimants,

v. Case No. 01-23-0005-0064

Daniella Kranjac, Reinhard Vogt, Sebastien Latapie and Jessica Davis,

Respondents/Counterclaimants.

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PARTIAL FINAL AWARD

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PARTIAL FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement between the Parties contained in the agreements described below in paragraph 7(a) and (b), having been duly sworn, and having duly heard the proofs and allegations of the Parties, do hereby issue this PARTIAL FINAL AWARD, as follows:

I. INTRODUCTION

1. The issues presented in this arbitration arise out of a relationship between a brother and sister who formed a closed-end venture capital fund in or about 2016 to make early-stage investments in specific life sciences portfolio companies. Under the terms of their agreements, the siblings initially agreed to hold an equal ownership interest in the companies serving as the general partner of the fund and the fund's manager and to co-manage them in line with their experience and expertise in the life sciences and law.

2. The central issues in this proceeding are (a) whether the brother's ownership interests in the general partner and the fund's manager were wrongfully reduced such that his sister secured a majority ownership interest in those companies; (b) by virtue of his sister's majority interest in those companies, whether the brother was then unlawfully deprived of (i) his management rights therein and (ii) his right to invest in any future business endeavor similar to the fund; and (c) whether the sister and the general partner and fund's manager, along with another member of those companies and their employees were harmed by the alleged misconduct of the brother, including the alleged misappropriation of funds from the fund's manager.

A. The Parties, their Representatives and the Tribunal

3. Claimant is Mario M. Kranjac ("Mr. Kranjac" or "Claimant"), an individual residing in Englewood Cliffs, New Jersey.[1] Mr. Kranjac is represented in this proceeding by Jeffrey P. Resnick, Esq. of Sherman, Silverstein, Kohl, Rose & Podolsky, P.A.[2]

4. Respondents/Counterclaimants are (a) Daniella Kranjac, an individual residing in Montclair, New Jersey, (b) Reinhard Vogt, an individual residing in Germany, (c)

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[1] This arbitration was initially commenced by Mr. Kranjac, individually and on behalf of two Delaware limited liability companies with business operations in New York, New York: Dynamk Capital LLC and Dynamk Fund Advisors LLC. Pursuant to the Arbitrator's ruling on Respondents' Dispositive Motion (as such term is defined below in paragraph 38), those limited liability companies were dismissed as Claimants in this matter as to all claims alleged derivatively on their behalf as described below in paragraph 39.

[2] As explained in greater detail below in paragraph 28, Mr. Resnick substituted as counsel for Mr. Kranjac's original counsel.

Sebastien Latapie, an individual residing in New York, and (d) Jessica Davis, an individual residing in New York (each individual herein referred to individually by name and collectively, as "Respondents"). Respondents are represented in this proceeding by Joseph A. Piesco, Esq. and Ryan P. O'Connor, Esq. of DLA Piper LLP (US).

5. Claimant and Respondents are herein referred to collectively as the "Parties."

6. On April 4, 2024, the International Centre for Dispute Resolution ("ICDR"), the international division of the American Arbitration Association ("AAA"), gave notice that it had completed its appointment of Michele S. Riley as the sole arbitrator of this matter upon receiving her Arbitrator Oath.

B. The Relevant Agreements

7. This dispute arises out of or relates to several agreements: (a) the Second Amended and Restated Limited Liability Company Agreement of Dynamk Capital LLC made and entered into as of April 1, 2020 (the "2020 Capital LLC Agreement"), (b) the Third Amended and Restated Limited Liability Company Agreement of Dynamk Fund Advisors LLC made and entered into as of April 1, 2020 (the "2020 Advisors LLC Agreement," and together with the 2020 Capital LLC Agreement, the "2020 LLC Agreements"), and (c) the Second Amended and Restated Limited Partnership Agreement of Dynamk Life Sciences Fund, L.P. made and entered into as of January 19, 2021 (the "2021 LPA").[3]

C. The Governing Law and Dispute Resolution Clause

8. The 2020 LLC Agreements set forth provisions relating to the governing law and submission of disputes to arbitration.

9. The 2020 LLC Agreements provide, in relevant part, as follows:

> Section 10.04 **Applicable Law and Dispute Resolution**. It is the intent of the parties hereto that all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the provisions of the laws of the State of Delaware in such cases made and provided, without giving effect to the choice of law rules thereof. This Agreement and all related documents, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with the laws of the State of Delaware, United States of America, without regard to the conflict of laws provisions thereof. *** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties shall attempt to resolve it promptly by negotiation between the

[3] Dynamk Fund Advisors LLC ("Advisors") is the general partner for Dynamk Life Sciences Fund, L.P. (the "DLS Fund"), and Dynamk Capital LLC ("Capital") is the fund manager (Advisors and Capital are collectively referred to herein as the "Dynamk LLCs" or "Dynamk"). (Tr. 1, 27:12-21).

Members and Managers who have authority to settle the dispute. If the dispute cannot be settled through negotiations within thirty (30) days, the parties shall endeavor first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Procedures before resorting to arbitration. Any dispute not resolved through negotiation or mediation shall be settled promptly by arbitration with one (1) arbitrator in New York City, New York, in accordance with the rules of the AAA then in effect.[4] The decision of the arbitrator shall be final and binding, and judgment may be entered on the arbitrator's award in any court having jurisdiction. Arbitration shall be the exclusive final remedy for any dispute between the parties; provided, however, that this provision shall not prevent either party from seeking injunctive relief from a court having jurisdiction. No party to this Agreement will challenge the jurisdiction or venue provisions as provided in this Section. Each party hereby consents to (i) the jurisdiction of the AAA and the state and Federal courts located in New York County and (ii) service of process if done in accordance with Section 10.15.

(Exs. C-65/R-1 and C-66/R-2 at § 10.04).

10. The Parties satisfied the jurisdictional requirement set forth in the Agreements "first to try in good faith to settle the dispute by mediation" before resorting to arbitration. (*Id.*). The Parties were unsuccessful in their attempt to settle the dispute.[5]

11. The seat of the arbitration, as provided in Section 10.04 of the 2020 LLC Agreements set forth above in paragraph 9, is New York City, New York.

II. PROCEDURAL HISTORY

The Pleadings

12. On November 3, 2023, pursuant to Article 2 (Notice of Arbitration and Statement of Claim) of the ICDR Rules as well as the mandatory arbitration clause set forth above in paragraph 9, Mr. Kranjac, together with the Dynamk LLCs, filed a Demand for Arbitration, together with a Statement of Claim (the "Original Claim"), asserting contractual, quasi-contractual and tort claims against one or more Respondents, and seeking an award in favor of Claimants of compensatory and punitive damages, as well as equitable and declaratory relief. (*See* Original Claim at pp. 56-59). Claimants also sought an award of attorneys' fees and other arbitration costs. (*Id.*).

[4] The Parties agreed that the International Dispute Resolution Procedures (including Mediation and Arbitration Rules), amended and effective March 1, 2021 (the "ICDR Rules") shall govern this arbitration. (Procedural Order No. 1 dated May 7, 2024 ("P.O. No. 1") at ¶ 16).

[5] *See* Third Amended Claim at p. 1; Counterclaim at p. 7, each described below in footnote 20.

13. On December 8, 2024, Claimants filed an Amended and Restated Statement of Claim ("First Amended Claim") which expanded their prayer for relief and supplemented the factual allegations set forth in the Original Claim.

14. On January 22, 2024, Respondents filed their answer to Claimants' First Amended Claim.[6] Respondents generally denied the allegations in the First Amended Claim and requested that the Arbitrator issue an award denying Claimants' claims in their entirety. (*See* Original Counterclaim at pp. 43-44). Respondents also asserted contractual, quasi-contractual and tort counterclaims against Claimant Kranjac, seeking an award in their favor of compensatory and punitive damages, as well as declaratory relief. (*Id.*). Lastly, Respondents also sought an award of attorneys' fees and other arbitration costs.[7] (*Id.*).

15. In accordance with P.O. No. 1, on May 6, 2024, Claimants filed their Second Amended and Restated Statement of Claim ("Second Amended Claim"), adding as Respondents to this proceeding Peter Lee, Sebastien Latapie, Jessica Davis, Avant Bio LLC, Avant Bio GP II LLC, and Avant Bio Fund II LP ("Avant Bio" or "Avant," and together with Avant Bio LLC and Avant Bio GP II LLC, collectively, the "Avant Entities" or "Avant"); and John/Jane Does. (*See id.* at p. 1). The Second Amended Claim also interposed as a new Third Count a derivative claim on behalf of the Dynamk LLCs based on the alleged breach by Respondents Kranjac and Vogt of their fiduciary duties, and as a new Seventeenth Count a claim based on tortious interference with contract. (*See id.* at ¶¶ 196-201, 265-69). Claimants also supplemented their prayer for relief. (*See id.* at ¶ 270).

16. On May 20, 2024, Respondents filed Respondents' Answer, Affirmative Defenses, and Counterclaims to Claimants' Second Amended and Restated Statement of Claim. Respondents generally denied the allegations in the Second Amended Claim and supplemented their affirmative defenses and prayer for relief.

The Preliminary Conference

17. On April 23, 2024, in accordance with Article 22(2) (Conduct of Proceedings) of the ICDR Rules, the Arbitrator and the Parties participated in a videoconference to

[6] *See* Respondents' Answer, Affirmative Defenses, and Counterclaims to Claimants' Amended and Restated Statement of Claim ("Original Counterclaim"). It appears that Respondents did not file any pleading in response to the Original Claim.

[7] On March 13, 2024, Claimants filed their response to Respondent's Original Counterclaim. (*See* Claimants' Answer to Respondents' Counterclaims). Claimants generally denied the allegations in the Original Counterclaim and requested that the Arbitrator issue an award denying Respondents' counterclaims in their entirety and award Claimants their attorneys' fees and other arbitration costs. (*Id.* at p. 9).

discuss procedural matters (the "Preliminary Conference").[8] The Arbitrator issued P.O. No. 1, which *inter alia* fixed the procedural schedule with which the Parties and their counsel endeavored to comply. The evidentiary hearing was scheduled to be held October 1 - 2, 2024, with October 3, 2024 held in reserve, but was subsequently rescheduled as described below in paragraphs 31-37.

18. At the Preliminary Conference, it appeared that the Parties had agreed to have a confidentiality order governing the exchange of information and documents entered in this proceeding and the Arbitrator ordered the Parties to submit a proposed order. Claimants subsequently advised the Arbitrator that Claimants would not agree to any confidentiality restrictions beyond those provided by the ICDR Rules. The Arbitrator ordered the Parties to submit to the Arbitrator letter-briefs explaining why a confidentiality order was or was not necessary.

19. After considering the written submissions of the Parties,[9] and for the reasons set forth in Procedural Order No. 2 dated May 15, 2024, pursuant to the authority conferred upon the Arbitrator by Article 40 (Confidentiality) of the ICDR Rules, the Arbitrator granted Respondents' request for the entry of a confidentiality and protective order in substantially the form appended to their May 10, 2024 letter and issued the Confidentiality and Protective Order dated May 15, 2024 governing the exchange of information and documents in this proceeding.

Applications for Leave to File Motions

20. In May 2024, the Parties presented two requests to the Arbitrator for leave to file motions: (a) Claimants requested leave to file a motion to restore the *status quo ante*; and (2) Respondents requested leave to file a motion to dismiss all claims brought by Claimant Kranjac on behalf of the Dynamk LLCs, and to dismiss the Dynamk LLCs as named claimants.

21. At the direction of the Arbitrator, a hearing was scheduled to be held on these requests on June 14, 2024. On the eve of the hearing, Claimants requested, with no objection from Respondents and with the acceptance of the Arbitrator, that the hearing be postponed to an unspecified future date while the Parties engaged in settlement discussions.[10]

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[8] All pre-hearing conferences in this proceeding were held via videoconference on the ICDR/AAA or the Arbitrator's Zoom Pro platform.

[9] By letters dated May 10, 2024, Respondents requested that their proposed form of a confidentiality and protective order, appended to their letter, be entered in this proceeding, and Claimants objected to such entry. By letter dated May 13, 2024, Respondents responded to Claimants' objection.

[10] On June 25, 2024, the Parties proposed modifications to the procedural timetable to accommodate their efforts to settle their dispute but left open the rescheduled date for the hearing on the pending requests. The Arbitrator issued Procedural Order No. 3, dated June 28, 2024, approving the Parties' proposed

22. With respect to Claimants' request for leave to file a motion to restore the *status quo ante*, after considering the written submissions of the Parties,[11] for the reasons and in the circumstances set forth in Procedural Order No. 4 dated July 31, 2024 ("P.O. No. 4"), pursuant to the authority conferred upon the Arbitrator by Article 27 (Interim Measures) of the ICDR Rules, the Arbitrator denied Claimants' request for such leave.

23. With respect to Respondents' request for leave to file a motion to dismiss all claims brought by Claimant Kranjac on behalf of the Dynamk LLCs, and to dismiss them as named Claimants from this arbitration, after considering the written submissions of the Parties,[12] the Arbitrator concluded that the motion to dismiss had not been adequately briefed such that the Arbitrator could make a reasoned decision on whether to grant the motion to dismiss at that time. The Arbitrator consequently invited the Parties to supplement their submissions by submitting a letter-brief addressing certain questions., or in the alternative, to defer the motion to the evidentiary hearing for disposition on a full record developed at such hearing.[13] Accordingly, for the reasons and in the circumstances set forth in P.O. No. 4, the Arbitrator denied Respondents' motion to dismiss at that time.

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modifications. In response to the Arbitrator's inquiry concerning rescheduling the hearing on the requests for leave to file the motion to restore the status quo ante and the motion to dismiss, by email of July 22, 2024, the Parties informed the Arbitrator that it was their desire to have the Arbitrator decide both requests on the papers without a hearing.

[11] The briefing relating to Claimant Kranjac's request for leave to file a motion to restore the *status quo ante* consists of (i) Claimants' letter-brief dated May 16, 2024 requesting leave to file such a motion, and (ii) Respondents' letter-brief dated May 30, 2024 opposing the request for leave.

[12] The briefing relating to Respondents' motion to dismiss consists of (i) Respondents' letter-brief dated May 20, 2024 requesting leave to file a motion to dismiss the Dynamk LLCs from this arbitration and all claims brought by Claimant Kranjac on their behalf, (ii) Claimants' letter-brief dated June 5, 2024 opposing Respondents' request, and (iii) Respondents' reply dated June 12, 2024 in further support of their request for leave to file the motion. Respondents styled their letter-brief as a request for leave to file a motion to dismiss to adequately ensure compliance with the requirements of P.O. No. 1. However, because this motion was contemplated at the time of, and discussed during, the preliminary conference (and a proposed briefing schedule was included in Annex A to P.O. No. 1), and Claimants had no objection to treating Respondents' letter-brief as a motion to dismiss rather than a request for leave to file such a motion, the Arbitrator dispensed with the requirement that Respondents first seek leave pursuant to Article 23 (Early Disposition) of the ICDR Rules and treated Respondents' May 20th letter-brief as the motion to dismiss itself. (*See* emails of May 20, 2024 exchanged between counsel and the Arbitrator).

[13] By email of August 12, 2024, Respondents advised the Arbitrator that they would "refrain from moving forward with the Motion to Dismiss (and address same during subsequent motion practice or at the evidentiary hearing)."

Interim Rulings and Party Agreements

24. By emails of July 22 and 31, 2024, the Parties jointly proposed certain modifications to the procedural timetable to accommodate their on-going efforts in holding settlement discussions, leaving the dates for the evidentiary hearing as scheduled pursuant to P.O. No. 1 unchanged. Among the proposed modifications were the extensions of the deadline for document production to August 9, 2024 and the deadline for submitting discovery disputes and requests for taking depositions to August 19, 2024.[14] Accepting all modifications proposed by the Parties, the Arbitrator issued Procedural Order No. 5 dated August 5, 2024.

25. On August 12, 2024, Respondents requested that the Arbitrator grant interim injunctive relief pursuant to Article 27 of the ICDR Rules, pending the evidentiary hearing then scheduled to commence on October 1, 2024. After considering the multiple submissions of the Parties made by email between August 12 and August 15, 2024 and offering the opportunity to Claimants to address what they might view as new arguments raised by Respondents in support of their initial request for interim injunctive relief, on August 16, 2024, the Arbitrator issued a temporary restraining order against Mr. Kranjac in respect of funds in the amount of $400,000 allegedly misappropriated by him and in respect of any monies, property and/or assets held or controlled by either of the Dynamk LLCs or the DLS Fund.[15]

26. On August 21, 2024, disregarding the arbitration rules by which they had agreed to be bound,[16] Claimants submitted a request to take eight (8) depositions. On the same day, Respondents submitted their opposition to Claimants' request as well as their own request regarding the inadequacy of Claimants' responses to Respondents' First Set of Requests for Production of Documents. By email of August 22, 2024, the Parties advised the Arbitrator that they had agreed to limit the depositions sought by Claimants to Mr. Kranjac and Ms. Kranjac, and permit Claimants to have until August 27, 2024 to produce documents responsive to Respondents' First Set of Requests for Production of Documents.

27. On September 3, 2024, the Parties timely submitted their respective Identification of Witnesses.

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[14] As this proceeding continued, the Parties jointly requested several extensions of the deadlines governing discovery. Such extensions were sought primarily to accommodate the Parties' engagement in settlement discussions, leaving unchanged the dates scheduled for the evidentiary hearing and were accepted by the Arbitrator.

[15] *See* Temporary Restraining Order Pending Arbitration Hearing dated August 16, 2024.

[16] The ICDR Rules states that "[d]epositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules." (Article 24(7) (Exchange of Information) of the ICDR Rules).

Substitution of Claimants' Counsel

28. On September 9, 2024, John M. Hanamirian, then counsel for Claimants, informed the Arbitrator, and on the following day, the ICDR/AAA, that he would be unable to continue to represent Claimants in this proceeding due to a serious medical condition. On September 13, 2024, Jeffrey P. Resnick entered his appearance as counsel for Claimants in this proceeding. On the same day, the Arbitrator advised the Parties and the ICDR that she had no disclosures to make in connection with the substitution of counsel.

29. Pursuant to paragraph 66 of P.O. No. 1, a conference was held via videoconference on September 16, 2024 in connection with the substitution of counsel and the consequent need to modify the procedural timetable governing this proceeding.

30. At the September 16th conference, the evidentiary hearing, originally scheduled to take place from October 1 - 2, 2024, with October 3 held in reserve, was rescheduled for the week of December 16, 2024 — three full months from the time of the September 16th conference and two and a half months from the time the evidentiary hearing would have been held but for the substitution of counsel — subject to the availability of the witnesses expected to be called to testify at the hearing. The Arbitrator directed the Parties to meet and confer to modify the interim deadlines leading up to the evidentiary hearing and to submit a joint proposed procedural order setting forth those dates.

Claimants' Request to Re-Open Discovery

31. After meeting and conferring with counsel for Respondents, Mr. Resnick, new counsel for Claimants, requested that the Arbitrator re-open discovery as "essential fairness considerations require moving forward properly." Specifically, Mr. Resnick expressed his dissatisfaction that the discovery schedule "was not realistic when entered (regardless of whether it was with the consent of all parties)", that "Respondents have refused to provide a substantive response to 37 out of 54 document requests", and that "no depositions have been taken". [Emphasis added.] (*See* Mr. Resnick's email of September 26, 2024). To address his claims that the discovery schedule was unrealistic and unfair, and as such, was "not something I would have agreed to," Mr. Resnick requested "not … just a little time to conclude discovery; we need a proper amount of time to prepare for a hearing (or settlement)." (*Id.*).

32. While Claimants properly availed themselves of their right to "provide the tribunal with [their] view on the appropriate level of information exchange …, the tribunal retains final authority." (Article 24 (2) of the ICDR Rules). Claimants subsequently requested as a "proper amount of time" an adjournment of eight (8) months so that discovery could be re-opened. (*See* Mr. Resnick's email of September 30, 2024).

33. The 2020 LLC Agreements are silent on the right to conduct discovery in connection with the arbitration of any dispute arising thereunder. Claimants submitted no legal authority evidencing any such right under Delaware law. In light of the absence of any such right to discovery under the 2020 LLC Agreements (or any other agreement among the Parties) or any decisional law in support of such a right, the Arbitrator was required to abide by the ICDR Rules[17] which provides that "the arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy." (Article 24(1) of the ICDR Rules).

34. Mindful of her responsibility under Article 24(1) of the ICDR Rules, and in an effort to strike the correct balance between efficiency and economy, on the one hand, and safeguarding the opportunity for each side to present their claims and defenses fairly, on the other hand, pursuant to paragraph 66 of P.O. No. 1, the Arbitrator nevertheless held a conference via videoconference on October 2, 2024 to further discuss, in connection with modifying the procedural timetable governing this proceeding, the issue of whether to re-open discovery as requested by Claimants, which would in the view of Mr. Resnick require that the evidentiary hearing not commence until June 2, 2025.

35. After considering the written submissions of the Parties and the arguments made at the October 2nd conference, the Arbitrator issued Procedural Order No. 6 dated October 7, 2024 ("P.O. No. 6"), finding that (a) Claimants were actively engaged in the discovery process close to a three-month period — May 30 to August 22, 2024, (b) the discovery deadlines and all extensions were negotiated by and between the Parties themselves rather than imposed upon them by the Arbitrator, (c) Claimants had never objected to any discovery deadline to which they had agreed and had never filed a motion to compel discovery, and (d) Claimants presented no legal authority in support of the right of substitute counsel in an arbitration to re-open discovery by resetting the procedures governing discovery that had been agreed upon by Claimants' former counsel.

36. Given the substantial time, effort and expense that had been expended by Respondents in this proceeding, it would have been highly prejudicial and unfair to them to have discovery re-opened and for the next eight months, be required to engage in further discovery. Moreover, from an institutional point of view, to allow a substitute counsel to disregard all prior agreements of former counsel for his clients and all prior orders of the presiding arbitrator relating to discovery, would be fundamentally unfair to the opposing party and would wreak havoc on the integrity of the arbitral process. (P.O. No. 6 at § 3). In sum, the Arbitrator concluded that the period for conducting discovery had closed and denied Claimants' request to re-open discovery.

37. Accordingly, for the reasons and in the circumstances presented therein and pursuant to the authority conferred upon her under Article 22(1) and (2) of the ICDR Rules, the

[17] As noted above in footnote 4, the Parties stipulated that the ICDR Rules would apply to this proceeding.

Arbitrator ruled that the evidentiary hearing shall take place on December 17 - 18, 2024, December 19, 2024 to be held in reserve, in keeping with the agreement of substitute counsel and opposing counsel reached at the September 16th conference. (P.O. No. 6 at § 3).

Respondents' Dispositive Motion

38. On October 16, 2024, pursuant to Article 23 of the ICDR Rules and paragraph 54 of P.O. No. 1, and the procedural timetable appended to P.O. No. 6 as Annex A, Respondents timely filed for early disposition of certain claims and counterclaims on a motion for partial summary judgment ("Respondents' Dispositive Motion"),[18] and on November 1, 2024, Claimants filed their opposition thereto.

39. After considering the written submissions of the Parties on Respondents' Dispositive Motion,[19] pursuant to Procedural Order No. 7 dated November 29, 2024 ("P.O. No. 7"), the Arbitrator granted in part and denied in part Respondents' Dispositive Motion. All claims brought by Claimant on behalf of the Dynamk LLCs were dismissed with prejudice and the Dynamk LLCs were consequently dismissed as Parties to this arbitration. All claims brought by Claimant against the Avant Entities, Peter Lee and unnamed persons (John Does 1-4 and Jane Doe) were dismissed with prejudice. Consequently, the sole surviving Claimant is Mr. Kranjac and the surviving Respondents are Daniella Kranjac, Reinhard Vogt, Sebastien Latapie and Jessica Davis. (*See* P.O. No. 7 at § VIII.)

40. The claims of Claimant surviving Respondents' Dispositive Motion are claims brought by Claimant, individually, for breach of contract, breach of fiduciary duty, shareholder oppression, breach of duty of care and loyalty, *ultra vires*, indemnification (common law), indemnification (contractual), civil conspiracy, fraud, fraudulent inducement, defamation/libel and conversion. (*See id.*).

41. Summary judgment in favor of Respondents was denied, leaving for adjudication at the evidentiary hearing Respondents' counterclaims for breach of contract, breach of fiduciary duty, breach of the covenant of good faith and fair dealing, conversion,

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[18] Respondents did not apply for leave to file a dispositive motion as required under Article 23 of the ICDR Rules on the ground that such requirement had been waived pursuant to the agreement of the Parties in modifying the procedural timetable appended to P.O. No. 6. Claimants did not object to the filing of a dispositive motion without obtaining leave to file and the Arbitrator accepted such filing.

[19] The written submissions of the Parties consist of (1) Memorandum of Law in Support of Motion for Partial Summary Judgment under AAA Rule R-34 dated October 16, 2024, (2) Claimants' Response to Respondents' Motion for Partial Summary Judgment dated November 1, 2024, and (3) Reply Memorandum of Law in Further Support of Motion for Partial Summary Judgment under AAA Rule R-34 dated November 8, 2024 which was submitted at the invitation of the Arbitrator pursuant to P.O. No. 6 and her email of November 4, 2024.

fraud, defamation, tortious interference with business relations, indemnification, and declaratory judgment. (*See id.*).

42. By email of December 2, 2024, the Arbitrator directed the Parties to amend and restate their respective pleadings to reflect the surviving claims and counterclaims and the Parties asserting such claims and counterclaims in this arbitration.[20]

Preparations for Evidentiary Hearing

43. By email of November 6, 2024, Claimants requested that the Arbitrator issue twelve (12) summonses to non-parties seeking to compel their appearance to testify at the evidentiary hearing, and by letter-brief dated November 13, 2024, Respondents submitted their objection to such issuance.[21]

44. To address this and other issues, a status conference was held on November 22, 2024. As memorialized in the Arbitrator's email of November 24, 2024, the Arbitrator issued several rulings regarding the issuance of summonses to non-parties seeking to compel their appearance to testify at the evidentiary hearing;[22] the taking of depositions of both Kranjacs; Mr. Kranjac's access to certain financial information of the Dynamk LLCs; waiver of the requirement set forth in P.O. No. 1 to submit pre-hearing briefs inasmuch as the issues that would be briefed in such pre-hearing briefs were briefed for the most part in the briefing of Respondents' Dispositive Motion; submission of a modified procedural timetable setting forth all remaining interim due dates set forth therein (leaving the dates for the evidentiary hearing unchanged); and scheduling the final pre-hearing conference and preparation of an agenda for such conference.

45. The Parties subsequently informed the Arbitrator that they believed that the final pre-hearing conference was not necessary as counsel will have met and conferred on any logistical or evidentiary issues for the Hearing. (*See* Mr. O'Connor's email of December 9, 2024).

46. After multiple requests to comply with the Arbitrator's directive of November 24, 2024 concerning preparation for the evidentiary hearing, on the eve of the hearing scheduled to commence on December 17, 2024, the Parties jointly provided the

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[20] *See* Third Amended and Restated Statement of Claim (the "Third Amended Claim"), and Respondents' Answer, Affirmative Defenses, and Counterclaims to Claimant's Third Amended and Restated Statement of Claim (the "Counterclaim"), each dated December 9, 2024.

[21] *See* email of Claimant dated November 6, 2024 and Respondents' letter-brief objecting to Claimants' request for issuance of subpoenas dated November 13, 2024.

[22] The Arbitrator issued a summons directed to Joseph A. Tripodi on November 25, 2024 at the request of Respondents, and summonses directed to Lori Dernavich and Richard Ferraro on November 27, 2024 at the request of Claimant.

Arbitrator with an overall schedule for the hearing, informed the Arbitrator of their acceptance of proposed ground rules for witnesses testifying by videoconference,[23] and advised the Arbitrator that that they agreed to "stipulate that all exhibits will be deemed authenticated and admissible, subject to relevance objections that may be raised by either party to certain exhibits." (*See* Mr. O'Connor's email of December 16, 2024).

47. Neither side objected to the application at the evidentiary hearing of Article 22(7) of the ICDR Rules which provides in full: "[t]he tribunal shall determine the admissibility, relevance, materiality and weight of the evidence" nor did they consider or agree upon the application of a set of evidentiary rules in lieu of the authority conferred upon the Arbitrator with respect to evidence pursuant to Article 22(7).[24]

The Evidentiary Hearing

48. The evidentiary hearing was conducted in person on December 17 - 19, 2024 at the law offices of Littler Mendelson P.C. located at 900 Third Avenue, New York, New York 10022, commencing at approximately 9:30 a.m. (ET) each day (the "Hearing").

49. The following persons were present at the Hearing:

The Tribunal:

Michele S. Riley

For Claimant:

Jeffrey P. Resnick, Esq.
Mario M. Kranjac, Esq.
Lori Dernavich

For Respondents:

Joseph A. Piesco, Esq.

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[23] *See Ground Rules for Witnesses and their Access to Exhibits* ("*Ground Rules for Witnesses*"), dated July 29, 2024. By email of May 20, 2024, the Parties advised the Arbitrator of their agreement "that any witnesses working outside of New York City may appear via Zoom/videoconference."

[24] The Arbitrator had occasion at the evidentiary hearing to remind counsel, when they pressed for the exclusion of evidence based on hearsay grounds, that formal rules of evidence governing in a court of law, do not apply to arbitral proceedings and that such application is reserved for the arbitrator's determination. (Tr. 2, 567:24-568:23). In the Arbitrator's practice, arbitrations are not conducted under the formal rules of evidence found in a court of law, unless the parties have expressly stipulated otherwise.

Ryan P. O'Connor, Esq.
Daniella Kranjac
Reinhard Vogt
Sebastien Latapie
Jessica Davis

Court Reporter:

Roberta Caiola, U.S. Legal Support[25]

50. The Parties delivered opening statements before presenting their witnesses. On Claimant's side, Mr. Kranjac and Ms. Dernavich testified as fact witnesses. Respondents presented four (4) fact witnesses: Respondents Kranjac, Vogt, Latapie and Davis. Each witness testified in person except Mr. Vogt and Ms. Dernavich who testified via videoconference in accordance with the *Ground Rules for Witnesses*. Each witness was cross-examined by the opposing Party and several witnesses were questioned by the Arbitrator.

51. The record shows that all exhibits that were pre-marked and exchanged were admitted into evidence whether or not shown to a witness at the Hearing subject only to objections based on relevancy grounds. (Tr. 3, 391:10-22).

52. At the conclusion of the Hearing, following a discussion of certain post-hearing matters, the Parties agreed to (a) each submit, no later than February 17, 2025, a post-hearing brief not exceeding 50 double-spaced pages (Tr. 3, 388:22-389:2); and (b) forego the submission of reply memoranda addressing the opposing Party's post-hearing brief. (Tr. 3, 390:8-18).

53. The Parties also agreed, with the concurrence of the Arbitrator, that all issues relating to the costs and expenses of the Parties incurred in this proceeding, including attorneys' fees, will be deferred until the decision on the merits of the claims/counterclaims is delivered to the Parties. (Tr. 3, 389:13-17). At such time, in consultation with the Parties, it was agreed that the Arbitrator will set a schedule for submissions relating to all such costs and expenses.

Post-Hearing Matters

54. On December 20, 2024, the day after the conclusion of the Hearing, the Arbitrator forwarded to the Parties *Arbitrator's Guidelines regarding Post-Hearing Briefs*, together with a request, given the multiple claims (twelve (12)) and counterclaims (nine (9)) presented for determination in this arbitration, for a chart identifying (1) each claim, (2) the person(s) asserting the claim, (3) the person(s) against whom the claim is asserted, (4) the source of the obligation allegedly violated (*e.g.*, a specific

[25] After the Hearing, U.S. Legal Support provided a transcript of the Hearing. All citations to the transcript in this Partial Final Award is denoted "Tr. [volume number, page number:line number-page number:line number]."

agreement, statute, common law), and (5) the relief sought for such violation. Such *Guidelines* and chart were designed to serve as a checklist for ensuring that the information the Arbitrator would need to render an award would be clearly provided in the post-hearing briefs.

55. On February 17, 2025, the Parties simultaneously served their post-hearing briefs, together with a *Summary of Remaining Claims* in partial response to the Arbitrator's request described in preceding paragraph (the "Remaining Claims Chart"). [26]

56. On February 27, 2025, Mr. Kranjac advised the Arbitrator that he understood that Ms. Davis was no longer affiliated with the Dynamk LLCs and that Mr. Vogt's affiliation with them would also soon come to an end. According to Mr. Kranjac, each of these Respondents had been a Board Observer for several of the DSL Fund's portfolio companies. In light of their departures, Mr. Kranjak requested that the Arbitrator "compel Dynamk and Avant to appoint Mr. Kranjac as observer to the portfolio companies" and to "provide him full access to all relevant information relating to these employees' departures" in addition to ordering the relief that he has already sought in the pending arbitration. By email on the following day, after receiving Respondents' objection to Mr. Kranjac's request, the Arbitrator invited Mr. Kranjac to follow the procedures set forth in P.O. No. 1 for making motions. No motion to compel was filed by Mr. Kranjac.

57. By email of April 11, 2025, the Arbitrator advised the Parties of her specific questions relating to the arguments set forth in their post-hearing briefs. On April 25, 2025, the Parties timely submitted their responses to such questions.[27]

58. Upon further review of the evidentiary record, by email of May 6, 2025, the Arbitrator conveyed additional questions to the Parties. On May 13, 2025, the Parties timely submitted their responses.[28]

59. The evidentiary record was declared closed on June 9, 2025, as to all issues other than arbitration costs and expenses. This is a Partial Final Award which reserves for

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[26] *See* Claimant Mario M. Kranjac's Closing Brief ("Claimant's Post-Hearing Brief" or "Cl. PHB"), and Respondents' Posthearing Memorandum of Law ("Respondents' Post-Hearing Brief" or "Resp. PHB"), each served on February 17, 2025.

[27] *See* Claimant Mario M. Kranjac's Answers to Questions of Arbitrators for the Parties ("Cl. Responses I") and Respondents' Responses to Arbitrator's Post-Hearing Questions ("Resp. Responses I"), each dated April 25, 2025. Attached to Resp. Responses I as Exhibit 3 is Respondents' proposed Final Award ("Resp. Proposed Order").

[28] *See* Mario Kranjac's Response to the Arbitrator's May 6, 2025 Supplemental Questions for the Parties ("Cl. Responses II") and Respondents' Responses to Arbitrator's Supplemental Post-Hearing Questions ("Resp. Responses II"), each dated May 13, 2025.

future determination only those issues relating to arbitration costs and expenses as provided below in paragraph 369(S).

60. Notwithstanding the closing of the evidentiary record, on June 16, 2025, Mr. Kranjac filed a motion to compel Respondents to provide Mr. Kranjac access to the books and records of the Dynamk LLCs.[29] Mr. Kranjac made clear that the purpose of making Claimant's Post-Closing Motion was to continue his quest for discovery. (*See* Post-Closing Memo at p. 1.)

61. As an initial response to Claimant's Post-Closing Motion, on June 20, 2025, the ICDR Administrator reminded the Parties that the evidentiary record had been closed on June 9, 2025 and that the Parties should make no further submissions to the Arbitrator unless they were specifically invited to do so by the Arbitrator.

62. Responding to this reminder on the same day, counsel for Mr. Kranjac asserted that Claimant's Post-Closing Motion "is not related to the arbitration hearing record." The evidentiary record belies that assertion. (*See* Tr. 1, 642:5-16; Tr. 2, 444:13-448:3; Tr. 3, 356:22-368:25). Furthermore, the relief sought in Claimant's Post-Closing Motion is among the relief for specific performance Mr. Kranjac seeks in this arbitration: that "he [be] immediately entitled to all books, records and systems of Dynamk and Avant." (*See* Cl. Responses II at § 6).

63. By email of June 26, 2025, the ICDR Administrator advised the Parties on behalf of the Arbitrator that she had concluded that Claimant's Post-Closing Motion was not a matter that needed to be considered on motion practice as it will be decided in this Partial Final Award and declined to consider Claimant's Post-Closing Motion.

III. SUMMARY OF FACTS

A. Backgrounds of Mario Kranjac and Daniella Kranjac and Reinhard Vogt

64. Mr. Kranjac is a corporate lawyer. (Tr. 1, 14:13-15:3; Ex. C-9). Practicing law and serving as managing partner of KTP, is his full-time job. (Tr. 1, 232:2-7). In his capacity as legal counsel, he would assist clients at their request in raising financing by making introductions to possible sources of financing – until his involvement with Dynamk. (Tr. 1, 15:4-16:6). He gained experience in the life sciences field from his representation of a vaccine manufacturer. (Tr. 1, 16:7-17:11). In his words, "I am a lawyer, I am not a life sciences person." (Tr. 2, 457:23-25). Mr. Kranjac has extensive experience in preparing legal documents relating to fund formation. (Tr. 1, 15:19-16:6).

[29] *See* Notice of Motion to Compel Access to the Books and Records of Dynamk, LLC [sic] filed on June 16, 2025, and together with Claimant Mario M. Kranjac's Memorandum of Law to Compel Access to the Books and Records of Dynamk, LLC [sic] ("Post-Closing Memo," and together with the aforesaid Notice of Motion, "Claimant's Post-Closing Motion"). Respondents filed their opposition on June 18, 2025.

65. Ms. Kranjac is a chemical engineer by training, with a degree in chemical engineering, a specialization in biochemical engineering, an executive MBA, and over 25 years' experience in the life sciences industry. (Tr. 2, 521:11-522:20, 538:2-9).

66. Mr. Vogt has almost 40 years in the biotech space, including 36 years with Sartorius, an international pharmaceutical and laboratory equipment supplier. (Tr. 2, 379:15-380:19). As a veteran of the life sciences industry, Mr. Vogt thinks "very highly" of Ms. Kranjac and believes "she is one of the best in the industry." (Tr. 2, 393:16-23).

B. The Formation of the Dynamk LLCs

67. In 2015, after deciding to leave her employment with G.E. (to whom she had sold a business she co-founded several years previously), Ms. Kranjac initially set up a consulting firm – Dynamk Consulting, LLC – to advise life sciences start-up companies. (Tr. 2, 528:7-529:6). Shortly thereafter, she began discussing the concept of a venture capital fund with her brother. Although Mr. Kranjac wanted to invest in disparate and unconnected businesses (such as their father's machine tool shop, a real estate app, and a shoe company), his sister discovered quickly through conversations with her industry contacts that this investment "thesis" was not feasible. (Tr. 2, 535:19-537:7; *see* Ex. C-22). She decided that it would make more sense to focus the investment fund on early-stage portfolio company opportunities in the life sciences sector, the industry in which she had knowledge and credibilty. (Tr. 2, 537:8-15).

68. Mr. Kranjac formed the Dynamk LLCs – Capital and Advisors – and drafted the operating agreements for them. (Tr. 1, 45:12-14, 56:13-22, 538:15-22; Ex. C-1 at ¶ 3). At the time, Ms. Kranjac believed that her brother was acting both as her lawyer and as lawyer for the companies, and Mr. Kranjac told her she did not need to retain separate counsel to represent her interests. (Tr. 2, 538:23-539:17). The initial operating agreements provide that Ms. Kranjac was 51% majority member, while Mr. Kranjac was 49% minority member (Ex. C-1 at ¶¶ 3-7).

69. The Kranjacs brought in additional partners to Dynamk. Gustavo Mahler was made a partner, but he resigned towards the end of 2021. (Tr. 1, 80:4-8, 81:6-17). Mr. Vogt was also made a 20 percent partner in Dynamk. (Tr.1, 47:25-48:11). Mr. Kranjac's and Ms. Kranjac's ownership interests were diluted proportionally. (Tr. 50:5-11). Mr. Vogt subsequently resigned as General Partner of Advisors and Capital and became a consultant, exchanging his twenty percent (20%) interest in Dynamk to five percent (5%). (Tr. 1, 48:12-15, 50:14-52:20; C-18).

70. This change of Mr. Vogt's interest is reflected in a settlement document effective March 1, 2020 (the "Vogt Settlement Document"). (Ex. C-18). Section 12 of the Vogt Settlement Document prohibits Mr. Vogt from disclosing, with certain exceptions, any information pertaining to investors to any third party without prior written consent of Capital. (*Id.*). Section 15 prohibits Mr. Vogt from soliciting

directly or indirectly any person or entity with whom Dynamk has a relationship for any business or commercial purpose. (*Id.*).

C. The Contributions of the Kranjacs to the Dynamk LLCs

71. The operating agreements prepared by Mr. Kranjac provided, and continue to provide in their amended and restated versions, including the 2020 LLC Agreements, that:

> The day-to-day management and operations of the Company[30] shall be conducted by the following managers: [Daniella Kranjac] and [Mario Kranjac]. The Managers shall divide responsibilities among themselves; provided, however, that any material or non-day-to-day decisions shall require Member consent.

(*See* Exs. C-65/R-1 and C-66/R-2 at § 6.01(A)).[31]

72. Since the beginning of the Dynamk LLCs' operations, Ms. Kranjac testified that she was doing "the lion's share of both the strategic and day-to-day operations" for Dynamk. (Tr. 2, 554:15-17).[32] Mr. Kranjac served as "general counsel" and his role was limited to "supporting documenting commitments as they came in" and "doing the fund formation documents, ... the investment due diligence or the legal due diligence relating to the deals" for the fund's investments. (Tr. 2, 554:18-24). Mr. Kranjac acknowledged at the Hearing that the plan for Dynamk was that his sister "was more day-to-day operations" and would "receive a salary for that work" while he would serve as "general counsel, the attorney for all of the entities" and would "be a member of the investment committee, and a manager." (Tr. 1, 34:12-35:4, 239:24-240:7). Mr. Kranjac admitted that he was not involved in Dynamk's management in two separate sworn certifications he submitted to the New Jersey Superior Court wherein he stated: "While I am a member of Dynamk, I am not part of Dynamk's management." (*See* Exs. R-18 at ¶ 3, R-19 at ¶ 24; Tr. 1, 242:18-243:9, 244:10-25). Although Mr. Kranjac claims that he could run Dynamk by himself (Tr. 1, 232:22-233:12, 316:13-16), Mr. Vogt disagrees, as Mr. Kranjac "is lacking all the market experiences and he is also lacking all the knowledge about the technologies of the start-ups that we are – that we are investing in Dynamk." (Tr. 2, 385:19-386:4).

73. The Kranjacs "never had agreement on how to divide the activities of the fund" – although they "did have some frameworks," they "never reached agreement as to how to divide those responsibilities." (Tr. 2, 577:2-10).[33] Although Ms. Kranjac asked

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[30] All references to "Company" in any text of the 2020 LLC Agreements quoted in this Partial Final Award are references to each of the Dynamk LLCs.

[31] As Mr. Kranjac admitted, the word "equal" does not appear anywhere in this Section. (Tr. 1, 338:4-339:15).

[32] Mr. Vogt testified that Ms. Kranjac "managed the company, took always the lead and managed it very well." (Tr. 2, 382:22-383:4).

[33] *See also* Ex. C-1 at ¶¶ 11-14.

her brother to assume additional responsibilities besides his general counsel role (including managing tax and accounting issues for the LLCs), Mr. Kranjac never assumed those responsibilities and did not undertake additional duties beyond his legal work and attendance at certain meetings with investors. (Tr. 2, 577:11-578:3). Mr. Kranjac claimed that his calendar was "full of meetings, until I say the end of 2020, 2021." (Tr. 1, 46:14-16).[34] However, as Ms. Kranjac confirmed, her brother "was frequently unavailable because of his other commitments … so there were a number of meetings that he was unable to attend." (Tr. 2, 597:10-17). Nevertheless, Mr. Kranjac continues to be a co-Manager of the Dynamk LLCs. (Tr. 3, 361:10-23, 362:8-24).

74. Mr. Kranjac was prominently featured on the Dynamk website, listed as General Counsel, Founding Partner, J.D., B.Sc. Public Accounting. (Ex. C-63). In the marketing material used to induce potential investors to invest, both Ms. Kranjac and Mr. Kranjac are featured alongside one another. (C-64). In materials Ms. Kranjac prepared and disseminated, Mr. Kranjac is listed as a Co-Founder, "[p]roviding expert advice to investors and entrepreneurs from company inception through to successful exits," and "[t]ransactional, M&A, licensing, project financing expertise across Biopharma, Life science and many other sectors." (*Id.*).

75. Mr. Kranjac contributed "very little" to the fundraising of Dynamk. (Tr. 2, 386:15-19). According to Mr. Vogt, "all the investors that we brought in were brought in through the relationships that Daniella and I had." (Tr. 2, 386:20-387:5). Ms. Kranjac confirmed that she and Mr. Vogt "brought 95 percent of the commitments originating from our relationships, those relationships dating back years[.]" (Tr. 2, 550:15-19).[35]

76. One such investor was Pfizer, which invested $10 million in the DLS Fund (or ~ 15% of the total funds raised for DLS Fund), and had no preexisting relationship with Mr. Kranjac, who only met his sister's contact at Pfizer a few months before the investment was finalized. (Tr. 2, 542:18-544:18). Mr. Kranjac's only role in connection with the investment was documenting agreements pursuant to which Pfizer made the investment. (Tr. 2, 544:19-545:6).

77. During the negotiations regarding Pfizer's capital commitment to DLS Fund, Pfizer expressed concerns with the DLS Fund's Limited Partnership Agreement and Private Placement Memorandum drafted by Mr. Kranjac and his firm. (Tr. 2, 545:7-22). Dynamk ultimately retained outside counsel to address Pfizer's concerns and experienced outside counsel at Morgan Lewis revised the documents. (Tr. 2, 548:13-

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[34] Notably, Mr. Kranjac's Outlook records do not support his assertion that his calendar was "full of meetings" for Dynamk. (*See* Ex. C-4). His calendar shows an average of two to three Dynamk meetings per month during calendar years 2019, 2020, and 2021 (and does not confirm whether or not he actually attended these meetings).

[35] These investors included Kevin Bailey, JSR, Sartorius, Danaher, Findyn, and Pfizer. (Tr. 2, 550:15-551:23).

24). Mr. Kranjac insisted on overseeing the Morgan Lewis work, and invoiced Dynamk for his time spent in supervising their work, which amounted to almost the same as the Morgan Lewis bill. (Tr. 2, 575:2-576:18).

D. Mr. Kranjac's Law Firm's Provision of Services to Dynamk

78. Although Mr. Kranjac did not receive a salary for his role as general counsel, his law firm, Kranjac Tripodi & Partners LLP ("KTP"), received over $2 million in legal fees from Dynamk during a 4–5-year period. (Tr. 1, 258:23-259:22, 552:24-553:5).[36] KTP was paid for its time, which included time billed by Mr. Kranjac for work performed for Dynamk. (Tr. 1, 259:16-260:13; *see, e.g.*, Exs. R-63 through R-75). On several occasions, KTP invoices included large "block" charges purporting to represent time spent by Mr. Kranjac on work for Dynamk that month. (*See, e.g.*, Exs. R-63 [100 hours], R-68 [20 hours], R-71 [16 hours], R-72 [20 hours], R-73 [15 hours]).[37] Additionally, Mr. Kranjac billed, and was reimbursed for, travel expenses associated with domestic and international trips he took for Dynamk business. (Tr. 2, 553:24-554:4; *see, e.g.*, Ex. 68).

79. Ms. Kranjac objected to KTP's excessive fees. (Tr. 2, 651:3-14). Mr. Kranjac testified that the objections to KTP's fees did not begin until the "2020 time frame" (Tr. 1, 43:13-17) but Ms. Kranjac recalls objecting much earlier, which is corroborated by 2019 emails where she raised concerns regarding KTP invoices. (Tr. 2, 652:18-25, 654:3-16; *see also* Exs. R-59, R-60, R-61, R-62). These objections were well-founded, as charts prepared by Mr. Kranjac after analyzing KTP's fees show the disparities between KTP fees versus benchmarks and caps, and as compared to other funds. (*See* Exs. R-56, R-57, R-58).

E. Mr. Kranjac's Election and Tenure as Mayor of Englewood Cliffs

80. Mr. Kranjac served as mayor of the borough of Englewood Cliffs for eight years, beginning in January 2016. (Tr. 1, 19:13-22, 231:14-18). It was, as Mr. Kranjac readily admitted, a time-consuming job although it did not rise to the level of a full-time job. (Tr. 1, 231:19-23). There were numerous articles written about Mr. Kranjac and his conduct during his tenure (Tr. 1, 273:16-274:2), including press detailing: (1) the borough council's multiple censures of Mr. Kranjac for threats of physical violence against the borough attorney, sending unauthorized letters on official borough stationary, etc.; (2) resignations by borough officials due to Mr. Kranjac's "personal attacks and "bullying"; (3) allegations of political retaliation

[36] As Ms. Kranjac noted in a December 2021 email to her brother, she went without salary for several years (and took a below-market salary for years) while working full time for Dynamk; during this same period of time, KTP billed Dynamk for millions of dollars' worth of purported legal fees. (*See* Ex. R-52).

[37] KTP also sent at least one invoice where Mr. Kranjac had billed time for work on "Fund II" despite the absence of agreement between the members on a potential Fund II and no authorization to perform such work. (*See* Ex. R-74).

against the borough police chief and private residents; (4) lawsuits filed by and against the borough (including against Mr. Kranjac personally); and (5) billing an 18-year-old organizer of a Black Lives Matter ("BLM") rally for purported police overtime costs. (*See* Ex. R-24). The story regarding billing the teen for the BLM protest received national attention. (Tr. 1, 274:3-11).

81. Ms. Kranjac had legitimate concerns regarding her brother's misconduct as reported by the press, as well as media coverage unrelated to Dynamk. (Tr. 3, 329:10-17).[38] As Ms. Kranjac explained, her concerns were initially that Mr. Kranjac's role as mayor was too time consuming during the formative stages of the DLS Fund, and that investors might have a negative perception of his role as a public figure. (Tr. 2, 555:15-556:10). These concerns were borne out when, "increasingly over time, in 2017, 2018, and certainly a substantial amount in 2019 and 2020, he was frequently in the news… and… got national attention for some of his township matters, if I could call it that." (Tr. 2, 556:18-557:5). Additionally, Ms. Kranjac testified that multiple investors voiced concerns regarding reports of Mr. Kranjac's misconduct. (Tr. 3, 330:4-23; C-10 at 57:11-18 ["There was significant reputational harm that their, in some cases, hundred plus year old brands may suffer being affiliated with this ongoing misconduct."]).

82. Mr. Kranjac admitted that his negative publicity was harming Dynamk when he wrote a letter to the Dynamk team in August 2020 apologizing for the damage caused by the unfavorable news coverage. (Tr. 2, 579:17-580:11; Ex. C-33). Ms. Kranjac testified that her brother told her that he would step back from politics to limit reputational harm to Dynamk. (Tr. 2, 580:12-24). Mr. Kranjac reneged on his promises, however, and also told his sister not to tell the DLS Fund's portfolio companies anything about the negative news coverage surrounding his public misconduct. (Tr. 2, 581:7-582:10). Thus, at the time Pfizer, Danaher, and other investors closed their investments in 2021, they were unaware of the negative publicity. (Tr. 2, 582:11-15). When they subsequently found out, Ms. Kranjac testified that they were "extremely upset." (Tr. 2, 582:21-23). But as they had already closed on their investments, Dynamk did not lose them as investors.

83. More recently, Mr. Kranjac has been publicly and repeatedly sanctioned by the New Jersey Superior Court for failing to comply with more than 20 court orders in connection with an Open Public Records Act matter where the plaintiff sought records from Englewood Cliffs. (Tr. 1, 248:15-253:18; Exs. R-20, R-21, R-22, R-23). Court orders confirming and affirming these sanctions (which are publicly available online) have described Mr. Kranjac's misconduct as "particularly odious" and noted that he has been sanctioned repeatedly violating court orders. (*See* Ex. R-22). One court order refers Mr. Kranjac to the New Jersey State Bar Office of Attorney Ethics, the New Jersey Attorney General's Office, and the Bergen County Prosecutor's Office for obstruction and perjury. (*See* Ex. R-21). Of relevance to this arbitration is

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[38] Ms. Kranjac raised these concerns in her conversations with Lori Dernavich about Mr. Kranjac's mayoral misconduct and its impact on Dynamk. (Tr. 1, 226:25-227:25). Notably, Gustavo Mahler shared these concerns, as reflected in Ms. Dernavich's notes. (*See* Ex. C-29; Tr. 1, 220:4-13).

that Mr. Kranjac caused Dynamk to be dragged into the litigation because he was caught secretly storing emails relating to official mayoral duties on the Dynamk server without consent and in violation of Dynamk's policies. (Tr. 2, 659:8-661:12).[39] Online Google searches for "Mario Kranjac" and "Dynamk" yield results that include links to the court orders imposing sanctions against Mr. Kranjac for his misconduct. (Tr. 2, 662:8-16, Ex. R-25).

F. Mr. Kranjac's Threats Against Ms. Kranjac and Others

84. As Ms. Kranjac explained, in the wake of the 2020 negative publicity regarding her brother and her request that he take a step back, "Mario began a very consistent and very focused campaign of threats of litigation against anyone and everyone within the team, [and] outside of the team." (Tr. 2, 584:9-585:2, 588:7-589:9). Accordingly, "the relationships broke down" and "[i]t became very difficult to get anything done" because "[t]here were a lot of arguments, a lot of disagreements" and "[i]t became a very toxic environment." (Tr. 2, 586:5-10). Ms. Kranjac became concerned that Dynamk would lose team members. (Tr. 2, 586:10-12).

85. Beginning in 2021, Mr. Kranjac, according to his sister, began to berate her during business calls; she recalls specifically an internal due diligence call with KTP where Mr. Kranjac interrupted Ms. Kranjac by yelling at her to stop asking questions. (Tr. 2, 599:6-600:24; *see* Ex. R-43). Ms. Kranjac recalled calls where her brother yelled at and/or berated Dynamk team members as well, such as when he chastised Ms. Davis for briefly joining a call with counsel for a company representing an investment opportunity, a call for which KTP failed to attend. (Tr. 2, 600:25-601:15; *see* Ex. R-46).

86. According to Mr. Vogt, Mr. Kranjac "has threatened everybody" including Ms. Kranjac and himself. (Tr. 2, 421:22-422:3, 431:2-5). Those whom Mr.Kranjac threatened include:

- Respondents Latapie and Davis, who Mr. Kranjac threatened with litigation, rescission of their carried interest, and demands that they resign from their jobs. (Tr. 2, 448:10-17, 479:8-23);

- Dynamk's IT consultant, Rob Gordon. (Tr. 2, 448:4-9; Exs. R-42, R-44);[40]

[39] Additionally, Dynamk and Ms. Kranjac incurred over $50,000 in fees and costs to comply with the court's order in the New Jersey Superior Court matter to search for responsive emails and appropriately review and screen them before producing them to third parties. While Mr. Kranjac stipulated in a court order that he or KTP would pay these amounts, they have repeatedly refused to do so. (Tr. 2, 661:7-662:7; *see* Exs. R-16, R-17).

[40] Rob Gordon ultimately resigned and terminated his consulting agreement with Dynamk due to the threats, leaving Dynamk without IT support. (Tr. 2, 594:7-16, 596:12-22).

- Dynamk's auditor, Frank Rimerman & Co. (Tr. 2, 611:3-12);

- One of Dynamk's own portfolio companies, FloDesign Sonics, which Mr. Kranjac threatened to sue, which would likely have chilled future opportunities for the DSL Fund. (Tr. 2, 643:11-647:9);

- Dynamk's outside counsel, Morgan Lewis, which Mr. Kranjac accused of "tortously [*sic*] interfering with my contractual rights." (*See* Ex. R-37); and

- Dynamk's fund administrator, Alter Domus, which Mr. Kranjac threatened to hold liable "for every Dollar that leaves any Dynamk account" because "following Daniella down her rabbit hole creates liability for you." (Tr. 2, 591:12-593:18; *see* Ex. C-45/R-12).[41]

87. The threats against Alter Domus were potentially very damaging to Dynamk, as securing a new contract with another firm administrator and transferring the relationship would be "really disruptive" and send a bad signal to actual and prospective portfolio companies. (Tr. 2, 594:21-595:12).

88. Mr. Kranjac's misconduct was not limited to threats of litigation, however. According to Ms. Kranjac, he held up the closings on two separate deals (for RoosterBio and CellFE) by threatening to withhold his consent or not provide required information if his personal demands, having nothing to do with the closings, were not met. (Tr. 2, 635:25-642:22; *see* Ex. R-49). He also admitted to sending unauthorized correspondence to the LPs "advising them" of his rights as member. (Tr. 2, 464:4-19; *see* Ex. R-26). These communications, sent by Mr. Kranjac directly to the LPs without Majority Approval,[42] were inappropriate and damaging to Respondents. (Tr. 2, 609:22-610:21).

89. Despite his sister's repeated entreaties to send accurate communications and avoid upsetting potential investors or the Dynamk LLCs' employees, Mr. Kranjac continued to send these false and threatening emails to his sister and others. Mr. Kranjac's refusal to cease making false statements ultimately forced Ms. Kranjac to set up a "screen" for his outgoing emails to mitigate the risk of his communications creating legal liability for the Dynamk LLCs. (Tr. 2, 595:24-596:11; Ex. R-48).[43]

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[41] Given the breadth of the institutional fund clientele of Frank Rimerman & Co and Alter Domus, the reputational harm caused by Mr. Kranjac's threats directed to them was significant. (Resp. PHB at p. 16).

[42] For each of the Dynamk LLCs, "Majority Approval" is defined as the affirmative vote of Members owning greater than fifty percent (50%) of the Percentage Interests. (*See* Exs. C-65/R-1 and C-66/R-2 at § 2.01).

[43] Mr. Kranjac's threats and misrepresentations continued even during the pendency of this arbitration. For example, after stating in written correspondence dated July 22, 2024, to Dynamk's strategic advisors that Respondents

G. Potential Dynamk Successor Fund

90. The Kranjacs had many discussions about a successor fund (or "Fund II") in 2019, 2020, 2021 and even into 2022 and were trying to find a way forward. (Tr. 2, 612:8-25; *see also* Exs. R-30, R-31, R-34, R-35, R-36, C-35, C-39). Those discussions never reached any successful resolution, as Mr. Kranjac insisted that every partner's interest in any successor fund be the same as in the initial fund regardless of whether his sister was doing all of the work (Tr. 2, 613:2-10; Ex. C-11) and rejected all proposals for a potential Dynamk Fund II that were put in front of him. (Tr. 2, 616:23-617:4). At that point, Ms. Kranjac told her brother that if they could not reach agreement, she would seek other opportunities while still meeting her obligations to Dynamk. (Tr. 2, 617:5-21; *see* R-38, C-41 [stating that "the current set up does not support a Fund II being established and ... it would be irresponsible to future investors to do so given the conflicts that exist in the partnership"]).

91. During a February 8, 2022, meeting of Capital's members to discuss a proposal to form a successor fund, Mr. Kranjac objected to any proposal that did not provide him the same right of ownership he had in the initial fund. (*See* Ex. R-9/C-58 at p. 2). He refused to articulate why he believed he was entitled to any such rights, acknowledged that his sister was managing the day-to-day operations of the initial fund, announced that he had unilaterally (in breach of the 2020 LLC Agreements) formed new entities to serve as the successor fund, and threatened litigation. (*See id.* at pp. 2-3). In response, Ms. Kranjac noted that the 2020 LLC Agreements require that any dispute go to mediation, that Mr. Kranjac – according to the documents he drafted – could not institute any litigation without Majority Approval of the Members, and that she had asked her brother to proceed to mediation months prior in an effort to resolve the dispute. (*See id.* at p. 3).

92. Mr. Kranjac knew that formation of a successor fund would require unanimous consent and admitted that he did not secure unanimous consent to form the "Dynamk II" entities in 2022. (Tr. 1, 234:2-10, 235:4-19, 237:13-19). Following Mr. Kranjac's disclosure that he formed the "Dynamk II" entities without consent, his sister sent him an email confirming that she did not agree with what he had proposed and that "the documents provided by [him] are not consistent with the structure voted on and agreed to by the Partners/Members of Dynamk Capital." (*See* Ex. C-42).

H. Mr. Kranjac's Attempt to Secure Mr. Vogt's Proxy and March 2022 Waivers and Consents

93. In late February 2022, only a few weeks after the February 8 meeting, Mr. Kranjac met with Mr. Vogt in Zurich, Switzerland and tried to convince Mr. Vogt to give him

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"pilfered Dynamk's business" and accusing the advisors of "unlawful skullduggery," Mr. Kranjac sent follow-up correspondence to this group from his law firm on July 29, 2024, in which he purported to "revoke *ab initio* all carried interests and other compensation" (an action for which he had neither unilateral authority nor Majority Approval). Mr. Kranjac sent similar texts to Respondents in 2024 rescinding their carried interests (without authorization or Majority Approval).

a proxy for his interest in Capital. (Tr. 2, 388:9-22, 618:21-619:11). According to Mr. Vogt, Mr. Kranjac told him "it would be to [his] financial benefit" to sell his proxy to Mr. Kranjac, but Mr. Vogt refused, wanting to remain neutral. (Tr. 2, 388:23-389:11). In response, Mr. Kranjac threatened to sue Mr. Vogt and told him "it would cost [him] a fortune." (Tr. 2, 390:14-21). Despite his refusal, Mr. Kranjac called Mr. Vogt a few weeks later and sent him the proposed proxy from his KTP email (without a copy to Ms. Kranjac), stating that "[t]he best way is you keep your equity, assign the vote to me and let me straighten out this situation before Daniella destroys everything." (*See* Ex. R-7). Mr. Vogt again politely declined and, following consultation with his personal attorney in Göttingen, Germany notified Mr. Kranjac that "[r]esigning and given back my equity is the most fair way for both of you, so I can keep my neutral position that I have always practiced[.]" (*See id.*).

94. Mr. Vogt ultimately decided to relinquish his 5% interest in Capital such that it could be shared *pro rata* between the Kranjacs as the two remaining Members. (Tr. 2, 389:23-390:7). In lieu of moving forward with Mr. Kranjac's plan (which was not shared with Ms. Kranjac), on March 25, 2022, Ms. Kranjac and Mr. Vogt, representing Majority Approval as of such date, executed a Waiver and Consent to irrevocably waive application of Sections 1.01, 3.01, 4.09, 6.01(A), 6.02, 6.03, 8.01, 8.02, 8.05, 10.03, and all other provisions of the 2020 Capital LLC Agreement as to Capital, each Member, each Manager, and each of their respective successors, assignees, agents, and Affiliates, as necessary to confirm (i) Mr. Vogt's resignation and withdrawal from Capital, and the transfer, assignment and relinquishment of 100% of his right, title and interest in Capital, and (ii) that each current or former Capital Member may engage in any business without providing Capital or any person any interest therein (the "First Waiver"). (*See* Ex. R-6/C-17). Following the return of Mr. Vogt's interest to Capital, Ms. Kranjac once again became the owner of 51% of Capital's percentage interest, and Mr. Kranjac became the owner of 49% of Capital's percentage interest.

95. On March 28, 2022, Ms. Kranjac executed, as majority member of Capital, a second Waiver and Consent which (i) confirmed that each current or former Capital Member may engage in any business without providing Capital or any person any interest therein, (ii) authorized her to manage the affairs of Capital and take certain actions in furtherance of that management, and (iii) ratified certain actions previously taken, including the agreement with Mr. Vogt, the relocation of Capital's office space, and written notices to Mr. Kranjac regarding his breaches of obligations under the 2020 Capital LLC Agreement and his publication of false and/or defamatory statements to others (the "Second Waiver" and, together with the First Waiver, the "Waivers and Consents"). (*See id.*).

96. The Waivers and Consents, in each case, purport to provide that so long as Ms. Kranjac devotes sufficient time and attention to the activities of the Dynamk LLCs and the DLS Fund, each of the Dynamk LLCs' affiliates, members, partners, officers and employees are expressly permitted to engage in, invest in, participate in or otherwise enter into other business ventures of any kind, nature and description,

individually and with others. (*See* Exs. R-1/C-65 and R-2/C-66 at § 10.03, R-3/C-27 at § 3.05(a), R-6). Ms. Kranjac delivered the fully executed Waivers and Consents to Mr. Kranjac via email and courier on April 1, 2022. (*See* Exs. R-5, R-6). The Waivers and Consents and cover email also set forth Ms. Kranjac's concerns with her brother's "intentional and material misconduct" and his actions "interfering with [Dynamk]'s ability to continue operations in the ordinary course and meet contractual and fiduciary obligations to investors." (*See id.*).

I. Mr. Kranjac's Transfer of Funds from Dynamk to his Law Firm

97. On September 15, 2022, Mr. Kranjac – without seeking the consent of his sister or any other person – transferred $297,769 from Capital's bank account by initiating an unauthorized wire transfer while his sister was on a trans-Atlantic flight and unable to stop the proposed transfer.[44] (Tr. 1, 327:3-13; Tr. 2, 648:4-16, 650:24-651:16). Ms. Kranjac demanded that her brother return the funds, but he refused. (Tr. 1, 328:10-13; Tr. 2, 651:17-24; *see* Exs. R-15, R-50, R-52).

J. Mr. Kranjac's Filing of Public Lawsuit With Confidential Information

98. While this arbitration proceeding was pending, Mr. Kranjac made the unilateral decision to file the 2024 NYSC Lawsuit against Respondents and several other parties. (Tr. 2, 465:18-24, 472:16-21, 558-5-9). Mr. Kranjac's complaint discloses Dynamk's confidential information, including but not limited to investor names, correspondence with portfolio companies, confidential and proprietary internal communications, and sensitive portfolio company information. (Tr. 3, 335:11-336:17; Tr. 2, 569:25-571:1). Mr. Kranjac maintains that he had no continuing legal or ethical obligation to safeguard Dynamk confidential information or that his public lawsuit did not damage Dynamk's reputation. (Tr. 2, 467:3-17). As Ms. Kranjac testified, investors in the DLS Fund "voice[d] significant concern" regarding the lawsuit including concerns "over the ability of the fund to continue to function," whether or not team members would leave because they were named as parties in the public lawsuit, expenses that might be incurred in resolving the lawsuit, and "the use of their name in the lawsuit." (Tr. 2, 558:13-19, 572:8-573:16). Ms. Kranjac "spent hours upon hours addressing and allaying any concerns from limited partners" regarding the lawsuit filed by her brother. (Tr. 2, 571:13-15, 573:17-24).

K. Avant Bio

99. Consistent with her statements to Mr. Kranjac that she would seek other opportunities given their deadlock over a Dynamk successor fund and the Waivers and Consents, Ms. Kranjac formed Avant Bio in May 2023 as a new growth equity and venture capital firm with a different team focused on currently available life sciences, tech

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[44] On August 9, 2024, Mr. Kranjac also misappropriated $400,000 from Capital's bank account, resulting in the Arbitrator issuing a Temporary Restraining Order Pending Arbitration Hearing requiring Mr. Kranjac to return those funds.

bio, and health technology investment opportunities.[45] (*See* Exs. R-10, C-6, C-7, C-8).

100. All Respondents testified that Avant is entirely separate from Dynamk and that they are not the same companies. (Tr. 3, 374:9-11, 385:22-24; Tr. 2, 391:17-392:2). As Ms. Kranjac explained, "Avant has been formed to focus entirely as a growth equity fund" in 2023, whereas Dynamk "is a venture capital fund" formed in 2016 that "invested in early stage seed, sometimes pre-seed companies, companies that did not have products on the market, companies that did not have revenue, companies that were strictly in the life sciences tools and life sciences services space." (Tr. 2, 666:17-667:2). Avant also focuses on health tech and diagnostics and therapeutics opportunities, which were not targets of Dynamk. (Tr. 2, 668:3-14). Additionally, Avant was formed to appeal to institutional investors, unlike Dynamk. (Tr. 2, 668:21-669:5). Avant has separate accounting and contact relationship management (CRM) systems, a separate website, a separate LinkedIn profile, separate bank accounts, and separate branding. (Tr. 2, 669:6-670:3).

101. Mr. Vogt testified that he never took any computer systems, software, proprietary data, or information from Dynamk to use in connection with his work for Avant. (Tr. 2, 392:3-13, 430:13-19). Mr. Vogt has very limited access to software, and no access to the CRM. He has never attempted to steal any opportunities from Dynamk and bring that opportunity to Avant. (Tr. 2, 430:9-12). He has not, to date, been involved in finding or recruiting investors for Avant. (Tr. 2, 409:5-17). Mr. Vogt continues to provide services to Dynamk. (Tr. 2, 391:9-16). He testified that he spends the majority of his time working for Dynamk "by supporting three companies here in Europe where they are invested in." (Tr. 2, 405:23-406:4). He is paid $7,500 per month by Dynamk for his services provided to Dynamk (as well as certain amounts from Avant for services provided to Avant). (Tr. 2, 427:13-18, 428:18-429:6, 673:15-23). He estimates that he spends 70% of his time on Dynamk work and 30% of his time on Avant work. (Tr. 2, 428:12-17). Mr. Vogt confirmed that he has performed all the work for Dynamk faithfully and to the best of his ability. (Tr. 2, 430:2-8). He also rebutted Mr. Kranjac's claims that Dynamk and Avant are the same. (*See* Ex. R-55).

102. Ms. Davis was an employee of Dynamk and a consultant for Avant. (Tr. 3, 370:22-23, 371:3-12).[46] She testified that she did not take or use any of Dynamk's confidential information in providing consulting services to Avant. (Tr. 3, 371:18-372:5). She spent approximately 60% of her time on work for Dynamk and

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[45] As the DLS Fund reached its Full Investment Date and is fully invested as of September 2021 and the Dynamk LLCs are deadlocked, Avant does not (and cannot) "compete" with Dynamk. (Tr. 1, 30:14-31:4, 597:24-598:7).

[46] Respondents note that, after the Hearing, Ms. Davis resigned from Dynamk and has ceased performing any services as a Dynamk employee (and is no longer providing any consulting services or other services to Avant). (Resp. PHB at p. 22).

approximately 40% of her time on work for Avant. (Tr. 3, 376:2-21). She received a salary from Dynamk for her work for Dynamk (and received a carried interest / profits interest % from Avant for her work for Avant). (Tr. 3, 377:2-25). Mr. Latapie is an employee of Dynamk and a consultant for Avant. (Tr. 3, 381:24-25, 384:6-13). He testified that he did not take or use any of Dynamk's confidential information in providing consulting services to Avant. (Tr. 3, 385:4-9). He spends approximately 50% of his time working for Dynamk and approximately 50% of his time working for Avant. (Tr. 3, 387:3-8). During the relevant period, he received a salary from Dynamk for his work for Dynamk and a carry interest from Avant for his work for Avant. (Tr. 3, 383:19-23, 384:14-19). As Ms. Kranjac confirmed, no Dynamk funds have been used to pay anyone associated with Avant. (Tr. 2, 671:20-24). Both Peter Lee and Ole Henrik Bang-Andreasen were compensated entirely by Avant, did not receive any compensation from Dynamk, and did not work on anything related to Dynamk. (Tr. at 674:3-7).[47]

L. Mr. Kranjac's Claims of Harm and Alleged Damages

103. Mr. Kranjac claims to have been subjected to "soft oppression" beginning in September 2020, and claims he was "fully oppressed" from May 2022 forward. (Tr. 1, 351:11-19, 354:14-22). This narrative, however, is belied by the evidentiary record. As an initial matter, Mr. Kranjac has retained his full economic and voting interests in both Capital and Advisors (and his economic and voting interest in Capital has increased as a result of Mr. Vogt's 2022 resignation and withdrawal). Notwithstanding the cash Mr. Kranjac transferred from Capital's bank account and his pursuit of claims, Capital returned a material portion of each Member's capital account balance on November 29, 2023, with Ms. Kranjac receiving 51% (or $204,000) and her brother receiving 49% (or $196,000) (*See* Exs. R-13, R-14).

104. For Dynamk meetings occurring since 2022, Ms. Kranjac provided her brother with copies of the minutes if minutes were taken. (Tr. 3, 354:4-18). Mr. Kranjac had access to the Dynamk budgets from 2023, 2024, and 2025 through QuickBooks, and Ms. Kranjac believes that she emailed him copies as well. (Tr. 3, 354:19-355:16). When questioned, Mr. Kranjac admitted he could not recall a time he tried to access Quickbooks and could not. (Tr. 2, 445:17-20). Ms. Kranjac confirmed that her brother has had "regular and consistent access" to Dynamk's Quickbooks account since at least 2020. (Tr. 2, 662:23-663:15; *see also* Ex. C-2). Moreover, as Ms. Kranjac testified in response to the Arbitrator's questions, the audit logs for the OneDrive confirm that Mr. Kranjac "has accessed consistently, repeatedly, and opened files over the course of this proceeding and prior." (Tr. 3, 368:21-25; *see* Exs. R-33, R-53, C-70).

105. It appears that Mr. Kranjac's primary complaint is that he is given only "read-only" or "view-only" access to Dynamk's Quickbooks account. (Tr. 2, 445:20-447:12; *see*

[47] As Ms. Kranjac explained, Peter Lee, formerly a Respondent, resigned from Avant due to the pending arbitration. (Tr. 3, 342:3-343:5).

Exs. C-69, C-70). As Ms. Kranjac explained, there were "issues where Mr. Kranjac [had] changed documents, edited documents, corrupted documents, and it [] caused hours of work among the team to sort of retool that." (Tr. 3, 360:6-10). Consequently, Mr. Kranjac has been allowed only "view-only" access to the Quickbooks account. (Tr. 3, 360:2-4). Notably, no information is excluded from "view-only" files which would otherwise be viewable in editable files; the files simply are not editable, but the content remains the same. (Tr. 3, 360:11-21). When asked "what's wrong with you having read-only access to documents," Mr. Kranjac responded that "[a]s a manager and member, I should have ... full access, not sporadic access, not view-only access, not what [Respondents] think[] my access should be." (Tr. 2, 447:4-19).[48] Mr. Kranjac also complains about no longer being invited to "monthly portfolio review" meetings, but he was advised in April 2023 that, moving forward, he would simply receive written updates and could submit any comments in response.[49] (*See* Ex. C-5).

IV. CLAIMS/COUNTERCLAIMS ASSERTED; RELIEF REQUESTED

106. The term of the 2020 LLC Agreements extends indefinitely until dissolution occurs for any one of the reasons enumerated thereunder. (Exs. C-65/R-1 and C-66/R-2 at § 9.01). The Parties have disagreements regarding the interpretation of the 2020 LLC Agreements, and their rights and obligations thereunder. Thus, given the indefinite term of those Agreements, in addition to the damages and equitable remedies sought by the Parties in this proceeding, the Parties request that the Arbitrator make several declarations as to certain provisions of the 2020 LLC Agreements in accordance with the agreement of the Parties (Cl. Responses at § 6; Resp. Responses II at § 5), inasmuch as the Parties desire to have clarity and guidance regarding how they should operate under the 2020 LLC Agreements for their remaining term.[50]

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[48] Evidenced was adduced at the Hearing that Mr. Kranjac was denied access to the Dynamk's Quickbooks account. (*See* Exs. C-69, C-70). In response to the Arbitrator's questioning, Ms. Kranjac explained that the Quickbooks account automatically posted a message "access denied" when Mr. Kranjac attempted to gain unauthorized access to folders containing editable files. (Tr. 3, 360:22-361:9).

[49] Mr. Kranjac has also alleged that he has not received his share of Dynamk's American Express points without any evidence to substantiate this statement. (Tr. 1, 116:13-21). It appears that he doesn't know how they have been divided but knows that he has not received any benefit from them.

[50] The Parties consented to the grant of "any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties" including non-monetary declaratory relief. (*See* Cl. Responses II at § 6; Resp. Responses II at § 5). While Claimant describes the relief he seeks as orders for specific performance, it appears that some of such relief is a request for declaratory judgment (*see, e.g.*, request for an order that "[Claimant] is a 49% Member of Dynamk with equal management rights per the Operating Agreement, and a 49% Member of Avant"). (*See* Cl. Responses II at § 6).

107. Any declaration made by the Arbitrator is made within the section of this Partial Final Award discussing the dispute giving rise to the desire for such declaration after considering the competing versions, if any, proposed by each Party.

108. Set forth above in paragraphs 40-41, and with more specificity in Sections V and VI below, are the Parties' claims and counterclaims, and the damages, equitable remedies and declarations sought by the Parties in this proceeding.

V. CLAIMANT KRANJAC'S CLAIMS AGAINST RESPONDENTS

109. Mr. Kranjac has brought twelve (12) claims against one or more Respondents. These claims can be categorized as follows: (a) those asserted against Ms. Kranjac and Mr. Vogt which are shareholder oppression, indemnification (contractual), and fraud; (b) those asserted against Ms. Kranjac which are breach of contract, fraudulent inducement, defamation/libel *per se*, and conversion; and (c) those asserted against all Respondents Kranjac, Vogt, Latapie and Davis which are breach of fiduciary duty, breach of the duties of care and loyalty, *ultra vires* claim, indemnification (common law), and civil conspiracy. Mr. Kranjac also seeks equitable relief in the form of specific performance as well as one or more declarations.

A. Breach of Contract Claim against Respondent Kranjac (First Count)[51]

110. For his First Count, Claimant alleges that Respondent Kranjac materially breached certain provisions of the 2020 LLC Agreements, specifically, those pertaining to the right of first refusal ("ROFR") (Section 8.02 of the 2020 Capital LLC Agreement); inclusion in future activities (Section 4.09); the rights and ownership structure of the Dynamk LLCs and Claimant's management role in Dynamk (Sections 6.01(A), 6.01(B), 6.03, 6.06(A), 6.06(B), 9.01 and 10.01); access to books and records (Section 7.01); and dissolution and liquidation of the Dynamk LLCs (Section 9.01). (*See* Cl. PHB at p. 29).[52]

111. The Parties do not contest that under Delaware law, breach of contract is a claim with three elements: "1) a contractual obligation; 2) a breach of that obligation by the

[51] The First Count set forth in the Third Amended Claim is asserted "as to Respondent D. Kranjac and Respondent Vogt." *See* Third Amended Claim at ¶¶ 182-84. Claimant has interposed two additional Counts based on breach of contract: the Eighth Count against Respondents Kranjac and Vogt; the Thirteenth Count against all Respondents or only Respondents Kranjac and Vogt. (*See* Third Amended Claim at ¶¶ 214-15, ¶¶ 234-39). Claimant subsequently clarified that his breach of contract claim (regardless of the Count) is asserted solely against Respondent Kranjac. (*See* Remaining Claims Chart at p. 1, Cl. Responses I at § 4).

[52] Although Mr. Kranjac testified that he also has a claim for breach of "the good faith and fair dealing within" the 2020 LLC Agreements (Tr. 1, 135:5-14), his breach of the covenant of good faith and fair dealing claim was denied with prejudice by the Arbitrator in her decision on Respondents' Dispositive Motion (P.O. No. 7 at § VIII.C).

defendant; and 3) a resulting damage to the plaintiff." *Humanigen, Inc. v. Savant Neglected Diseases, LLC*, 238 A.3d 194, 202 (Del. Sup. Ct. 2020); *Kuroda v. SPJS Holdings, LLC*, 971 A.2d 872, 883 (Del. Ch. 2006).

1. Section 8.02 of the 2020 Capital LLC Agreement ("Right of First Refusal")

112. Turning first to the purported breach of Section 8.02 of the 2020 Capital LLC Agreement, Section 8.02(A) provides in relevant part:

> (A) A Member[53] (the "selling Member") may not sell or assign such Member's Membership Interest without first offering to sell or assign all, and not less than all, of such Member's Membership Interest to all of the other Members. ... If more than one Member accepts such offer, the Membership Interest shall be apportioned among the Members so accepting in proportion to their respective Percentage of Membership Interests in the Company or in such other proportion upon which they mutually agree.

(Ex. C-66/R-2 at § 8.02(A)).

113. Claimant contends that Ms. Kranjac breached Section 8.02 when Dynamk redeemed Mr. Vogt's 5% interest in Dynamk rather offering his interest to the Members. The failure of Mr. Vogt to expressly notify the Kranjacs, the other Members, "of his intent to sell or assign [his] interest and the price and terms thereof" before proceeding with the sellback of his interest in Capital deprived Claimant, in his view, of the opportunity to purchase Mr. Vogt's entire interest. (Cl. PHB at p. 32).[54]

114. When read together with Section 8.02(B),[55] however, it is clear that the ROFR procedure set forth in Section 8.02(A) was intended to protect each existing Member's right to acquire their *pro rata* share of a selling Member's interest in the event that the selling Member seeks to sell their interest to a third party. This intent is evidenced by Section 8.02(B) which provides that in the event that none of the other Members notify the selling Member of their intent to exercise their right to purchase

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[53] All capitalized terms used in this Partial Final Award, unless otherwise defined herein, shall have the meanings ascribed to them in the 2020 LLC Agreements or the 2021 LPA, as the case may be.

[54] Notably, Claimant never sought to comply with Section 8.02 of the 2020 LLC Agreements when he secretly asked Mr. Vogt to provide him with an irrevocable proxy on March 25, 2022, so that Claimant could acquire Mr. Vogt's voting interest in Dynamk. (*See* Ex. R-7).

[55] Mr. Kranjac persuasively argues that principles of contract interpretation should apply in understanding the 2020 LLC Agreements in citing one such principle: "contract language cannot be distorted or twisted and Respondents must thus be bound by the language's plain meaning," citing *Allied Capital Corp. v GC-Sun Holdings, L.P.*, 910 A.2d 1020, 1030 (Del. Ch. 2006). (Cl. PHB at p. 29). Mr. Kranjac must also be familiar with another well-settled principle articulated in *Fairstead Cap. Mgmt. LLC v. Blodgett*, 288 A.3d 729, 759 (Del. Ch. 2023) ("[i]n upholding the intentions of the parties, a court must construe the agreement as a whole, giving effect to all provisions therein.") (internal citation omitted).

such interest, "the selling Member shall be free to seek a "bona fide offer" to purchase such Membership Interest from third parties." [Emphasis added.] (Ex. C-66/R-2 at § 8.02(B)).

115. Here, Mr. Vogt had no intention of selling his Member Interest to a third party; rather, Mr. Vogt expressed his clear intent to relinquish his interest in Capital for the benefit of both remaining Members, the Kranjacs, when he emailed Claimant declining his offer to pay him for his proxy. (Ex. R-7).

116. Under the ROFR procedure provided by Section 8.02, when more than one Member seeks to acquire the selling Member's interest, Section 8.02(A) provides that the Member's Interest will be apportioned among the Members in proportion to their respective percentage interests (which is what happened here). So even if the ROFR procedure set forth therein governed the redemption of his 5% interest (which it does not), Respondents argue that any failure to comply with that procedure resulted in no harm to Claimant as his Membership Interest in Capital was actually increased by his *pro rata* share of the Membership Interest relinquished by Mr. Vogt. (Resp. PHB at p. 26). Where, as here, there is no evidence of harm, a breach of contract claim must fail. *See McCoy v. Cox*, 2007 Del. Super. LEXIS 156, at *18 (Del. Sup. June 11, 2007) ("Even if the evidence established that the Coxes breached the contract by failing to disclose this information (which it does not), McCoy's claims fail, because he did not prove by a preponderance of the evidence that he suffered any damages as a proximate result of this breach.").

117. Respondents' argument is disingenuous. Even though the Membership Interests of the Kranjacs were increased proportionally, Ms. Kranjac's proportional increase of 2.55% changed her minority Membership Interest of 48.45% to a majority interest of 51% whereas, after giving effect to Mr. Kranjac's proportional increase of 2.45%, he remained a minority owner at 49%. (*See* Third Amended Claim at ¶ 41, Ex. C-17/R-6).

118. This outcome would have been no different, however, even if compliance with Section 8.02 had been required and been satisfied. Claimant maintains that it is uncontroverted he would have exercised his ROFR to purchase Mr. Vogt's interest. (Cl. PHB at p. 32; Tr. 1, 285:16-286:6). But Claimant would not have been able to purchase Mr. Vogt's entire 5% interest because there is nothing in the record that indicates that Ms. Kranjac had waived or would have declined to exercise her ROFR and allowed her brother to achieve a majority interest in Capital. Indeed, Claimant's efforts to obtain the Vogt Proxy were driven by his desire to thwart the ability of Ms. Kranjac to achieve a majority interest in Capital – a percentage interest she would have achieved had she exercised her ROFR. (Tr. 2, 285:9-286:6). Thus, Claimant recognized that Ms. Kranjac would have exercised her ROFR in accordance with Section 8.02(A) with the effect that, under Section 8.02(B) providing for sale in proportion to their respective Membership Interests, Ms. Kranjac and Mr. Kranjac would have become 51% and 49% owners, respectively, which is what they are today.

119. Consequently, for the foregoing reasons, the Arbitrator concludes that Respondent Kranjac did not breach Section 8.02 of the 2020 Capital LLC Agreement when Respondent Vogt failed to offer his Membership Interest to other Members of Capital and instead assigned his Membership Interest to Capital which Interest was then apportioned to the remaining Members (the Kranjacs) in proportion to their percentage interests in Capital.[56]

120. Such change in the ownership structure of Capital did not change the management structure of the Dynamk LLCs.

121. With respect to the ownership and management structure of Dynamk, Claimant requests an order for specific performance which would require a declaration that Claimant is a "49% Member of Dynamk with equal management rights per the Operating Agreement ..." (Cl. Responses II at § 6).

122. The Arbitrator makes the following declaration regarding the ownership structure of, and Claimant's management rights in, Dynamk to conform with her findings/conclusion in this Section V.A:

> Declaration #1:
>
> Claimant Kranjac currently holds a forty-nine percent (49%) Membership Interest in Capital. The responsibilities for conducting the day-to-day management and operations of each of the Dynamk LLCs shall continue to be divided (not necessarily equally) between Claimant and Respondent Kranjac as co-Managers pursuant to Section 6.01(A) of the 2020 LLC Agreements.

2. Section 4.09 of the 2020 LLC Agreements ("Future Activities")

123. Claimant also contends that Ms. Kranjac breached Section 4.09 of the 2020 LLC Agreements (otherwise known as the "future activities provision") by forming and operating Avant Bio, which he believes is a successor fund to Dynamk, claiming that "anything that came after Dynamk was the offspring of Dynamk." (Tr. 1 at 93:21-22).

124. Section 4.09 provides in full:

[56] Even if there was a breach of Section 8.02(A), it is unclear how Ms. Kranjac was the Party who breached the duty imposed by that Section, rather than Mr. Vogt. It is the "selling Member" who may not sell or assign such Member's Membership Interest without first offering to sell or assign ... such ... Interest to all of the other Members." (Ex. C-66/R-2 at § 8.02(A)). As noted above in footnote 51, Claimant's breach of contract claim is lodged against only Ms. Kranjac.

> 4.09 **Future Activities**. Unless otherwise mutually agreed in writing, each Member shall have the right subject to substantially the same terms and conditions as set forth herein to be included by the other Members or a Member in, and part of, any future business endeavor or company organizing, managing, operating or administering a fund or business similar to the Current Fund.[57]

(Exs. C-65/R-1 and C-66/R-2 at § 4.09).

125. Claimant maintains that "[t]here can be no credible dispute that Dynamk and Avant are similar businesses." (Cl. PHB at p. 30; *see* Tr. 1, 93:21-97:16).

126. Before rebutting Claimant's factual argument that Avant Bio is "a fund or business similar to the Current Fund," Respondents advance several legal arguments as to why Section 4.09 of the 2020 LLC Agreements does not prohibit Ms. Kranjac from forming and operating Avant without including the other Members. Those arguments relate to whether Section 4.09 is a valid and enforceable prohibition. More specifically, Respondents argue that Section 4.09 by its terms, even without giving effect to any purported amendment or waiver thereof, is effectively an unreasonably overbroad perpetual non-compete provision that is unenforceable under Delaware law. (Resp. PHB at p. 26). Respondents further contend that even if Section 4.09 is not on its face invalid and unenforceable, (a) the provisions within the 2021 LPA (incorporated by reference in the Subscription Agreement) superseded and replaced Section 4.09 such that it no longer applies, and (b) even if the 2021 LPA did not supersede and replace Section 4.09, each of the Waivers and Consents authorized Ms. Kranjac's formation and operation of Avant. (Resp. PHB at p. 26). These arguments are in turn addressed below.

a. Section 4.09 is an Unenforceable Perpetual Non-Compete

127. Spurred by Mr. Kranjac's testimony at the Hearing that the future activities provision is "effectively, a non-compete" that prohibits Ms. Kranjac and/or Mr. Vogt from forming a competing company in the life sciences industry indefinitely without providing Mr. Kranjac a 49% interest (Tr. 1, 362:13-20, 366:24-367:10), Respondents argue that such a provision is against public policy and unenforceable under Delaware law. (Resp. PHB at pp. 28-29). *See Cantor Fitzgerald, L.P. v. Ainslie*, 312 A.2d 674, 684 n.65 (Del. 2024) ("Delaware courts do not mechanically enforce non-competes."); *Intertek Testing Servs. NA v. Eastman*, 2023 Del. Ch. LEXIS 66, at *7 (Del. Ch. Mar. 16, 2023) (internal quotations omitted) ("Instead, 'to be enforceable, a covenant not to compete must,' among other things, 'be reasonable in scope and duration…'"); *Sunder Energy, LLC v. Jackson*, 2024 Del. LEXIS 407, at *25-27 (Del. 2024) (refusing to enforce restrictive covenant with a "duration [that] is potentially indefinite").

[57] The "Current Fund" is defined as the DSL Fund. (Exs. C-65/R-1 and C-66/R-2 at § 3.01(A)).

128. Respondents' argument has no merit. Each of the cases relied upon by Respondents determined the enforceability of a non-compete provision after the sale by an owner of a business or after the termination of an employee, preventing the former owner or the former employee from competing after the termination of the relationship. *See Cantor Fitzgerald*, 312 A.2d at 684 (forfeiture-for-competition provisions "do not preclude a former employee from earning a living in his chosen field"); *Intertek Testing Servs. NA,* 2023 Del. Ch. LEXIS 66, at *7 (prohibition on co-founder of a business sold to other co-founder from competing after sale held unenforceable); *Sunder Energy*, 2024 Del. LEXIS 407, at *8-9 (restrictive covenants purported to bind minority members for a period of two years after they ceased owning equity in the plaintiff).

129. Section 4.9 of the 2020 LLC Agreements, unlike the restrictive covenants/non-compete provisions at issue in the above-cited cases, does not "prohibit [Members] from competing and remaining in their chosen professions." *Cantor Fitzgerald*, 312 A.2d at 691. Rather, Section 4.09 allows a Member, during or after their membership in the Dynamk LLCs, to engage in any future business endeavor but with the attendant obligation to include "the other Members or a Member in, and part of, any future business endeavor or company organizing, managing, operating or administering a fund or business similar to the Current Fund." (Exs. C-65/R-1 and C-66/R-2 at § 4.09).

130. As noted in the *Sunder Energy* decision, "Delaware is a contractarian state that holds parties' freedom of contract in high regard." *Sunder Energy*, 2024 Del. LEXIS 407, at *25-26. In the context of limited liability companies, the Delaware Chancery Court has opined that Delaware's Limited Liability Company Act,[58] "'leaves latitude for substantial private ordering' provided that statutory and judicially imposed parameters are honored" (*In re Coinmint, LLC*, 261 A.3d 867, 889 (Del. Ch. 2021)), noting that the limited liability company agreement "serves as the primary source of rules governing the 'affairs of a limited liability company and the conduct of its business.'"). (*Id.* at 890). Respondents have not submitted any judicial or statutory parameters that would preclude the Members of the Dynamk LLCs from agreeing to be bound by Section 4.09 or render that Section invalid and unenforceable.

131. Consequently, for the foregoing reasons, the Arbitrator concludes that Section 4.09 of the 2020 LLC Agreements is not an invalid or unenforceable non-compete provision.

b. Section 4.09 is Superseded by the 2021 LPA

132. Respondents further contend that Claimant's claim for breach of Section 4.09 of the 2020 LLC Agreements fails because Section 4.09 was superseded and replaced by Section 3.05(a) of the 2021 LPA which was ratified and executed nine months after execution of the 2020 LLC Agreements. The 2021 LPA (which was prepared by Dynamk LLCs' outside counsel under Claimant's oversight, and reviewed and approved by him in writing before Ms. Kranjac executed the document on behalf of

[58] *6 Del. C.* § 18-101, et seq. (the "Delaware LLC Act").

Advisors) expressly provides that, so long as Ms. Kranjac devotes sufficient time and attention to the activities of the Dynamk LLCs and the DLS Fund, "each of the General Partner [Advisors], the Manager [Capital], their respective Affiliates and any of their respective members, partners, officers and employees may engage in, invest in, participate in or otherwise enter into other business ventures of any kind, nature and description, individually and with others…" (*See* Ex. R-3/C-27 at § 3.05(a)).

133. Claimant does not challenge the validity of the 2021 LPA which governs the rights and obligations of the General Partner (Advisors), and the limited partners in the DLS Fund. (*See* Ex. R-3/C-27). Nor does Claimant question the authority of Ms. Kranjac to execute the 2021 LPA as a Manager on behalf of Advisors. Rather, Claimant argues that neither he nor his sister is bound by the 2021 LPA inasmuch as neither of them is a party to the 2021 LPA and therefore Section 4.09 of the 2020 LLC Agreements to which the Kranjacs are parties and thereby bound cannot be replaced and superseded by Section 3.05(a) of the 2021 LPA. (Cl. Responses I at § 18).

134. In further support of their position that the 2021 LPA replaces and supersedes Section 4.09 of the 2020 LLC Agreements, Respondents rely on the integration clause set forth in the 2021 LPA (and corresponding Subscription Agreement) which provides that, as to subject matters referenced therein, the 2021 LPA terms "constitute the entire agreement among the <u>Partners</u> with respect to the subject matter hereof and supersede any prior agreement or understanding among or between them with respect to such subject matter." [Emphasis added.] (Ex. R-3/C-27 at § 11.10). Respondents' reliance on the integration clause is misplaced because the Kranjacs are not "Partners" as such term is defined in the 2021 LPA.[59] (*See* Ex. R-3/C-27 at p. 1). Thus, the 2021 LPA terms do not integrate or supersede any of the terms of the 2020 LLC Agreements.

135. Consequently, for the foregoing reasons, the Arbitrator concludes that Section 4.09 of the 2020 LLC Agreements affording Members the right to be included in any future business endeavor or company organizing, managing, operating or administering a fund or business similar to the DLS Fund was not superseded and replaced by the provisions within the 2021 LPA (incorporated by reference in the Subscription Agreement) such that Section 4.09 no longer applies.

136. Given her conclusion that Section 3.05(a) of the 2021 LPA did not supersede or replace Section 4.09 of the 2020 LLC Agreements, the Arbitrator declines to make the following declaration requested by Respondents:

d. Each of Respondents is authorized to engage in, invest in, participate in, or otherwise enter into, other business ventures of any kind, nature and description, individually and/or with others, in accordance with the terms of the Amended and Restated Limited Partnership Agreement of Dynamk Life Sciences Fund, L.P.

[59] The term "Partners" is defined to mean the General Partner (Advisors) and the Limited Partners, that is, the investors in the DLS Fund's portfolio companies. (*See* Ex. R-3/C-27 at p. 1).

(Resp. Proposed Order at ¶ (viii) d).

c. Section 4.09 is Waived by Majority Approval

137. Respondents advance another defense against Claimant's claim that Ms. Kranjac breached Section 4.09 of the 2020 LLC Agreements; to wit, they contend that such claim is foreclosed by the Waivers and Consents which purportedly waived by Majority Approval application of Section 4.09 and expressly confirmed that, "each current and former Member, each current and former Manager, and each of their respective successors, assignees, agents, consultants, employees, independent contractors, and Affiliates," could pursue any business endeavors without offering or providing the Dynamk LLCs or any other person any right, title, or interest in those business endeavors. (*See* Ex. R-6). As the combined Membership Interests of Respondents Kranjac and Vogt constituted a majority in interest in Capital as of the date of the First Waiver, and Respondent Kranjac's interest constituted a majority in interest of Capital as of the date of the Second Waiver, the Waivers and Consents were, Respondents argue, authorized by the plain terms of the 2020 Capital LLC Agreement.

138. The basis for Respondents' argument is found in two subsections of Section 6.01 of the 2020 LLC Agreements. First, Section 6.01(A) provides that any material or non-day-to-day decisions concerning the management and operations of the Dynamk LLCs require "Member consent." (Exs. C-65/R-1 and C-66/R-2 at § 6.01(A)). While there was no direct testimony offered at the Hearing as to whether "Member consent" required that such consent be by Majority Approval or unanimous, the common understanding of the Parties appears to be that Majority Approval is sufficient for "Member consent" to material or non-day-to-day decisions.[60]

139. Secondly, Section 6.01(B) provides that "Majority Approval of the Members shall be required prior to any … (i) amendment, modification, termination or waiver of rights under this Agreement …" (Exs. C-65/R-1 and C-66/R-2 at § 6.01(B)).

140. Thus, in the view of Respondents, Section 6.01(A) in authorizing material or non-day-to-day decisions by Majority Approval, and Section 6.01(B) in authorizing amendments, modifications, termination or waivers of rights by Majority Approval, provide ample support for the right of Respondents Kranjac and Vogt in the First Waiver, and the right of Respondent Kranjac in the Second Waiver, to waive the application of Section 4.09 of the 2020 LLC Agreements.

141. Claimant counters that the requisite degree of approval mandated by Section 6.01(B) -- "Majority Approval" -- applies only to those amendments, modifications, or

[60] That the Parties expressly provided for unanimous consent elsewhere in the 2020 LLC Agreements (*e.g.*, Section 10.01) shows that had the Parties intended to require unanimous consent of the Members for any material or non-day-to-day decisions, they knew how, and chose not, to do so. (*See* Exs. C-65/R-1 and C-66/R-2 at § 10.01).

termination or waiver of rights taken on behalf of or in respect of the Dynamk LLCs and does not apply to such actions affecting the rights of Members. (Cl. PHB at p. 9). Interpretation of the waiver language set forth in Section 6.01(B), Claimant argues, must be informed by the overall subject matter of Article VI – "Company Management" – and the specific subject of Section 6.01 – "Management by Managers," that is, their management of the operations of the Dynamk LLCs. Thus, in Claimant's view, "Majority Approval" is limited to effectuating amendments, modifications and termination or waiver of rights on behalf of or in respect of the Dynamk LLCs under the 2020 LLC Agreements; it is not the level of approval required to amend, modify, or terminate or waive any rights of the Members set forth thereunder. In sum, Claimant contends that Section 6.01(B) cannot be used to strip him of his rights, as a Member, under the 2020 LLC Agreements.

142. In support of his interpretation of Section 6.01(B), Claimant points to Section 10.01 which provides in full:

> 10.01 **Adoption of Amendments Generally.** Any amendment to this Agreement may only be made by a written instrument executed by the unanimous consent of all Members.

(Exs. C-65/R-1 and C-66/R-2 at § 10.01).

143. Claimant maintains that this provision governs any proposed amendment to a Member's rights and obligations under the 2020 LLC Agreements. Thus, both Section 6.01(B) and Section 10.01 provide that an amendment requires Member approval: under Section 6.01(B), "Majority Approval" and under Section 10.01, "unanimous" approval.

144. When asked by the Arbitrator whether there are any "guidelines for determining whether to obtain majority or unanimous approval of the Members in any particular situation," Respondents responded that the Arbitrator should "disregard Section 10.01 as inconsistent with the intent of the parties which confirms that Dynamk is governed by Majority Approval." (Resp. Responses I at § 20).

145. This, the Arbitrator cannot do because the Parties' arbitration clause expresses "the intent of the parties [to the 2020 LLC Agreements] that all questions with respect to the construction of [the 2020 LLC Agreements] … shall be determined in accordance with the provisions of the laws of the State of Delaware." (Exs. C-65/R-1 and C-66/R-2 at § 10.04; *see also* paragraph ¶ 9 above).

146. In light of this mandate, the Arbitrator must apply a principle of contract interpretation well established in Delaware: a contract must be interpreted to give effect to all provisions contained therein. *See Fairstead Cap. Mgmt. LLC v. Blodgett*, 288 A.3d 729, 759 (Del. Ch. 2023) (internal citation omitted), quoting *E.I. du Pont de Nemours & Co. v. Shell Oil Co.*, 498 A.2d 1108, 1113 (Del. 1985) ("[T]he meaning which arises from a particular portion of an agreement cannot control the meaning of

the entire agreement where such inference runs counter to the agreement's overall scheme or plan."). "[A] court interpreting any contractual provision ... must give effect to all terms of the instrument, must read the instrument as a whole, and, if possible, reconcile all the provisions of the instrument." *Elliott Assocs., L.P. v. Avatex Corp.*, 715 A.2d 843, 854 (Del. 1998).

147. Applying this principle of contract interpretation to the issue at hand, Claimant's argument that Section 10.01 applies to any amendment of any provision of the 2020 LLC Agreements that confers rights and imposes obligations on individual Members (including Section 4.09) is persuasive because it gives effect to both Section 6.01(B) and Section 10.01 and reconciles these ostensibly inconsistent provisions.[61]

148. Consequently, for the foregoing reasons, the Arbitrator concludes that neither of the Waivers and Consents adopted by Majority Approval irrevocably waived the application of Section 4.09 of the 2020 LLC Agreements affording Members the right to be included in any future business endeavor or company organizing, managing, operating or administering a fund or business similar to the DSL Fund.

149. Accordingly, the Arbitrator declines to make the declarations requested by Respondents confirming that the Waivers and Consents irrevocably waived the application of Section 4.09 of the 2020 LLC Agreements. (Resp. Proposed Order at ¶ (viii) e-f).

d. Avant is not a Successor Fund

150. Having withstood the legal arguments advanced by Respondents as to why Section 4.09 of the 2020 LLC Agreements does not prohibit Ms. Kranjac from forming and operating Avant, the remaining issue is whether Avant Bio is a fund or business similar to the Current Fund, that is, the DSL Fund. Claimant maintains that "[t]here can be no credible dispute that Dynamk and Avant are similar businesses." Cl. PHB at p. 30.

151. In support of his conclusion, Claimant testified that according to Mr. Vogt, Avant was formed because "nobody wanted to continue to work with [Claimant]." (Tr. 2, 425:11-23). Thus, Avant was formed simply to exclude Claimant from what would have been the Dynamk successor fund or "Dynamk II." Ms. Kranjac's use of the Roman numeral "II" for Avant confirms, in Claimant's view, that Avant, by another name, was in fact Dynamk II. (C-10, 26:20-27:3). Intent or motivation is not, however, an element of a breach of contract claim. What is determinative is whether the two funds are objectively similar.

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[61] Respondents contend that Section 10.03 support a reading that Members may engage other business ventures provided that such other enterprises shall not be in direct or indirect competition with any activities of the Company. But this right is qualified by the phrase "except as expressly provided otherwise in this Agreement." Section 4.09 expressly provides otherwise. (*See* Exs. C-65/R-1 and C-66/R-2 at §§ 4.09 and 10.03).

152. A review of the evidentiary record shows that Ms. Kranjac, after advising her brother that she would seek other opportunities given their deadlock over a Dynamk successor fund and what she thought were the valid Waivers and Consents, formed Avant Bio in May 2023 as a new growth equity and venture capital firm with a different team focused on currently available life sciences, tech bio, and health technology investment opportunities.[62] (*See* Exs. R-10, C-6, C-7, C-8).

153. In support of his belief in the similarity of the DSL Fund (the Current Fund) and Avant, Claimant testified that Dynamk is a life sciences venture capital fund. (Tr. 1, 26:22-26:25). Avant markets its focus on "life sciences," investing in the same sectors as Dynamk. (Ex. C-3). Ms. Kranjac's husband, hired by her to perform marketing services for Dynamk and Avant, testified that he provides the same type of branding services to each fund. (Richard Ferraro Trial Deposition, 20:24-21:15). And Ms. Kranjac testified that she used Roman numeral "II" for Avant because Dynamk was the first fund. (Ex. C-10, 26:20-27:3). Avant shares Dynamk's Salesforce account or contact list, and cloud storage system (Ex. C-10, 72:3-72:12; Tr. 1, 122:25-123:16) and their offices are both located at the same address and have the same employees.

154. While Dynamk and Avant are both life sciences venture capital funds as pointed out by Claimant,[63] Mr. Vogt refined that characterization in his testimony that Avant is a venture capital company "in the field for biotech and biopharma" operating under the umbrella of life sciences. (Tr. 2, 406:21-407:9). The evidentiary record substantiates that Avant is a new and separate venture. Whereas Dynamk targeted only early-stage investment opportunities in the life sciences tools and life sciences services space as of its commencement, Avant's focus is on current growth equity investment opportunities for institutional investors in the health tech, diagnostics and therapeutics sectors. Moreover, Avant has separate ownership, separate systems, a separate website, a separate LinkedIn profile, separate branding, separate banking, different investors and advisors, and a different team. And, as Respondents Vogt, Latapie and Davis testified, they provided separate services to each Dynamk LLC during the relevant period and are compensated separately by Dynamk and Avant.

155. The Parties have the burden of proving their respective claims by a preponderance of the evidence presented at the Hearing. *In re Coinmint, LLC*, 261 A.3d 867, 887-88 (Del. Ch. 2021). "Proof by a preponderance of the evidence means proof that

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[62] As the DLS Fund reached its Full Investment Date as of September 2021 and the Dynamk LLCs are deadlocked, Avant does not (and cannot) "compete" with Dynamk in any respect. (Tr. 1, 30:14-31:4; Tr. 2, 597:24-598:7).

[63] https://www.google.com/search?q=is+avant+bio+a+life+sciences+venture+capital+fund&rlz=1C1GCEU_enUS887US887&oq=is+avant+bio+a+life+sciences+venture+capital+fund&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIHCAEQIRigATIHCAIQIRigATIHCAMQIRigATIHCAQQIRigATIHCAUQIRiPAjIHCAYQIRiPAtIBCDg0OTVqMGo3qAIAsAIA&sourceid=chrome&ie=UTF-8

something is more likely than not." (citations omitted) (*Id.* at 888). "This 'means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not. By implication, the preponderance of the evidence standard also means that if the evidence is in equipoise' the party carrying the burden will lose." (citations omitted) (*Id.*).

156. By this standard, the evidence adduced at the Hearing makes the Arbitrator believe that Avant Bio is not a fund or business similar to the DLS Fund because Respondents' evidence, when compared to Claimant's evidence "has the more convincing force" and has made Respondents' position "more likely true than not." (*See id.*).

157. Consequently, the Arbitrator finds that the evidentiary record substantiates that Avant Bio is sufficiently distinct from the DLS Fund to warrant the conclusion that Avant Bio is not a fund or business similar to the DSL Fund and therefore Respondent Kranjac did not breach Section 4.09 of the 2020 LLC Agreements by forming and operating Avant Bio, without affording Members the right to be included in Avant Bio.

158. The Parties request overlapping and competing requests for specific performance/declaratory relief with respect to the similarity of Avant to the DSL Fund and the consequent ownership of Claimant in Avant.

159. Claimant seeks equitable relief in the form of an order for specific performance (a) requiring "Respondents [to] issue a public notice reasonably acceptable to [Claimant] confirming that he is a founder of … Avant;" and (b) ordering that "[Claimant] is a 49% Member of Avant," entitled to "substantially similar [to those rights he holds in Dynamk] management rights and investment committee rights in Avant" and "all access to all books, records and systems of … Avant." (Cl. Responses II at § 6). On the other hand, Respondents request declarations that (c) the Avant Entities are not similar to, or in direct or indirect competition with any activities of Dynamk, or the DSL Fund's portfolio companies[64] and (d) Claimant has no interest in any of the

[64] The declaration requested by Respondents reads in full as follows:

> g. As Mario is engaged in many other ventures and one or more political campaigns, the DLS Fund has reached its "Full Investment Date" and end of its "Investment Period" under the 2021 LPA and will no longer invest in new portfolio companies, and Dynamk is in a state of "deadlock" with respect to the formation of any new investment vehicle, Avant Bio LLC, Avant Bio GP II LLC, and Avant Bio Fund II LP (collectively, "Avant"), are not similar to, or in direct or indirect competition with any activities of, Dynamk, or its portfolio companies.

(Resp. Proposed Order at ¶ (viii) g).

Avant Entities or any other business ventures affiliated with any of the Avant Entities.[65]

160. Given her conclusion that Claimant has not met his burden of proving that Avant Bio is similar to the DSL Fund within the meaning of Section 4.09 of the 2020 LLC Agreements and consequently, Claimant has no ownership interest in any of the Avant Entities or any other business ventures affiliated with any of the Avant Entities, the Arbitrator makes the following declarations requested by Respondents, as modified by the Arbitrator to conform with her conclusions:

> Declaration #2:
>
> Given the separate businesses of the DSL Fund and Avant Bio, and that the DSL Fund has reached its "Full Investment Date" and the end of its "Investment Period" under the 2021 LPA and will no longer invest in new portfolio companies, the Avant Entities are not similar to, or in direct or indirect competition with any activities of the DSL Fund.
>
> Declaration #3:
>
> Claimant does not have any right, title or interest, in Avant, its affiliates, or any other business ventures of any kind, nature and description affiliated with any of Avant or its affiliates.

3. Section 6.01(A) (Management Rights)

161. Claimant contends that Ms. Kranjac breached his "management rights" and requests that such rights along with investment committee rights in the Dynamk LLCs be fully restored. (Cl. Responses II at § 6).

162. As noted above in paragraph 71, the 2020 LLC Agreements provide that the Managers "shall divide responsibilities among themselves" for any day-to-day decisions. (Exs. C-65/R-1 and C-66/R-2 at § 6.01(A). The provision is silent as to the manner or proportion in which such responsibilities should be divided.

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[65] The declaration requested by Respondents reads in full as follows:

> Except for the minority interests that Mario retains as a member in each of Capital and Advisors [Claimant] does not have any right, title or interest, in any business venture of any kind, nature and description owned by, managed by, or affiliated with any of the Respondents, including, without limitation, Avant, its affiliates, or any other business ventures of any kind, nature and description affiliated with any of Avant or its affiliates.

(Resp. Proposed Order at ¶ (viii) h).

163. The Kranjacs "never had agreement on how to divide the activities of the fund" – although they "did have some frameworks," they "never reached agreement as to how to divide those responsibilities." (Tr. 2, 577:2-10).[66] Although Ms. Kranjac asked her brother to assume additional responsibilities besides his general counsel role (including managing tax and accounting issues for the LLCs), Mr. Kranjac never assumed those responsibilities and did not undertake additional duties beyond his legal work and attendance at certain meetings with investors. (Tr. 2, 577:11-578:3).

164. Mr. Kranjac acknowledged at the Hearing that the plan for Dynamk was that his sister "was more day-to-day operations" and would "receive a salary for that work" while he would serve as "general counsel, the attorney for all of the entities" and would "be a member of the investment committee, and a manager." (Tr. 1, 34:12-35:4, 239:24-240:7). Mr. Kranjac admitted that he was not involved in Dynamk's management in two separate sworn certifications he submitted to the New Jersey Superior Court wherein he stated: "While I am a member of Dynamk, I am not part of Dynamk's management." (*See* Exs. R-18 at ¶ 3, R-19 at ¶ 24; Tr. 1, 242:18-243:9, 244:10-25). Ms. Kranjac, however, conceded at the Hearing that Mr. Kranjac continues to be a co-Manager of the Dynamk LLCs. (Tr. 3, 361:10-23, 362:8-24).

165. Accordingly, for the foregoing reasons, the Arbitrator concludes that Respondent Kranjac did not breach Section 6.01(A) of the 2020 LLC Agreements by denying Claimant any of his management rights thereunder.

166. With respect to the management structure of Dynamk, Claimant requests an order for specific performance requiring that Claimant be vested with "equal management rights per the Operating Agreement ..." (Cl. Responses II at § 6).

167. In light of the absence of any evidence that the Kranjacs agreed to divide their responsibilities equally, the Arbitrator makes Declaration #1 as set forth above in paragraph 122.

168. Additionally, related to his management rights under Section 6.01(A) of the 2020 LLC Agreements, Claimant requests an order for specific performance ordering that "he [be] immediately entitled to full access and authority to all banking and credit cards of Dynamk and Avant." (Cl. Responses II at § 6). On the other hand, Respondents seek a declaration that Claimant is not authorized to withdraw or expend funds from any bank account of either of the Dynamk LLCs without the consent of Ms. Kranjac or Majority Approval of their Members.

169. Claimant's withdrawal of funds from Capital's bank account in the amount of $297,769 on September 15, 2022 and another withdrawal in the amount of $400,000 on or about August 9, 2024 that was subject to a temporary restraining order issued by the Arbitrator on August 16, 2024 shows that, given the amount of such withdrawals, any access to the bank accounts or credit card accounts of the Dynamk

[66] *See also* Ex. C-1 at ¶¶ 11-14.

LLCs has involved "material or non-day-to-day decisions" pertaining to their management and operations. (Exs. C-65/R-1 and C-66/R-2 at § 6.01(A)). Such material and non-day-to-day decisions require "Member consent."[67] (*Id.*).

170. Accordingly, the Arbitrator makes the following declaration requested by Respondents as modified by the Arbitrator to conform with her conclusion:

> Declaration #4:
>
> Claimant is not authorized to unilaterally withdraw or expend funds (a) from any bank account of Capital without Majority Approval of the Members of Capital; or (b) from any bank account of Advisors (or any bank account of the DLS Fund or any of its co-investment vehicles or portfolio companies) without Majority Approval of the Members of Advisors.

171. In further respect of Claimant's management rights, Respondents request a declaration that Claimant has no unilateral authority to make any management determinations or decisions or to make any representations or communications on behalf of or regarding either of the Dynamk LLCs or the DLS Fund.[68] Ms. Kranjac testified that she was doing "the lion's share of both strategic and day-to-day operations" for Dynamk. (Tr. 2, 554:15-17). And by Claimant's own admission, he is no longer involved in Dynamk's management. (*See* Exs. R-18 at ¶ 3, R-19 at ¶ 24; Tr. 1, 242:18-243:9, 244:10-25). And Claimant also acknowledged that Ms. Kranjac is "more [involved in] day-to-day operations ..." ((Tr. 1, 34:12-20). Thus, whatever

[67] As discussed above in paragraph 138, Majority Approval is sufficient for "Member consent."

[68] The declaration requested by Respondents reads in full as follows:

> c. Mario has no unilateral authority to make any management determinations or decisions (i) on behalf of, or regarding, Capital, and shall make no representations or communications on behalf of, or which reference, Dynamk Capital LLC (or any variation of such name), without Daniella's consent or Majority Approval of the members of Capital; or (ii) on behalf of, or regarding, Advisors or DLSF, and shall make no representations or communications on behalf of, or which reference, Dynamk Fund Advisors LLC, or Dynamk Life Sciences Fund, L.P. (or any variations of such names), without Daniella's consent or Majority Approval of the members of Advisors.

(Resp. Proposed Order at ¶ (viii) c).

Respondents also make the following related request for a declaration:

> g. Mario shall cease and desist from publishing any false statements which reference, or relate to, Dynamk, Avant, their respective portfolio companies, "Dynamk II," "Dynamk-Avant," and/or any of the Respondents.

(Resp. Proposed Order at ¶ (viii) g).

management decisions Claimant believes that he needs to make on behalf of or regarding Dynamk would necessarily fall into the category of material or non-day-to-day decisions which require "Member consent," that is Majority Approval.

172. Accordingly, the Arbitrator makes the following declaration requested by Respondents as modified by the Arbitrator to conform with her conclusion:

Declaration #5:

Claimant has no unilateral authority to make any management determinations or decisions (a) on behalf of, or regarding, Capital, without Majority Approval of its Members, or (b) on behalf of, or regarding Advisors or the DLS Fund, without Majority Approval of Advisor's Members.

Claimant shall make no false representations or communications (a) on behalf of, or which reference, Dynamk Capital LLC (or any variation of such name or in combination with the name "Avant"), without Majority Approval of Capital's Members, or (b) Dynamk Fund Advisors LLC, or Dynamk Life Sciences Fund, L.P. (or any variations of such names or in combination with the name "Avant"), without Majority Approval of Advisor's Members.

4. Section 7.01 (Books and Records)

173. Claimant maintains that Respondent Kranjac also breached the 2020 LLC Agreements in violation of Section 7.01 thereof by denying him access to the books and records of the Dynamk LLCs in contravention of his right as a Member "to inspect and copy any and all of the Company's books and records ..."[69] (Exs. C-65/R-1 and C-66/R-2 at § 7.01).

174. Claimant has continued to be provided access to the Dynamk LLC's books and records, his share of available information, his tax returns, and his share of available cash distributions, and has no basis to assert that his sister's management determinations were not made in the best interests of each of the Dynamk LLCs and their members, consistent with her fiduciary duties to him and the Dynamk LLCs.

[69] For his Eighth Count, Claimant asserts a breach of contract claim against Respondents Kranjac and Vogt, alleging that "Respondents have materially breached the [2020 LLC Agreements] in violation of Delaware Code, Title 6, §§ 18-305 and 18-306." (Third Amended Claim at ¶¶ 214-15). Nowhere in his post-hearing briefing does Claimant brief this claim, nor did he testify at the Hearing as to manner in which those sections of the Delaware LLC Act were violated or whether the Parties' agreement as to access to the books and records of the Dynamk LLCs was permitted by the Delaware LLC Act. Without more, the Arbitrator is unable to rule in Claimant's favor on his claim based on such bare-bone allegations and will analyze the merits of such claim no further.

175. For Dynamk meetings occurring since 2022, Ms. Kranjac provided her brother with copies of the minutes if minutes were taken. (Tr. 3, 354:4-18). Claimant had access to the Dynamk budgets from 2023, 2024, and 2025 through QuickBooks, and Ms. Kranjac believes that she emailed him copies as well. (Tr. 3, 354:19-355:16). When questioned, Claimant admitted he could not recall a time he tried to access Quickbooks and could not. (Tr. 2, 445:17-20). Ms. Kranjac confirmed that her brother has had "regular and consistent access" to Dynamk's Quickbooks account since at least 2020. (Tr. 2, 662:23-663:15; *see also* Ex. C-2). Moreover, as Ms. Kranjac testified in response to the Arbitrator's questions, the audit logs for the OneDrive confirm that Claimant "has accessed consistently, repeatedly, and opened files over the course of this proceeding and prior." (Tr. 3, 368:21-25; *see* Exs. R-33, R-53, C-70).

176. It appears that Claimant's primary complaint is that he is given only "read-only" or "view-only" access to Dynamk's Quickbooks account. (Tr. 2, 445:20-447:12). As Ms. Kranjac explained, there were "issues where Mr. Kranjac [had] changed documents, edited documents, corrupted documents, and it [] caused hours of work among the team to sort of retool that." (Tr. 3, 360:6-10). Consequently, Claimant has been allowed only "view-only" access to the Quickbooks account. (Tr. 3, 360:2-4). Notably, no information is excluded from "view-only" files which would otherwise be viewable in editable files; the files simply are not editable, but the content remains the same. (Tr. 3, 360:11-21). When asked "what's wrong with you having read-only access to documents," Claimant responded that "[a]s a manager and member, I should have … full access, not sporadic access, not view-only access, not what [Respondents] think[] my access should be." (Tr. 2, 447:4-19).[70] Claimant also complains about no longer being invited to "monthly portfolio review" meetings, but he was advised in April 2023 that, moving forward, he would simply receive written updates and could submit any comments in response. (*See* Ex. C-5). [71]

177. Consequently, for the foregoing reasons, the Arbitrator concludes that Respondent Kranjac did not breach Section 7.01 of the 2020 LLC Agreements in providing Claimant with access to the books and records of the Dynamk LLCs in view-only format.

178. Given her conclusion that Claimant has not been denied access to the books and records of the Dynamk LLCs in accordance with Section 7.01 of the 2020 LLC

[70] Evidenced was adduced at the Hearing that Mr. Kranjac was denied access to the Dynamk's Quickbooks account. (Tr. 2, 445:20-24; Exs. C-69, C-70). In response to the Arbitrator's questioning, Ms. Kranjac explained that the Quickbooks account automatically posted messages "access denied" when Mr. Kranjac attempted to gain unauthorized access to folders containing editable files. (Tr. 3, 360:22-361:9).

[71] Mr. Kranjac has also alleged that he has not received his share of Dynamk's American Express points without any evidence to substantiate this incorrect statement. (Tr. 1, 116:13-21). He doesn't know how they have been divided but knows that he has not received any benefit from them.

Agreements, the Arbitrator makes the following declaration requested by Claimant[72] as modified by the Arbitrator to conform with her conclusion:

> Declaration #6:
>
> The parties to the 2020 LLC Agreements shall comply with Section 7.01 thereof in its entirety including the provision that "[a]ll Members and their duly authorized representatives shall have the right to inspect and copy any or all of the Company's books and records … during reasonable business hours upon three (3) business days' notice to the other Members, and shall have, on demand, true and full information of all matters affecting the Company." Such right of inspection and copying may be limited upon Majority Approval to "view-only" files constituting the Company's books and records accessible on the accounting platform used by the Company. Section 7.01 of the 2020 LLC Agreements as modified by this declaration shall continue in full force and effect.
>
> (Exs. C-65/R-1 and C-66/R-2 at § 7.01).

5. Section 9.01 (Dissolution and Liquidation)

179. Claimant claims that Respondent Kranjac also breached the 2020 LLC Agreements by failing to initiate proceedings for dissolution and liquidation of the Dynamk LLCs as provided thereunder. (Cl. PHB at p. 29). Claimant's reasoning appears to be that instead of adopting the Waivers and Consents, Ms. Kranjac should have but failed to follow the procedure for disassociating with Claimant as provided in Section 9.01 of the 2020 LLC Agreements. (Cl. PHB at pp. 9-10; Exs. C-65/R-1 and C-66/R-2 at § 9.01).

180. Section 9.01 provides two ways for effectuating dissolution of the Dynamk LLCs: an election made in writing by all Members or the entry of a decree of judicial dissolution. (Exs. C-65/R-1 and C-66/R-2 at § 9.01(A) and (B)). Nothing in Section 9.01 suggests any circumstances in which dissolution must be undertaken. (*Id.*).

181. The Arbitrator concludes that the plain language of Section 9.01 imposes no obligation on any Member to take any action to effectuate the dissolution of the Dynamk LLCs and, for this reason, Ms. Kranjac cannot be found to have breached Section 9.01 of the 2020 LLC Agreements.

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[72] The specific performance requested by Claimant reads in full as follows:

> [Claimant] is immediately entitled to all access to all books, records and systems of Dynamk and Avant.

(Cl. Responses II at § 6).

182. Accordingly, for the reasons stated in each subsection of this Section V.A, Claimant's breach of contract claim as interposed by the First Count against Respondent Kranjac[73] is hereby denied with prejudice.

B. Claim for Breach of Fiduciary Duty against Respondents Kranjac, Vogt, Latapie and Davis (Second and Third Counts)

183. For his Second and Third Counts, Claimant interposes a claim based on Respondents' purported breach of their fiduciary duties to him.[74] (Third Amended Claim at ¶¶ 185-92). When asked to describe what he believes to constitute such a breach, Claimant testified that "[i]t's a breach of fiduciary duty of opportunity to continue in a subsequent fund. It's reputational harm that they also breached when they did that. And it's also basically breaching the duty where I got frozen out of a company that they have no right to freeze me out of." (Tr.1, 135:23-136:12).

184. To establish liability for the breach of a fiduciary duty, a plaintiff must demonstrate that: (1) the defendant owed him a fiduciary duty; and (2) that the defendant breached that fiduciary duty. *See Estate of Eller v. Bartron*, 31 A.3d 895, 897 (Del. 2011). Under Delaware law, "[a] fiduciary relationship exists where one party places a special trust in another and relies on that trust, or where a special duty exists for one party to protect the interests of another." *Biegler v. Underwriting Serv. Mgmt. Co., LLC*, 2022 Del. Ch. LEXIS 356, at *6 (Del. Ch. Dec. 20, 2022) (quoting *Wal-Mart Stores, Inc. v. AIG Life Ins. Co.*, 872 A.2d 611, 624 (Del. Ch. 2005)).

185. Thus, the threshold question is whether any of Respondents owed Claimant a fiduciary duty.[75] Under Delaware law, for limited liability companies, default common law fiduciary duties are owed by an LLC's managers, managing members, and controlling members; however, individuals who are not members or who are passive members holding minority interests owe no such fiduciary duty. *See Feeley v. NHAOCG, LLC*, 62 A.3d 649, 662-63 (Del. Ch. 2012). While Respondent Kranjac clearly has a fiduciary relationship with Claimant in her role as a managing Member of the Dynamk LLCs, Respondent Vogt does not have such a relationship as he is not and never was a manager, managing Member, or controlling Member of either of the Dynamk LLCs. (Tr. 1, 303:14-304:11). Thus, Respondent Kranjac, but not Respondent Vogt, owes a default common law fiduciary duty to Claimant.

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[73] Claimant additionally asserts a breach of contract claim against all Respondents as an Eighth Count and Thirteenth Count. *See* respectively, footnote 69 above and Section V.K below for their disposition.

[74] In both the Second and Third Counts, the breach of fiduciary duty is asserted against Respondents Kranjac and Vogt. *See* Third Amended Claim at ¶¶ 185-87; ¶¶ 188–92. However, Claimant interposes the breach of fiduciary duty against all Respondents in his Post-Hearing Brief (Cl. PHB at pp. 37-38), as confirmed by the Remaining Claims Chart at p. 1.

[75] The party asserting a breach of a fiduciary duty claim bears the burden of proof on the existence of a fiduciary duty. *In re Rural Metro Corp.*, 88 A.3d 54 (Del. Ch. 2014).

186. Similarly, neither Mr. Latapie nor Ms. Davis is or was a manager, managing member, or controlling member of either of the Dynamk LLCs (Tr. 1, 303:14-304:11), so they owe no default common law fiduciary duty to Claimant. *See Feeley*, 62 A.3d at 662-63.

187. A fiduciary duty may be imposed by contract as well. Thus, the question as to whether any of Respondents owe a contractual fiduciary duty requires a review of the 2020 LLC Agreements.

188. That question is answered in part by Section 6.06(A) of the 2020 LLC Agreements which provides:

> (A) The Members shall not be liable, responsible or accountable in damages or otherwise to the Company or any of the other Members for any act or omission performed or omitted in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority granted by this Agreement and in the best interests of the Company, but shall be so liable, responsible or accountable for fraud, gross negligence, intentional misconduct or any breach of their fiduciary duty with respect to such acts or omissions.

(Exs. C-65/R-1 and C-66/R-2 at § 6.06(A)).

189. Thus, under Section 6.06(A), a fiduciary duty on the part of Members is, if not express, implied. After all, Members cannot be liable for breach of fiduciary duty as provided under certain circumstances unless they have such a duty. Because Ms. Kranjac is a Member of the Dynamk LLCs pursuant to the 2020 LLC Agreements, and Mr. Vogt was a Member at the time the alleged breaches took place, they bear a

fiduciary duty to "other Members" including Claimant who is a Member.[76] Thus, both Respondents Kranjac and Vogt owe contractual fiduciary duties to Claimant.[77]

190. Neither of Respondents Latapie nor Davis is a party to the 2020 LLC Agreements (Tr. 1, 363:15-17) so the contractual fiduciary duty implied by Section 6.06(A) of the 2020 LLC Agreements cannot be imposed on either of them. They are not Members of either Dynamk LLC, but rather employees of the companies. (Tr. 1, 363:15-17, 135:18-136-15). Claimant claims that Respondents Latapie and Davis, as employees, owed him a fiduciary duty "personally" (Tr. 1, 305:4-19), yet he did not produce any employment or other agreement substantiating the fiduciary duty of either employee to him.

191. Even though Claimant has met his burden of proof in establishing that Respondents Kranjac and Vogt owe fiduciary duties to him, Claimant's fiduciary duty claim fails as against them because it is based upon the same facts as his breach of contract claim. "It is a well-settled principle that where a dispute arises from obligations that are expressly addressed by contract … any fiduciary claims arising out of the same facts that underlie the contract obligations will be foreclosed as superfluous." *In re Multiplan Corp. Stockholders Litig.*, 268 A.3d 784, 805 (Del. 2022); *see also Renco Grp.,*2015 Del. Ch. LEXIS 25, at *24-25 ("Delaware … does not allow fiduciary duty claims to proceed in parallel with breach of contract claims unless 'there is an independent basis for the fiduciary duty claims apart from the contractual claims.'"); *Kuroda*, 971 A.2d at 889 (citations omitted) ("[t]hus, in order to assert a tort claim along with a contract claim, the plaintiff must generally allege that the defendant violated an independent legal duty, apart from the duty imposed by contract.").

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[76] Respondents appear to take the position that because Mr. Vogt was not a manager, managing member, or controlling member of the Dynamk LLCs, he owed no fiduciary duty to Claimant. (Resp. PHB at p. 32). That would be the case if he owed only a default common law fiduciary duty to other Members rather than additionally a fiduciary duty pursuant to the 2020 LLC Agreements. As discussed in this paragraph, Mr. Vogt, as a member of the Dynamk LLCs, was contractually obligated pursuant to Section 6.06(A) to act as a fiduciary vis-à-vis the Dynamk LLCs and the other Members, including Claimant. The 2020 LLC Agreements make no distinction as to the type of Member – whether a managing member, a controlling member or a passive member -- who is subject to a fiduciary duty to the Dynamk LLCs and other Members – the duty is simply reposed on "Members." (Exs. C-65/R-1 and C-66/R-2 at § 6.06(A)). Therefore, any Member, such as Mr. Vogt, not just managing Members and controllers of managing Members, is subject to a contractual fiduciary duty. *See Renco Grp., Inc. v. MacAndrews AMG Holdings LLC*, 2015 Del. Ch. LEXIS 25, at *24 (Del. Ch. Jan. 29, 2015) ("[t]he Delaware Chancery Court has reasoned that a managing member owes equitable fiduciary duties by default (unless altered by the LLC agreement").

[77] *See also* Section 7.04 of the 2020 LLC Agreements (which provides that "[t]he Managers shall have total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company," which assets include confidential information). (Exs. C-65/R-1 and C-66/R-2 at § 7.04).

192. The factual allegations upon which Claimant predicates his fiduciary duty claim are, as set forth in the Second Count of the Third Amended Claim, that Respondents Kranjac and Vogt have materially breached the 2020 LLC Agreements[78] by:

(a) Unilaterally changing the rights and ownership structure of Capital and Advisors without Claimant M. Kranjac's knowledge, consent or participation;
(b) Depriving Claimant M. Kranjac of full and unfettered access to the books and records of Dynamk;
(c) Depriving Claimant M. Kranjac of his management role in Dynamk as an equal to Respondent D. Kranjac;
(d) Removing Claimant M. Kranjac from the investment decision making of Dynamk; and
(e) Failure to observe and honor the right of first refusal contained in the [2020 LLC] Agreement of Dynamk Capital.

(Third Amended Claim at ¶ 186).[79]

193. Notably, the allegations underpinning the Second Count (Breach of Fiduciary Duty) do not merely overlap those set forth in the First Count (Breach of Contract) but are word-for-word identical to such breach of contract allegations. *Compare* Third Amended Claim at ¶ 186 *with* Third Amended Claim at ¶ 183. Where, as here, Claimant's own pleading duplicates the breach of contract claim, the fiduciary duty claim cannot be maintained because it seeks to enforce obligations governed by contract. *See Nemec v. Shrader*, 991 A.2d 1120, 1129 (Del. 2010); *In re Multiplan Corp. Stockholders Litig.*, 268 A.3d at 805, citing *Bäcker v. Palisades Growth Cap. II, L.P.*, 246 A.3d 81, 109 (Del. 2021) (quoting *Grunstein v. Silva*, 2009 WL 4698541, at *6 (Del. Ch. Dec. 8, 2009)) ("Plaintiffs cannot "'bootstrap' a breach of fiduciary duty claim into a breach of contract claim," merely by restating the breach of contract claim as a breach of fiduciary duty.").

194. Claimant expands the factual basis for his fiduciary duty claim in his Post-Hearing Brief to include the allegation that Respondents have used Dynamk assets in furtherance of their efforts for Avant and that he has been harmed by them excluding

[78] Moreover, even though the Second Count is entitled "Breach of Fiduciary Duty," the claim asserted in this Count is a breach of contract claim inasmuch as Claimant avers that Respondents Kranjac and Vogt "have materially breached the [2020 LLC Agreements]" without any reference to a fiduciary duty breach. (Third Amended Claim at ¶ 186).

[79] The Third Count of the Third Amended Claim, which also states a claim for breach of fiduciary duty, adds allegations that Claimant on multiple occasions demanded that Respondents Kranjac and Vogt comply with their fiduciary duties to him and offered them "many opportunities to cure their breaches of fiduciary duty behaviors." Those allegations arise out of the same facts that underlie Respondents' purported breach of their contract obligations. Any fiduciary claims arising out of the same facts that underlie the contract obligations will be foreclosed as superfluous. *In re Multiplan Corp. Stockholders Litig.*, 268 A.3d at 805.

him from the activities of Avant. (Cl. PHB at p. 34). These allegations also underpin the breach of contract claim set forth in the Thirteenth Count of the Third Amended Claim and are therefore duplicative of the allegations supporting such claim. (*See* Third Amended Claim at ¶¶ 234 - 39).

195. Claimant additionally alleges in his Post-Hearing Brief that Respondents Kranjac and Vogt have breached their fiduciary duty "by conspiring to transfer Mr. Vogt's interest" in Capital directly to Capital rather than to the Members as bound by the 2020 Capital LLC Agreement. (Cl. PHB at p. 35). On its face, this allegation relates to the breach of Section 8.02, a contractual provision of the 2020 Capital LLC Agreement, and is therefore a matter governed by contract and analyzed above in Section V.A (Breach of Contract).[80]

196. Claimant seeks to avoid denial of his fiduciary duty claim by arguing that "the tenets of the implied covenant of good faith and fair dealing" empower the Arbitrator to "ensure the parties 'reasonable expectations' are protected." (Cl. PHB at p. 38), citing *Dunlap v. State Farm Fire and Cas. Co.*, 878 A.2d 434, 442 (Del. Supr. 2005) (citations omitted). Claimant's claim based on breach of the implied covenant of good faith and fair dealing was denied with prejudice by the Arbitrator in her decision on Respondents' Dispositive Motion. (P.O. No. 7 at § VIII.C). In any event, the Arbitrator declines to apply the standards governing whether the implied covenant is a cognizable claim in determining whether Respondents Kranjac and Vogt breached their fiduciary duty, an entirely different claim.

197. Accordingly, for the foregoing reasons, Claimant Kranjac's claim for breach of fiduciary duty against all Respondents is hereby dismissed with prejudice.

C. Shareholder Oppression Claim against Respondents Kranjac and Vogt (Fourth Count)

198. Claimant asserts a claim based on shareholder oppression, taking comfort in the broad language of one Delaware Chancery Court decision upon which he solely relies that "shareholder oppression is simply 'a violation of the 'reasonable expectations of the minority.'"[81] *Litle v. Waters*, 1992 WL 25758, at *6–9 (Del. Ch. Feb. 11, 1992). Claimant "expected to be an integral part of Dynamk, attending meetings and

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[80] Claimant also alleges that Respondent Vogt breached Sections 12 and 15, and Schedule A of the Vogt Settlement Document. (Ex. C-18). On its face, any such breach would be a breach of contract, a contract to which Claimant is not a party. Claimant has not established that he has standing to pursue a breach of fiduciary duty claim against Respondent Vogt for his purported breach of the Vogt Settlement Document.

[81] Throughout his pleadings and briefing on his claims, Claimant characterizes this claim as "shareholder oppression" even though he is a member (not shareholder) of the Dynamk LLCs which are limited liability companies (not corporations). This claim should be referred to as "minority oppression" as it was in *3P-733, LLC v. Davis*, 2019 N.Y. Misc. LEXIS 1685 (Sup. Ct. Apr. 2, 2019), where the plaintiff, alleging oppression, was a member of a Delaware limited liability company.

reviewing books and records" and he "expected to be a member of a second fund under the same terms and conditions as with Dynamk." (*See* Cl. PHB at p. 35; Tr. 1, 350:14-354:6). Due to the actions of Respondents Kranjac and Vogt, including improperly trying to change the provisions of the 2020 LLC Agreements, Claimant argues that his reasonable expectations have been frustrated. (*See* Cl. PHB at p. 35; Tr. 1, 350:14-354:6).

199. At the urging of the minority shareholder in the *Litle* case that "oppressive conduct is a flexible concept which must be evaluated in the context of the specific facts of the case" (*Litle*, 1992 WL 25758, at *7), the Delaware Chancery Court undertook that evaluation: the minority stockholder had alleged that the continual failure of the corporation to provide distributions so that he could pay his substantial tax liability, while the corporation, awash with cash, provided such distributions via loan repayments to the other stockholder, constituted oppressive abuse of discretion. (*Id.*). After analyzing the minority stockholder's claims under non-Delaware cases concerning stockholder oppression, the Court held that the plaintiff's allegations supported "a classic squeeze out situation: the squeezing out of a minority shareholder by failing to pay dividends," and denied the motion to dismiss. *Litle*, 1992 WL 25758, at *8–9.

200. In a subsequent case, the Delaware Chancery Court declined to recognize a claim of shareholder oppression stating that "[t]here is no standalone remedy for stockholder oppression in Delaware." *Lidya Holdings Inc. v. Eksin*, 2022 Del. Ch. LEXIS 22, at *7 (Del. Ch. Jan. 31, 2022), quoting *Verdantus Advisors, LLC v. Parker Infrastructure P're, LLC*, 2020 Del. Ch. LEXIS 311, 2020 WL 5951368, at *5 (Del. Ch. Oct. 8, 2020).[82]

201. The *Lidya* decision is the progeny of several Delaware Chancery Court cases decided after the *Litle* case. In *Verdantus*, the Court noted that it had subsequently "declined to read the *Litle* decision as establishing a separate cause of action for stockholder oppression." *Verdantus*, 2020 WL 5951368, at *5, citing *Garza v. I Answer, Inc.*, 1993 WL 77186, at *7 (Del. Ch. Mar. 15, 1993).

202. Furthermore, any claim for "minority oppression" premised upon the same conduct as a breach of fiduciary duty claim is "duplicative and superfluous" and should be dismissed as a matter of law. *See 3P-733,* 2019 N.Y. Misc. LEXIS 1685, *4 (dismissing purported minority oppression claim under Delaware law as duplicative of breach of fiduciary duty claim). Where, as here, Claimant's shareholder oppression claim is based upon the same underlying conduct as his other claims

[82] Every legal authority cited in this Partial Final Award was either submitted by the Parties or cited in one or more legal authorities submitted by the Parties in their Post-Hearing Briefs or their briefing on Respondents' Dispositive Motion.

against Respondents Kranjac and Vogt (including but not limited to his breach of fiduciary duty claim), the shareholder oppression claim must be denied.[83]

203. Even if Claimant's claim of shareholder oppression is cognizable as a matter of law (which it is not), such claim would fail based on the facts. Similar to the plaintiff in the *Verdantus* case, Claimant attempts to avoid denial of his oppression claim by relying exclusively on the *Litle* decision, where the Delaware Chancery Court denied a motion to dismiss after determining that the minority shareholder faced a classic squeeze out situation. *Litle*, 1992 WL 25758, at *8–9. The Court in the *Verdantus* decision found the *Litle* case to be "factually distinguishable" in that "[i]n this case [where alleged oppression consisted of forcing minority member to sell his interest at an unfair price], Verdantus does not allege that Parker Infrastructure hoarded cash and refused to pay distributions or otherwise sought to convert Verdantus' equity stake into a burdensome liability, as was the case in *Litle*," and dismissed his oppression claim. *Verdantus*, 2020 WL 5951368, at *8-9. So, too, is the *Litle* case factually distinguishable from, rather than, as Claimant claims, "analogous" to, his situation, in that none of his allegations are remotely similar to those made in *Litle*. (*See* Cl. PHB at p. 35, fn. 219). For this reason, the *Litle* decision provides no authority for finding any merit to Claimant's shareholder oppression claim.

204. Accordingly, for the foregoing reasons, Claimant Kranjac's shareholder oppression claim against Respondents Kranjac and Vogt is hereby denied with prejudice.

D. Claim for Breach of Duties of Care and Loyalty against Respondents Kranjac, Vogt, Latapie and Davis (Fifth Count)

205. In addition to alleging breach by Respondents of their fiduciary duty to Claimant (Second and Third Counts), Claimant asserts for his Fifth Count breach of additional fiduciary duties purportedly borne by all Respondents to the Dynamk LLCs and their Members.[84] More specifically, Claimant avers that "[i]n making decisions impacting the business of a limited liability company, managers, managing members and officers owe [(a)] a duty of care to the company and its members which requires informed, deliberative decision-making based on all material information reasonable [sic] available" (Third Amended Claim at ¶ 201), and (b) "a duty of loyalty to the company and its members which requires acting on a disinterested and independent basis, in good faith, and with an honest belief that the action is in the best interests of the company and its stockholders." (*Id.* at ¶ 202). Claimant concludes that

[83] As noted in above in paragraph 183, at the Hearing, Claimant testified that Respondents violated their "duty of opportunity to continue in a subsequent fund" and because "I got frozen out of a company that they have no right to freeze me out of." (Tr. 1, 136:3-15). Thus, the conduct underpinning Claimant's breach of fiduciary duty claim is the same as the conduct giving rise to his shareholder oppression claim.

[84] Notwithstanding the assertion of Claimant's claim for breach of duty of care and loyalty against only Respondents Kranjac and Vogt in the Third Amended Claim, Claimant clarified that he is asserting such claim against all Respondents. (Remaining Claims Chart at p. 1).

Respondents Kranjac and Vogt, "in taking actions that serve no business purpose of [the Dynamk LLCs] (and in fact directly harm and threaten [them] and Claimant []), have violated their duty of care and their duty of loyalty." (*Id.* at ¶ 203).

206. The duty of care and duty of loyalty are recognized in Delaware as "two central fiduciary duties adhering to corporate directors." *TVI Corp. v. Gallagher*, 2013 Del. Ch. LEXIS 260, at *39 (Del. Ch. Oct. 28, 2013).

207. Turning first to the duty of care, Delaware courts find that that duty "requires directors to inform themselves, before making a business decision, of all material information reasonably available to them" and liability for alleged breach of that duty requires evidence of gross negligence. (*Id.* at *40-41) (no facts alleged to support inference that directors' decision-making process was grossly negligent or uninformed); *see Cede & Co. v. Technicolor, Inc.*, 634 A.2d 345, 366-67 (Del. Supr. 1993) (defendant directors were grossly negligent in failing to reach an informed decision when they approved merger agreement).

208. Claimant's pleadings and his post-hearing submissions are devoid of any allegations regarding Respondents' purported breach of the duty to act on an informed basis and no evidence was adduced at the Hearing regarding any such breach. (Tr. 1, 138:21-139:5). When pressed to identify instances where Respondents failed to inform themselves of all material information reasonably available to them before making a business decision, Claimant showed little understanding of the duty of care as construed by the Delaware courts by offering instances woefully disconnected to the duty of Respondents to act on an informed basis.[85] (Cl. Responses I at § 9).

209. Thus, Claimant could not even identify one or more business transactions with respect to which Respondents failed to engage in an informed decision-making process, much less identify any information which Respondents failed to inform themselves of in respect of such transaction.

210. Claimant also alleges that Respondents breached another fiduciary duty derived from the duty of care – the duty of disclosure. (Cl. PHB at p. 36). The duty of disclosure is the duty of directors to "exercise reasonable care to disclose all facts that are

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[85] Instances of purported breaches of Respondents' duty of care proffered by Claimant include:

> their failure to invite and allow Mr. Kranjac to Dynamk meetings, failure to disclose to him Dynamk's financial and other information despite his repeated demand, blocking Mr. Kranjac's emails from reaching Dynamk representatives, removing Mr. Kranjac from the Dynamk website, firing Mr. Kranjac as General Counsel of Dynamk, forming and running Avant without Mr. Kranjac, and dissipating Dynamk's assets, both in terms of soliciting others to invest in Avant, providing Avant with Dynamk intellectual property, paying Avant's expenses including rent, and dissipating Dynamk assets for Respondents' personal gain, such as paying legal and AAA fees from Dynamic accounts.

(Cl. Responses I at § 9).

material to the stockholders' consideration of the transaction" which requires a stockholder investment decision or approval. *In re Wayport, Inc. Litigation*, 76 A.3d 296, 314 (Del. Ch. 2013) (citations omitted); *New Enterprise Associates 14 L.P. v. Rich*, 292 A.3d 112, 144 (Del. Ch. 2023) (citations omitted); *Firefighters' Pension System of the City of Kansas City, Missouri Trust v. Presidio, Inc.*, 251 A.3d 212, 288 (Del. Ch. 2021).

211. Again, when pressed to identify instances where Respondents failed to satisfy their duty of disclosure, Claimant could not identify one or more business transactions with respect to which Respondents declined to provide any material information to Mr. Kranjac, as a member of the Dynamk LLCs,[86] nor did he identify any information which Respondents failed to disclose to him in respect of such transaction. (Cl. Responses I at § 10).

212. In sum, with respect to the duty of care and the derivative duty of disclosure,[87] Claimant fails to provide any factual basis for finding a breach by Respondents of either of those duties. Instead, the core of Claimant's allegations is that Respondents made decisions that were self-interested and motivated by bad faith. (Cl. PHB at pp. 36-37). Such claims, however, invoke the duty of loyalty, not the duty of care or the duty of disclosure.

213. Turning next to that duty, Delaware courts find that one who owes a corporate fiduciary duty of loyalty must "scrupulously [] put the interests of the corporation and

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[86] Instances of purported breaches of Respondents' duty of disclosure proffered by Claimant include:

> Ms. Kranjac duped Mr. Kranjac into providing his contacts, time, over $120,000, and legal ability to establish Dynamk and its progeny, Avant. He believed they would be partners through all iterations of the fund as required under the [2020 LLC Agreements]. Ms. Kranjac instead intended to drop Mr. Kranjac as soon as feasible. Had he known that he was to be used he would not have agreed to assist her under the terms provided.

(Cl. Responses I at § 10).

[87] As set forth above in the preceding footnote, Mr. Kranjac alleges that Ms. Kranjac breached her duty to disclose her intent to use him "to establish Dynamk and its progeny, Avant" and then "drop Mr. Kranjac as soon as feasible." (Cl. Responses I at § 10). In none of the cases submitted by Claimant, however, was the investment decision at issue the decision of an individual to purchase an ownership interest in the corporation. *See In re Wayport, Inc. Litigation*, 76 A.3d at 314-16 (duty of disclosure applies when "a corporate fiduciary buys shares directly from or sells shares directly to an existing outside stockholder."); *New Enterprise Associates*, 292 A.3d at 144 (directors have duty of disclosure when seeking stockholder approval for stock offering); *Firefighters' Pension System*, 251 A.3d at 288 (directors have duty of disclosure in seeking stockholder approval of merger). Thus, Delaware courts have defined the duty of care in a variety of settings, none of which includes the investment decision of an individual to become a stockholder. Notably, the allegations purportedly supporting Mr. Kranjac's claim for breach of the duty to disclose are the very allegations made in support of his fraudulent inducement claim analyzed below in Section V.I. It appears that the Claimant conflates the two claims with each other.

its shareholders before his or her own." *TVI Corp. v. Gallagher*, 2013 Del. Ch. LEXIS 260, at *42. As stated in *Guth v. Loft*, the Delaware Supreme Court's touchstone decision on the duty of loyalty, "[c]orporate officers and directors are not permitted to use their position of confidence to further their private interests … . The rule that requires an undivided and unselfish loyalty to the corporation demands that there shall be no conflict between duty and self-interest." (*Id.* at *43). A director will be considered conflicted with respect to a board decision if "the director stands to receive a benefit that is not shared by the corporation's stockholders as a whole." (*Id.*).

214. While Claimant claims that the duty of loyalty to him was breached, the specific acts of Respondents' disloyalty to him are unclear from his pleadings and his post-hearing briefing. At the Hearing, however, Claimant did testify that Respondents' duty of loyalty to him was breached when they deprived him of "the opportunity to continue in a subsequent fund."[88] (Tr. 1, 136:4-7). That opportunity is, however, described and delimited in Section 4.09 of the 2020 LLC Agreements and hence any wrongful deprivation by Respondents Kranjac and Vogt of that opportunity is a breach of a contractual duty – the duty set forth in the aforesaid Section 4.09.

215. Thus, it follows that Claimant's claim for breach of the duty of loyalty – indisputably a fiduciary duty – fails for the same reason as his breach of fiduciary duty claim disposed of in Section V.B above fails -- it arises from obligations that are expressly addressed by the contractual provisions of the 2020 LLC Agreements. As noted above in paragraph 191, "[i]t is a well-settled principle that where a dispute arises from obligations that are expressly addressed by contract … any fiduciary claims arising out of the same facts that underlie the contract obligations will be foreclosed as superfluous." *In re Multiplan Corp. Stockholders Litig.*, 268 A.3d at 805; *see also Renco Grp.*, 2015 Del. Ch. LEXIS 25, at *24-25 ("Delaware … does not allow fiduciary duty claims to proceed in parallel with breach of contract claims unless 'there is an independent basis for the fiduciary duty claims apart from the contractual claims.'"); *Kuroda*, 971 A.2d at 889 (citations omitted) ("[t]hus, in order to assert a tort claim along with a contract claim, the plaintiff must generally allege that the defendant violated an independent legal duty, apart from the duty imposed by contract.").

216. Accordingly, for the foregoing reasons,[89] Claimant Kranjac's claim against all Respondents for breach of the duties of care and loyalty is hereby denied with prejudice.

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[88] Mr. Kranjac also testified that Respondent Vogt breached his duty of loyalty by "abscond[ing]" with Dynamk's proprietary information without producing any evidence substantiating his testimony. (Tr. 1, 356:19-358:19).

[89] Additionally, Claimant's claims for breach of the fiduciary duties of care and loyalty as against Respondents Latapie and Davis are without merit because, as explained above in paragraphs 186 and 190, neither of them has a default common law fiduciary duty or a contractual fiduciary duty to Claimant.

E. *Ultra Vires* Claim against Respondents Kranjac, Vogt, Latapie and Davis (Sixth Count)

217. For his Sixth Count, Claimant asserts an *ultra vires* claim based on Respondents Kranjac's and Vogt's exclusion of Claimant "from managing (i) Capital and Advisors, (ii) fully participating in [their] operations …and (iii) accessing [their] books and records … constituted ultra vires acts in violation of the [2020 LLC Agreements] and Title 8, Section 124 of the Delaware General Corporation [Law]." (Third Amended Claim at ¶ 207). Claimant expands the catalogue of wrongdoing that, in his view, constitutes *ultra vires* acts by alleging that Ms. Kranjac, together with Respondents Latapie and Davis,[90] "improperly sought to redeem Mr. Vogt's shares in Dynamk, change the [2020] LLC Agreement[s], freeze out Mr. Kranjac from Dynamk, and create a subsequent fund without including Mr. Kranjac, contrary to the binding written agreements in place." (Cl. PHB at p. 37). Relying solely on a Delaware Chancery Court decision on the applicability of Section 141(a) of the Delaware General Corporation Law ("DGCL")[91], Claimant contends that these acts "must be declared void ab initio" (*id.*), for any action a corporation takes for which "it lacks the capacity or power to accomplish … is *ultra vires* and void." *West Palm Beach Firefighters Pension Fund v. Moelis & Company*, 311 A.3d 809, 856 (Del. Ch. 2024).[92]

218. *Ultra vires* acts are "acts specifically prohibited by the corporation's charter, for which no implicit authority may be rationally surmised, or those acts contrary to basic principles of fiduciary law." *Lynch v. Coinmaster USA, Inc.*, 614 F. Supp. 2d 494, 501 (D. Del. 2009). "An *ultra vires* claim is a narrow endeavor focusing on the governing documents" out of which the claim arises. *Cal. Pub. Emples. Ret. Sys. v. Coulter*, 2004 Del. Ch. LEXIS 64, at *4 (Del. Ch. May 26, 2004).

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[90] Notwithstanding the assertion of Claimant's *ultra vires* claim against only Respondents Kranjac and Vogt in the Third Amended Claim (*see* Third Amended Claim at ¶ 207) and only Respondents Kranjac, Latapie and Davis in the Remaining Claims Chart (*see* Remaining Claims Chart, at p. 1), Claimant clarified that the *ultra vires* claim is asserted against all Respondents. (Cl. Responses I at § 2).

[91] 8 *Del. C.* § 141(a).

[92] Claimant's reliance on *West Palm Beach Firefighters* is misplaced. In reviewing the history of statutory law governing Delaware corporations, the Delaware Chancery Court observed that the DGCL defines the powers a corporation can exercise, that a corporation only can wield the powers that the DGCL provides, and that when a corporation purports to take an action that exceeds the powers that the DGCL provides, that action is *ultra vires*. *West Palm Beach Firefighters*, 311 A.3d at 856 (Del. Ch. 2024). The Dynamk LLCs are not corporations subject to the DGCL. None of the legal authorities submitted by the Parties apply the *ultra vires* doctrine to any acts taken by Delaware limited liability companies, such as the Dynamk LLCs. The Arbitrator will nevertheless dispose of Claimant's *ultra vires* claim on the assumption that the doctrine does apply to Delaware limited liability companies.

219. Claimant's "*ultra vires* acts" claim is based upon his contention that Respondents "acted outside of their scope of authority in carrying out their oppression and pretending that Daniella controls the company. That's basically it." (Tr. 1, 139:6-14). Claimant more specifically testified that in response to his demands:

- Mr. Latapie and Ms. Davis "acted outside the scope of [their] authority when [they] did not provide me with the information I requested regarding meetings, Dynamk information" and "when organizing Avant with Daniella, Reinhard, Sebastien, Peter Lee, and Ole." (Tr. 2, 432:19-433:6, 433:20-22);

- Mr. Vogt acted outside of the scope of his authority because of "everything that Jessica and Sebastien did, plus the … sham redemption …" (Tr. 2, 434:21-435:3); and

- Ms. Kranjac acted outside of the scope of her authority because of "everything that Jessica and Sebastien did, everything that Reinhard did … [a]nd also, just the fact that she ignored a partner acting beyond the scope of her authority to go through all our vendors and our portfolio companies to freeze me out of Dynamk…" (Tr. 2, 435:4-17).

220. Notably, the acts allegedly taken by Respondents recited in the immediately preceding paragraph are all acts allegedly taken by individuals "outside of their authority"; none are acts allegedly taken by or on behalf of either of the Dynamk LLCs that caused the companies to act beyond their authorized powers. The act that is allegedly *ultra vires* must be an act that the corporation takes for which it "lacks the capacity or power to accomplish". *West Palm Beach Firefighters*, 311 A.3d at 856 ("[t]he DGCL defines what powers the corporation can exercise, and a Delaware corporation can only wield the powers that the DGCL provides. When a corporation purports to take an action that it lacks the capacity or power to accomplish, that action is *ultra vires* and void.").

221. The cases submitted by the Parties illustrate that if any director or officer of a corporation enters into a contract on behalf of the corporation that is beyond its authorized power, that contract would be *ultra vires*. *See West Palm Beach Firefighters*, 311 A.3d at 856. It is the act of the corporation not the director or officer that would be *ultra vires*. *Lynch*, 614 F. Supp. 2d at 500. None of the legal authorities submitted by the Parties dispose of disputes over the authority of a director, officer or employee to take a certain action against another director, officer or employee on the basis of the *ultra vires* doctrine.

222. As noted above in paragraph 217, Claimant claims that acts taken by Respondents constitute *ultra vires* acts in violation of not only the 2020 LLC Agreements but also Title 8, Section 124 of the DGCL. (Third Amended Claim at ¶ 207). It is noteworthy that the provision of the DGCL cited by Claimant, Section 124, provides that no act of a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act but such lack or capacity or power may be asserted,

in relevant part, in (a) a proceeding by a stockholder against the corporation, and (b) a proceeding by the corporation, whether directly or through stockholders in a representative suit, against an incumbent or former officer or director of the corporation, for loss or damage due to such incumbent or former officer's or director's unauthorized act. *Lynch*, 614 F. Supp. 2d at 501.

223. Thus, if the Dynamk LLCs were corporations rather than limited liability companies, the procedural limitations imposed by Section 124 of the DGCL would bar the pursuit by Claimant, individually, of an *ultra vires* claim against any of Respondents as he seeks to do here. Claimant would only be able to pursue his *ultra vires* claim against the Dynamk LLCs (which he has not done), and/or against Respondents Kranjac and Vogt[93] on behalf of the Dynamk LLCs, which derivative claim was asserted but denied with prejudice by the Arbitrator in her decision on Respondents' Dispositive Motion. (P.O. No. 7 at § VIII.A).

224. As noted above in footnote 92 and numerous places elsewhere in this Partial Final Award, the Dynamk LLCs are limited liability companies, not corporations. Nevertheless, Claimant, by specifically claiming that Section 124 of the DGCL was violated, has raised the possibility that the application of the *ultra vires* doctrine is similarly limited, whether by an analogue to Section 124 enacted for entities organized under the Delaware LLC Act or by decisional law. If the doctrine is similarly limited, Claimant's *ultra vires* claim would be denied because that claim has not been asserted in a manner compliant with the limited liability company analogue of Section 124, if one exists.

225. In any event, Claimant has not offered briefing on the issue of the *ultra vires* doctrine's applicability to the case at hand anywhere close in clarity and depth to instill confidence that a ruling in his favor on his *ultra vires* claim is justified.[94]

226. Accordingly, for the foregoing reasons, Claimant Kranjac's *ultra vires* claim against all Respondents is hereby denied with prejudice.

F. Indemnification Claim against Respondents (Seventh Count)

[93] Claimant would not be able to bring a derivative clam against Respondents Latapie and Davis as they are not and were never members or managers (the limited liability company counterparts of a corporation's officers and directors) of either of the Dynamk LLCs.

[94] Claimant's briefing on his *ultra vires* claim consists of the sum total of three sentences, citing one inapposite case as noted above in footnote 92. (*See* Cl. PHB at p. 37).

227. In the Seventh Count, Claimant interposes a claim for indemnification based on both common law and the contractual provisions of the 2020 LLC Agreements.[95] (*See* Tr. 1, 191:2-17; Remaining Claims Chart at p. 1). As a result of the alleged malfeasance of Respondents Kranjac and Vogt, Claimant argues that he has been exposed to potential liability (Third Amended Claim at ¶ 211) and in commencing this arbitration, he "has been forced to expend resources that are required to be advanced by [the Dynamk LLCs] ..." (*Id.* at ¶ 212). He seeks an award compelling Respondents Kranjac and Vogt to indemnify him for "all fair and reasonable costs and liability (including the costs of this suit) engendered as a result of their contractual violations." (*Id.* at ¶ 213).

Common Law Indemnification Claim against Respondents Kranjac, Vogt, Latapie and Davis

228. Claimant presents no legal authority in support of a claim for common law indemnification against Respondents.[96] Under Delaware law, "common law indemnification" is "a general right of reimbursement for debts owed to third parties by the indemnifier as a secondarily-liable party." *Levy v. Hayes Lemmerz Int'l, Inc.*, 2006 Del. Ch. LEXIS 68, at *38 (Del. Ch. Apr. 5, 2006) (internal quotation and citation omitted). The Superior Court of Delaware has explained that the equitable remedy of common law indemnification "may be available where two defendants, as joint tortfeasors, are liable to the same person for a joint wrong. In such cases, the primary wrongdoer may have a duty to indemnify the secondary wrongdoer for the recovery made by the injured party." *Himbrick v. Dover Hospitality Grp., LLC*, 2012 Del. Sup. LEXIS 228, at *6 (Del. Sup. May 1, 2012). A further limitation on "[a] cause of action for common law indemnification" is that it "does not accrue until after the party seeking indemnification has made payment to the injured party, and the dispute between those parties is concluded." (*Id.*).

229. Clearly, that is not the situation presented here. Rather, Claimant seeks reimbursement from Respondents for costs he himself has expended prosecuting his claims in this arbitration against Respondents. Where, as here, there is no injured third party, none of the Parties are joint tortfeasors who caused injury to any third-

[95] In the Third Amended Claim and Claimant's Post-Hearing Brief, Claimant makes no distinction between common law and contractual indemnification; he asserts a general indemnification claim against only Respondents Kranjac and Vogt in the Third Amended Claim and against all Respondents in Claimant's Post-Hearing Brief. (*See* Third Amended Claim at ¶¶ 209–13; Cl. PHB at p. 37). At the Hearing, counsel for Claimant clarified that he is asserting a common law indemnification claim against all Respondents and a contractual indemnification claim against Respondents Kranjac and Vogt. (Tr. 1, 190:11-191:17; *see also* Remaining Claims Chart at p. 1).

[96] The sole case submitted by Claimant in support of his indemnification claim is inapposite insofar as Claimant's claim is based on common law in that it is a case brought by outside directors against the corporation for contractual indemnification of amounts paid in settlement of class actions pursuant to the corporation's charter documents and indemnification agreements. *Levy v. HLI Operating Co., Inc.*, 924 A.2d 210, 221 (Del. Ch. 2007).

party, and no payment has been made to any injured party by Claimant, who is the party seeking indemnification, common law indemnification is unavailing as a theory of recovery. (*See id.*). Absent an express contractual or statutory provision enabling him to seek such relief, Claimant is not entitled to be indemnified by any of Respondents for the costs and expenses he chose to incur when he filed this arbitration against Respondents.

230. Accordingly, for the foregoing reasons, Claimant Kranjac's common law indemnification claim against all Respondents is hereby denied with prejudice.

Contractual Indemnification Claim against Respondents Kranjac and Vogt

231. Given that common law indemnification is unavailing as a theory for recovering his costs and expenses incurred in connection with this arbitration, as presaged above in paragraph 229, Claimant pursues another avenue for indemnification: one based on an express contractual provision of the 2020 LLC Agreements.

232. The 2020 LLC Agreements provide in relevant part:

> The Company shall indemnify the Members … against any loss or damage incurred by the Members by reason of any act or omission performed or omitted by them (or their employees or agents) in good faith on behalf of the Company and in a manner reasonably believed by the Members to be within the scope of the authority granted to them by this Agreement and in the best interests of the Company (but not, in any event, any loss or damage incurred by reason of fraud, gross negligence, intentional misconduct, or breach of the Members' fiduciary duty with respect to such act or omission).

(*See* Exs. C-65/R-1 and C-66/R-2 at § 6.06(B)).

233. Claimant's contractual indemnification claim is based on the same factual allegations upon which his common law indemnification claim rests. Claimant testified that he is "having to spend money to defend [his] rights under an agreement, and also defend counterclaims relating to that same agreement, that [he] should have indemnity for under the contract." (Tr. 1, 280:7-15).

234. Claimant's claimed loss or damage has not been incurred by him "by reason of any act or omission performed or omitted by [him] … in good faith <u>on behalf of the Company</u>…" [Emphasis added.] (*See* Exs. C-65/R-1 and C-66/R-2 at § 6.06(B)). Rather, he seeks to be reimbursed for his costs and expenses incurred in pursuing his individual claims against Respondents[97] and asserting his defenses against

[97] Claimant's indemnification claim as set forth in the Third Amended Claim is styled as "SEVENTH COUNT INDEMNIFICATION Against Respondent D. Kranjac and Respondent Vogt, <u>Individually on</u>

Respondents' counterclaims brought against him. Assertion of Claimant's purported derivative claims brought on behalf of the Dynamk LLCs against Respondents in this arbitration was the only act taken on behalf of the Dynamk LLCs which has allegedly resulted in the costs and expenses for which he seeks to be indemnified; those derivative claims were denied with prejudice by the Arbitrator in her decision on Respondents' Dispositive Motion. (P.O. No. 7 at § VIII.A).

235. Even if Claimant were found to be entitled to contractual indemnification pursuant to Section 6.06(B) of the 2020 LLC Agreements (which he is not), the obligation to indemnify the Members is an obligation of the Dynamk LLCs, and not any Member. (*See* Exs. C-65/R-1 and C-66/R-2 at § 6.06(B); Tr. 1, 280:23-281:2).[98] No claims have been brought in this arbitration against the Dynamk LLCs seeking enforcement of their contractual obligations.

236. Moreover, Claimant fails to request any specific relief in respect of his purported entitlement to indemnification. (*See* Cl. PHB at pp. 45-46; Cl. Responses I at §§ 5, 22; Cl. Responses II at § 6). While his pleadings had demanded that a judgment be entered compelling Respondents Kanjac and Vogt to indemnify him (*see, e.g.,* Third Amended Claim at ¶ 212), the relief set forth in Claimant's Post-Hearing Brief "replaces what was pled in the [Third Amended Claim]." (Cl. Responses I at § 5). And none of his post-hearing briefing includes a request for any specific relief in respect of his entitlement to indemnification were he to prevail on such claim. (*See* Cl. PHB at pp. 45-46; Cl. Responses I at §§ 5, 22; Cl. Responses II at § 6).

237. Accordingly, for the foregoing reasons, Claimant Kranjac's contractual indemnification claim against Respondents Kranjac and Vogt is hereby denied with prejudice.

G. Civil Conspiracy Claim against Respondents Kranjac, Vogt, Latapie and Davis (Ninth Count)

238. For his Ninth Count, Claimant asserts a claim against Respondents[99] for civil conspiracy based on his belief that "Respondents worked together to freeze out Mr. Kranjac from Dynamk and Avant. They conspired to exclude him from meetings, they did not share financial documents with him, they refused to consult with him on

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Behalf of Claimant M. Kranjac". [Emphasis added.] (Third Amended Claim at sentence immediately preceding ¶ 209).

[98] On cross-examination, Claimant admitted that the 2020 LLC Agreements were not personal agreements between himself and his sister and that it would be the Dynamk LLCs which would pay the amounts indemnified if he were to prevail. (Tr. 1, 280:16-281:2).

[99] Mr. Kranjac clarified that he is asserting his civil conspiracy claim against all Respondents, not only against Respondent Kranjac as stated in the Ninth Count. (*Compare* Remaining Claims Chart at p. 1 *with* Third Amended Claim at sentence immediately preceding ¶ 216).

management decisions." (*See* Cl. PHB at p. 38). Moreover, by forming and operating a second fund, "Dynamk II", Claimant claims that Respondents conspired to exclude him from all aspects of the business. (*Id.*).

239. The elements of civil conspiracy under Delaware law are: (1) a confederation or combination of two or more persons; (2) an unlawful act done in furtherance of the conspiracy; and (3) actual damages. *Rader v. ShareBuilder Corp., 772 F.Supp.2d 599, 605 (D. Del. 2011)* (citing *Nicolet, Inc. v. Nutt,* 525 A.2d 146, 149-50 (Del. 1987)); *see also Benihana of Tokyo, Inc. v. Benihana, Inc.,* 2005 WL 583828, at *7, 2005 Del. Ch. LEXIS 19, at*25–27 (Del. Ch. Feb. 4, 2005). As the *Rader* court further explained, a "civil action for conspiracy is essentially a tort action" and, therefore, requires an underlying "act which would be actionable even without the conspiracy" (citing *Eli Lilly and Co. v. Roussel Corp.,* 23 F.Supp.2d 460 (D.N.J.1998); *see also* W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 46 (5th ed. 1984). Hence, "[a] civil conspiracy cannot exist in the absence of a separate actionable wrong." *TriState Courier & Carriage, Inc. v. Berryman,* 2004 Del. Ch. LEXIS 43, 2004 WL 835886, at *13 n. 143 (Del.Ch. Apr. 15, 2004).[100]

240. It appears that Claimant predicates his civil conspiracy claim on one or both of the torts of fraud and shareholder oppression (Cl. PHB at pp. 37-38), or fraud, oppression, breach of their fiduciary duties and duties of care. (*See* Third Amended Claim at ¶ 218). As Claimant does not prevail on either the fraud or oppression claim or any of his other claims sounding in tort, his civil conspiracy claim fails as a matter of law. *See Rader*, 772 F.Supp.2d at 605.

241. Even if Claimant were able to prove the existence of an "act which would be actionable even without the conspiracy" (which he has not) (*id.*), there is no evidence to establish any other elements of a civil conspiracy. When asked by his own counsel to explain the basis for his claim, Claimant testified that "Well, clearly, they all got together to freeze me out after Daniella didn't get her way in November of '21. So everything I've talked about today was done by Daniella, in concert with Reinhard, Jessica, Sebastian, DLA Piper." (Tr. 1, 140:8-17). No other evidence was offered to substantiate Claimant's conclusory belief that Respondents conspired against him or that any of them "knowingly participated" in such a conspiracy as required under Delaware law. *Matrix Parent, Inc. v. Audax Mgmt. Co., LLC*, 319 A.3d 909, 942 (Del. Super. 2024). Without such evidence, Claimant's belief is insufficient to sustain his civil conspiracy claim.

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[100] Notwithstanding his assertion of a civil conspiracy claim against Respondents, Mr. Kranjac seeks to establish that the elements of an aiding and abetting claim have been met. (*See* Cl. PHB at p. 37). As the Delaware Chancery Court observed, however, "[c]laims for civil conspiracy are sometime called aiding and abetting," noting that "Delaware decisions have largely equated the two theories," and that "the distinctions usually are not material." *New Enterprise Associates 14 L.P. v. Rich*, 292 A.3d 112, 176 (Del. Ch. 2023) (citations omitted). Accordingly, the Arbitrator follows Delaware decisions in treating the two theories as interchangeable.

242. Accordingly, for the foregoing reasons, Claimant Kranjac's civil conspiracy claim against all Respondents is hereby denied with prejudice.

H. Contractual Fraud Claim against Respondents Kranjac and Vogt (Tenth Count)

243. For his Tenth Count, Claimant contends that Respondents Kranjac and Vogt "willfully, intentionally, knowingly, and fraudulently misrepresented the role of Claimant M. Kranjac in Dynamk with reckless indifference to the truth. Claimant M. Kranjac relied on the representations made and was injured by his reliance on Respondent's [sic] representations. The fraudulent statements made exist within the contract itself (contractual fraud)."[101] (Third Amended Claim at ¶ 221).

244. Given the requirement that all averments of fraud be stated with particularity (*Envo, Inc. v. Walters*, 2009 Del. Ch. LEXIS 216, at *14 (Del. Ch. Dec. 30, 2009) (quoting Del. Ct. Ch. R. 9(b)), when pressed to identify the specific false contractual representations and the agreements in which they are contained, Claimant stated that "[t]he fraud is in the entirety" of the Waivers and Consents, the 2020 LLC Agreements, and the 2021 LPA.[102] (*See* Cl. Responses I at § 13).

245. After claiming that the aforesaid documents constitute a bundle of fraud, Claimant explained that "one party to an Operating Agreement (Ms. Kranjac) cannot unilaterally waive the bargained for rights and benefits of another party to the Operating Agreement (Mr. Kranjac). This basic contract foundation is also memorialized in the [2020 LLC Agreements] which requires mutual consent to amendments and waivers." (*Id.*).

246. Such an explanation reveals a fundamental misunderstanding of contractual fraud. The sole Delaware decision upon which Claimant relies make clear that contractual fraud is "based on a written representation in a contract." *See Matrix Parent, Inc. v. Audax Management Company, LLC*, 319 A.3d 909, 933 (Del. Supr. 2024); *see id.* at 921 (claim of contractual fraud was based on "Contested Representations" concerning financials in a stock purchase agreement.); *see also Prairie Capital III, L.P. v. Double E. Holding Corp.*, 132 A.3d 35, 49 (Del. Ch. 2015) (claim of contractual fraud involved four representations in a stock purchase agreement.)

[101] The Tenth Count set forth in the Third Amended Claim is asserted "against Respondent D. Kranjac". (*See* Third Amended Claim at ¶¶ 220-22). Claimant subsequently clarified that his contractual fraud claim is asserted against Respondents Kranjac and Vogt. (*See* Remaining Claims Chart at p. 1).

[102] Remarkably, Claimant claims that the fraud permeates the 2020 LLC Agreements, agreements he himself drafted. (Tr. 1, 56:13-22).

247. Here, Claimant fails to identify a specific contractual representation made by Respondents Kranjac and/or Vogt that he contends was false or fraudulent.[103] Resorting to a recitation of alleged acts undertaken to perpetrate fraud upon him, Claimant testified that the basis for his claim of fraud is that he was nevertheless "defrauded by the fact that [he is] not part of Avant and that they basically canceled me in this space, where they'll talk to investors and portfolio companies as if I, like, never existed, and I've been damaged by that." (Tr. 1, 141:5-13). Hence, his claim is based on actions that Respondents Kranjac and Vogt allegedly took in perpetrating the purported fraud rather than on any allegedly false or fraudulent representation in any of the "entirety" of the relevant documents.

248. Accordingly, for the foregoing reasons, Claimant Kranjac's contractual fraud claim against Respondents Kranjac and Vogt is hereby denied with prejudice.

I. Fraudulent Inducement Claim against Respondent Kranjac (Eleventh Count)

249. Related to his fraud claim, Claimant for his Eleventh Count interposes a fraudulent inducement claim against Respondent Kranjac based upon his contention that in or about 2016/2017 he "was induced to enter into the [operating agreements that were amended and restated in the 2020 LLC Agreements], to fund $125,000, to take over ten international trips and many domestic trips, and to spend a lot of time and money and resources doing this away from [his] family" while his sister "never intended to perform, as it turns out."[104] (Tr. 1, 341:6-15).

250. Claimant further decries the lost opportunities to obtain other business and lost time to spend with his family at a very important time in his life as his wife was losing her sight and, had he the time, he could have shown her more of the world that she wanted to see before she became blind. (Tr. 2, 491:13-492:9). Had he known how his sister would treat him, Claimant claims that he would not have worked with her. "I would never have gotten involved with Daniella or Dynamk as a partner if I knew that my tenure was—she was just using me to launch Dynamk I, and she and Reinhard were using me to do all this work and run around." (Tr. 1, 129:17-131:13).

251. Both sides agree that under Delaware law the elements of fraudulent inducement are: "1) the existence of a false representation, usually one of fact, made by the defendant;

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[103] Both sides agree that a claim for fraud under Delaware law requires as the first of five elements "a false representation." *Trifecta Multimedia Holdings, Inc. v. WCG Clinical Servs. LLC*, 318 A.3d 450, 463 (Del. Ch. 2024); *see also Matrix Parent*, 319 A.3d at 932; *Prairie Capital III*, 132 A.3d at 49. Because Claimant fails to establish the existence of a false statement in any of the documents he alleges constitute the fraud, there is no need to consider whether the remaining elements of a fraud claim have been met.

[104] The Eleventh Count set forth in the Third Amended Claim is asserted "against Respondent D. Kranjac and Respondent Vogt". (*See* Third Amended Claim at ¶¶ 223-28). Claimant subsequently clarified that his fraudulent inducement claim is interposed against only Respondent Kranjac. (*See* Remaining Claims Chart at p. 1.)

2) the defendant had knowledge or belief that the representation was false, or made the representation with requisite indifference to the truth; 3) the defendant had the intent to induce the plaintiff to act or refrain from acting; 4) the plaintiff acted or did not act in justifiable reliance on the representation;[105] and 5) the plaintiff suffered damages as a result of such reliance." *Trifecta Multimedia Holdings*, 318 A.3d at 463; *H-M Wexford LLC v. Encorp, Inc.*, 832 A.2d 129, 144 (Del. Ch. 2003); *Arwood v. Arwood*, 2022 Del. Ch. LEXIS 57, at *35 (Del. Ch. Mar. 9, 2022).

252. Here, whether Ms. Kranjac induced Claimant to create, enter into and perform under the operating agreements of the Dynamk LLCs and every amended and restated version of them, including the 2020 LLC Agreements, without herself intending to perform her obligations thereunder is the key element Claimant must establish in order to prevail on his fraudulent inducement claim. Under Delaware law, a party's failure to honor a promise is insufficient to constitute fraud. The plaintiff must plead and prove particularized facts, which are specific facts leading to a reasonable inference, that the defendant had no intention of performing when the defendant made the promise. *See Grunstein v. Silva*, 2009 WL 4698541, at *13 (Del. Ch. Dec. 8, 2009). "An unfulfilled promise of future performance will not convert a potential contract claim into a claim sounding in fraud, unless at the time the promise was made the speaker had no intention of performing." *Winner Acceptance Corp. v. Return on Capital Corp.*, 2008 WL 5352063, at *7 (Del. Ch. 2008) (internal citation omitted), cited in *Trifecta Multimedia Holdings*, 318 A.3d 450 at fn. 43. "Conversely, if a speaker intended when she made a promise to perform it, but sometime later reneges, no action for fraud arises." (*Id.*).

253. As an initial observation, it was Claimant himself who formed the Dynamk LLCs, drafted in or about 2016 the operating agreements of the Dynamk LLCs and encouraged his sister to sign them without consulting her own counsel. (Tr. 1, 45:12-14, 56:13-22, 538:15-539:17; Ex. C-1 at ¶ 3).

254. The scant evidence adduced at the Hearing to support Claimant's speculation that his sister "never intended to perform" under the Dynamk operating agreements consists of a statement that she allegedly made to Claimant when they had lunch together in October 2021: "look, you weren't part of the long-term plan here. I want to restructure everything. You did what you had to do." (Tr. 1, 145:13-19). In a four-page email dated October 26, 2021 to Members Mahler and Vogt, Claimant summarized what he and his sister discussed at the lunch; no mention was made of

[105] Mr. Kranjac contends that in proving the element of reliance, "he need only show that it is 'reasonably conceivable' that he acted based upon the representation or omission." (Cl. PHB at p. 39, citing *Trifecta Multimedia Holdings*, 318 A.3d at 465). That may be the standard applicable to the motion-to-dismiss stage as was the case in *Trifecta*. (*Id.* at 463); *see also TVI Corp.*, 2013 Del. Ch. LEXIS 260, at *37 ("the governing pleading standard in Delaware to survive a motion to dismiss is reasonable 'conceivability.'"). However, that is not the standard of proof in determining the merits of a fraudulent inducement claim after a full evidentiary hearing; rather, the standard of proof is preponderance of the evidence. *See In re Coinmint, LLC*, 261 A.3d 867, 887-88 (Del. Ch. 2021); *Arwood v. Arwood*, 2022 Del. Ch. LEXIS 57, at *2 (Del. Ch. Mar. 9, 2022) (applying the preponderance of evidence standard of proof to a fraud claim).

Ms. Kranjac's purported admission that Claimant was never part of the long-term plan for the Dynamk LLCs. (*See* Ex. C-35).[106]

255. Notwithstanding the lack of probative evidence that Ms. Kranjac had no intent at the time of execution to perform her obligations under the operating agreements of the Dynamk LLCs and every amended and restated version of them, including the 2020 LLC Agreements, Claimant nevertheless believes that his sister "had a different idea, a different plan from the beginning" which materialized years later (Tr. 1, 343:7-345:9), and "strung [him] along" and "wasted [his] time …[and] resources" while "never intending to have me participate in Avant – or Dynamk II, which is Avant." (Tr. 1, 317:8-19).

256. Such allegations are undermined by Ms. Kranjac's positive relationship with her brother in collaborating in the operation of the Dynamk LLCs for years following their formation in or about 2017. Indeed, Claimant testified more than once that his working relationship with his sister "was magical, we worked so well together and we had such a clear focus on what we were trying to achieve and accomplish." (Tr. 1, 70: 4-17, 35:5-16, 74:14-75:8). He also stated in the October 26, 2021 email to Members Mahler and Vogt that "Daniella and I worked extremely well together until Q4 of last year …" (Ex. C-35 at p. 3).

257. Thus, Claimant's claim that his sister had no intention of performing the operating agreements of the Dynamk LLCs at the time they were entered into or subsequently amended and restated is belied by his own testimony at the Hearing. Claimant would have the Arbitrator believe that Ms. Kranjac induced him first to enter the operating agreements of the Dynamk LLCs in 2017 with no intent to perform her obligations thereunder, and then waited until September 2020 to begin her campaign of "soft oppression" to freeze her brother out of Dynamk's business.[107] This interpretation strains credulity as it fails to take into account the positive relationship the siblings had for several years in running the Dynamk LLCs. It is by far more likely than not that Ms. Kranjac had every intention to perform under the Dynamk LLC operating agreements and every amended and restated version of them as evidenced by her

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[106] According to Claimant, Mr. Vogt corroborated Ms. Kranjac's statement, telling Claimant that his sister "never intended to have you around, because you're not – you're not one of us, you're not a life sciences guy…" (Tr. 1, 145:22-146:3). At the Hearing, Mr. Vogt was not asked to corroborate his statement to Claimant. Mr. Vogt also emailed Claimant on November 24, 2020, expressing his shock in learning from Mr. Mahler that Ms. Kranjac "trues [sic] get you out of Dynamk." (Ex. C-34 at p. 3). Because Mr. Vogt's statement sheds no light on when Ms. Kranjac formed the intent to "get [Mr. Kranjac] out of Dynamk," his statement is not probative in determining whether she intended to perform her obligations at the time any iterations of the operating agreements of the Dynamk LLCs were executed.

[107] It is also not plausible that Ms. Kranjac, purportedly without any intent to perform, induced her brother to enter into the 2020 LLC Agreements, dated as of April 1, 2020, amending and restating earlier amendments and restatements of the Dynamk LLC operating agreements. Any intent she harbored not to perform did not manifest itself until September 2020 at the earliest, the time when "soft oppression" commenced according to Claimant. (Tr. 1, 351:11-19).

actual performance thereunder for several years without complaint, and any change in Ms. Kranjac's conduct in relation to the management of those entities was in reaction to her brother's willful and material misconduct, misrepresentations, public censure, court sanctions, and management deadlock, all of which frustrated her initial expectations. Consequently, because Claimant fails to meet his burden of proof that Ms. Kranjac did not intend to perform under the Dynamk LLC operating agreements or any amended and restated version at the time she entered into them, "no action for fraud arises." *Winner Acceptance Corp.*, 2008 WL 5352063, at *7.

258. Accordingly, for the foregoing reasons, Claimant Kranjac's fraudulent inducement claim against Respondent Kranjac is hereby denied with prejudice.

J. Libel/Defamation *Per Se* Claim against Respondent Kranjac (Twelfth Count)

259. For his Twelfth Count, Claimant asserts another tort claim against Ms. Kranjac relating to Respondents' alleged efforts to exclude him from the operations of the Dynamk LLCs. He contends that Ms. Kranjac has defamed him by removing his name "from the Dynamk website, social media platforms, and marketing materials, and falsely not acknowledg[ing] he is a founder, manager, and member of Dynamk" and that such actions have harmed him.[108] (Cl. PHB at p. 46).

260. Under Delaware law, "the elements of defamation are: (1) defamatory communication; (2) the publication; (3) reference to the plaintiff; (4) third party's understanding of the communication's defamatory character; and (5) injury." *Preston Hollow Capital LLC v. Nuveen LLC*, 216 A.3d 1, 9 (Del. Ch. 2019). In addition, if the plaintiff is a "public figure," the allegedly defamatory statement must be shown to have been made with "actual malice," *i.e.*, knowledge that the statement was false or reckless disregard for the truth. *Page v. Oath Inc.*, 2021 Del. Super. LEXIS 127, at *11 (Del. Sup. Feb. 11, 2021).

261. This is not a straightforward claim where Claimant alleges that his sister affirmatively made false statements in satisfaction of the first element of a defamation claim for no evidence was adduced at the Hearing that Ms. Kranjac made any false misrepresentations to partners and potential partners, investors, employees, consultants, portfolio companies or service providers regarding her brother's role in the Dynamk LLCs, the impact of his personal, political, and religious beliefs on those companies, his competence, or any other matters.[109]

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[108] The Twelfth Count set forth in the Third Amended Claim is asserted "against Respondent D. Kranjac and Respondent Vogt". (*See* Third Amended Claim at ¶¶ 229-33). Claimant subsequently clarified that his defamation claim is asserted against only Respondent Kranjac. (*See* Remaining Claims Chart at p. 1.)

[109] While Claimant alleges that Respondent Vogt falsely told people, including Paolo Mortarotti of Findyn, a Member of Advisors since January 1, 2020 (*see* Third Amended Claim at ¶ 41), that Claimant was not a founder of Dynamk (Tr. 2, 439:3-440:12), Claimant has not asserted his defamation claim against Respondent Vogt. *See* Remaining Claims Chart at p. 1.

262. Rather, the allegation is that Ms. Kranjac wrongfully omitted information, specifically the uncontroverted fact that her brother is a co-founder of the Dynamk LLCs, from the Dynamk website, social media platforms, and marketing materials, and "falsely does not acknowledge that he is a founder, manager, and member of Dynamk." (Cl. PHB at pp. 45-46). Such omission, in Claimant's view, is defamatory and has damaged his reputation. (Tr. 1, 146:17-148:24).

263. With respect to the establishing the first element of a defamation claim -- a defamatory communication -- , Claimant correctly posits that even though "the law requires the imputation of something that will dishonor or degrade a man, or lessen his standing in society, it does not require that such imputation should be in express terms … The character of a libel is to be judged of by the effect it produces on the mind …" *Spence v. Funk*, 396 A.2d 967, 972 (Del. Supr.1978), citing the "seminal case" of *Rice v. Simmons*, Del.Ct. of Err. and Apps., 2 Harr. 417, 422 (1836).

264. Thus, "Delaware law recognizes a cause of action for libel by implication" under certain circumstances where plaintiffs allege that literally true statements are defamatory based on implications created through juxtapositions or omissions of facts. *Abraham v. Post*, 2012 Del. Super. LEXIS 492, at *8 (Del. Sup. Sept. 26, 2012). "However, when alleging [defamation] by implication, a plaintiff must make an especially rigorous showing" in that "the language must … be reasonably read to impart false innuendo." (*Id.* at *9). That is, the challenged statement must be "capable of a defamatory meaning." *Riley v. Moyed,* 529 A.2d 248, 251 (Del. 1987). *See Mullen Auto, Inc. v. Intersection Media Grp., Inc.*, 2023 Del. Super. LEXIS 1249, at *12 (Del. Sup. Mar. 28, 2023) ("[t]o support a claim for defamation [by implication], the alleged factual statement must be both defamatory and false"), citing *Riley,* 529 A.2d 248.

265. Claimant argues that his sister's removal of him as co-founder of the Dynamk LLCs from the Dynamk website, social media platforms, and marketing materials, and refusal to acknowledge that he is a founder, manager, and member of Dynamk" (Cl. PHB at p. 41) has robbed him of recognition for his role in forming the Dynamk LLCs. In other words, by referring to herself as the founder of the Dynamk LLCs without referencing her brother as a co-founder, Ms. Kranjac arguably implies that her brother was not a co-founder of the Dynamk LLCs. Thus, the question is whether such omission makes her statement that she is the founder false and defamatory.

266. Ms. Kranjac's choice to leave out her brother' role in the formation of the Dynamk LLCs, while may be hurtful, cannot be reasonably read to "impart false innuendo." *Abraham*, 2012 Del. Super. LEXIS 492, at *8. Claimant does not allege facts to show that the omission of his role of co-founder gives rise to the inference that he played no role in the founding of the Dynamk LLCs.[110]

[110] Indeed, notwithstanding his insistence that his role "would continue to be General Counsel … Founding Partner and part of Management, Mr. Kranjac acknowledged that he "was perfectly fine with [Ms. Kranjac] being the face of Dynamk." (Ex. C-35 at p. 2).

267. Even if such an inference were plausible, the omission is "not capable of a defamatory meaning." *Riley*, 529 A.2d at 251 (Del. 1987). It is not reasonable to make the further inference that such omission imputes to Mr. Kranjac "something which tends to disgrace (or) ... lower him in" the opinion of his professional community. *Spence* 396 A.2d at 973. *See also Mullen Auto*, 2023 Del. Super. LEXIS 1249, at *12 (a statement is defamatory when it "tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.").

268. Notably, in none of the defamation by implication cases submitted by the Parties did any plaintiffs claim that the challenged statements deprived them of positive recognition. Rather, what was alleged to have been wrongfully omitted would arguably have been exculpatory in nature had the "whole story" been told. For example, in the two defamation cases relied upon by Claimant, the plaintiffs claimed that had the whole story been told, no inference would have been drawn in (a) the *Spence* case, that the women of Delaware were unchaste (*Spence*, 396 A.2d at 972), or (b) the *Ramunno* case, that the landlord was a slumlord. *Ramunno v. Cawley*, 705 A.2d 1029, 1037 (1998). In contrast, here what was allegedly wrongfully omitted by implication --- that Claimant is a co-founder of the Dynamk LLCs --- does not exculpate him from any aspersions implicitly cast upon him by virtue of such omission but simply deprives him of recognition.

269. Claimant testified that in describing himself "[i]f you look at everything I write, it's always co-founder, out of respect for history and where we came from." (Tr. 2, 442:9-11). A review of one of his websites, however, belies that claim. Claimant introduces himself as follows: "In the private sector, Mario founded both a successful law firm and a venture capital firm that helps biotechnology companies turn their life-saving technologies into reality." It appears that Claimant believes that it is not defamatory for him to imply that he was the sole founder of the Dynamk venture capital firm whereas his sister's omission that he is a co-founder is defamatory.[111]

270. Moreover, even if the omission made Ms. Kranjac's statement defamatory by implication, which it does not, Claimant has failed to establish the element of injury. *Preston Hollow Capital*, 216 A.3d at 9. Claimant's conclusion that his sister's omission left his reputation "in complete tatters" both with his staff and with his professional contacts (Tr. 1, 146:17-148:24) is woefully inadequate as proof of injury. Apart from Claimant's testimony, no evidence was adduced at the Hearing of such reputational harm.

271. Nonetheless, to avoid the need to prove that the omission under review led directly to some material harm, such as lost income – anything quantifiable, Claimant's claim for defamation is styled as a claim for defamation *per se*. (Third Amended Claim at ¶ 231; *see* Cl. PHB at p. 40; Cl. Responses I at §1). In his view, defamation *per se* is found where a statement is considered egregious enough to be understood as innately

[111] Kranjac For Governor (https://www.marioforn j.com).

harmful or "inherently damaging to a person's reputation or community standing." (Third Amended Claim at ¶ 231). To prevail on a libel *per se* claim, thereby obviating the need to show special damages, Mr. Kranjac would have to prove that "[t]he omission imputes something which tends to disgrace a man, lower him in, or exclude him from, society, or bring him into contempt or ridicule." *Spence*, 396 A.2d at 971.

272. This, he has not done. Thus, Claimant is not exempt from the requirement that he show special damages, and he has made no such showing.[112]

273. Nonetheless, Claimant seeks equitable relief in the form of an order for specific performance requiring that "Respondents shall issue a public notice reasonably acceptable to [Claimant] confirming that he is a founder of Dynamk ..." (Cl. Responses II at § 6). Given her conclusion that Claimant has not met his burden of proving that Respondent Kranjac's statement that she is the founder of Dynamk is false and defamatory by implication, the Arbitrator declines to issue any such order.

274. Accordingly, for the foregoing reasons, Claimant Kranjac's libel/defamation *per se* claim against Respondent Kranjac is hereby denied with prejudice.

K. Breach of Contract Claim against Respondent Kranjac (Thirteenth Count)

275. The Third Amended Claim asserts an additional breach of contract claim as a Thirteenth Count.[113] The averments set forth therein are a hodgepodge of allegations relating to the formation of Avant, including the allegation that Respondents have transferred assets, know-how, intellectual property, and other resources belonging solely to the Dynamk LLCs without Claimant's consent, knowledge or involvement in material breach of the 2020 LLC Agreements.[114]

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[112] Ms. Kranjac argues that another reason Claimant's claim fails is because he did not plead and prove actual malice. It is well settled under Delaware law that where the plaintiff is a public figure, the plaintiff must establish by clear and convincing evidence that the defendant acted with actual malice. *See Riley*, 529 A.2d at 250. But the threshold issue in any libel action is whether the challenged statements are, in fact, defamatory. (*Id.*at 251 (holding that should a court find that the statements at issue are not defamatory, it need not reach the actual malice issue)). Consequently, because the Arbitrator finds that the statement at issue is not defamatory, she need not determine whether Claimant is a public figure and has proved actual malice.

[113] The Thirteenth Count appears to be asserted against all Respondents or only Respondents Kranjac and Vogt. (*See* Third Amended Claim at ¶¶ 234-39). Claimant subsequently clarified that his breach of contract claim (regardless of the Count) is asserted solely against Respondent Kranjac. (*See* Remaining Claims Chart at p. 1, Cl. Responses I at § 4).

[114] Claimant fails to identify the specific contractual provision that would prevent such transfer. *See Wal-Mart Stores*, 901 A.2d at 116. None of the contractual provisions identified by Claimant as having been breached by one or more Respondents preclude such transfer. (*See* Cl. PHB at p. 29). The Thirteenth

276. Notwithstanding the assertion of Claimant's breach of contract solely against Ms. Kranjac, Claimant claims that Mr. Vogt "helped Daniella steal the contact list, the customer relationship management software access" from Dynamk to use for Avant but provides no proof for this claim. (Tr. 1, 313:8-12). Mr. Vogt testified, however, that he never took any computer systems, software, proprietary data, or information from Dynamk to use in connection with his work for Avant. (Tr. 2, 392:3-13, 430:13-19). Similarly, Respondents Latapie and Davis both testified that they did not take or use any of Dynamk's confidential information in providing consulting services to Avant. (Tr. 3, 385:4-9, 371:18-372:5). Thus, Respondents all credibly testified under oath that they did not take any confidential information of Dynamk and use it in connection with their work for Avant.

277. Because no evidence was adduced that any Respondents (including Ms. Kranjac against whom his breach of contract claim is asserted,) have transferred assets, know-how, intellectual property, and other resources belonging solely to Dynamk, Claimant has failed to meet his burden of proof in establishing his breach of contract claim as interposed by the Thirteenth Count.

278. Accordingly, for the foregoing reasons, Claimant Kranjac's breach of contract claim as interposed by the Thirteenth Count against Respondent Kranjac is hereby denied with prejudice.

279. Claimant requests that the Arbitrator issue an award ordering specific performance for the "creation of an intercompany services agreement reasonably acceptable to [Claimant] between Dynamk and Avant to be entered into which sets for [sic] the terms of use and ownership of intellectual property and other matters." (Cl. PHB at p. 45, Cl. Responses I at § 5, Cl. Responses II at § 6).

280. In light of her foregoing finding that Respondents have not transferred to Avant any assets, know-how, intellectual property, or other resources belonging solely to Dynamk as well as her lack of jurisdiction over the Avant Entities, the Arbitrator declines to award an order for specific performance requiring Dynamk and Avant to enter into any such intercompany services agreement.

L. Conversion Claim against Respondent Kranjac

281. Claimant interposes a claim against Ms. Kranjac for conversion.[115] Conversion under Delaware law is "any distinct act of dominion wrongfully exerted over the property of

Count also asserts allegations regarding the purported unlawful formation and operation of Avant by Respondents Kranjac and Vogt. That alleged breach of contract is analyzed above in Section V.A.

[115] Conversion is not among the claims enumerated in the Counts set forth in the Third Amended Claim or the Remaining Claims Chart. Nonetheless, Claimant briefed the claim in his post-hearing briefing and confirmed that the claim has not been withdrawn. (Cl. PHB at pp. 46-47; Cl. Responses I at § 4).

another, in denial of [Respondents'] right, or inconsistent with it." (Cl. PHB at p. 41, quoting *Kuroda*, 971 A.2d at 889 (citations omitted)).

282. Claimant's conversion claim is based on (i) the unilateral taking by Ms. Kranjac of Capital's American Express points rather than sharing them proportionally with her brother (Tr. 1, 116:13-21); (ii) an increase in the annual salary paid by Capital to Ms. Kranjac from $330,000 to $564,000 (Tr.1, 132:9-132:20; Tr. 2, 578:9-13); (iii) excess rent paid by Capital for office space (Tr. 3, 347:19-348:18); (iv) Capital's payment of "AAA and attorney fees" (Tr. 1, 133:16-22; Ex. C-2); and (v) the cost (allegedly paid by Capital) of Respondents' counsel's representation of Richard Ferraro, Ms. Kranjac's husband, a non-party, non-Dynamk employee in connection with his December 2024 deposition taken in connection with this arbitration. (Richard Ferraro Trial Deposition, 5:23-6:7).

283. Claimant claims that he is entitled to recover damages which should "include the monies Ms. Kranjac unlawfully diverted from the [Dynamk LLCs]." (Cl. PHB at p. 46) because Ms. Kranjac's actions "affected [him] individually" and "affects him, not Dynamk or Avant." (Cl. Responses II at § 1).[116]

284. Claimant has no standing to bring any direct claims against Ms. Kranjac as he has suffered no direct individual harm resulting from any actions allegedly taken by her. (*See* Exs. C-65/R-1 and C- 66/R-2 at § 6.01(B)(iv)); *see also Clifford Paper, Inc. v. WPP Investors, LLC*, 2021 WL 2211694 (Del. Ch. Jun. 1, 2021) (claims alleging a breach of an individual plaintiff's voting and other contract rights under LLC agreement are not direct because the resulting injury damages the LLC rather than the individual), citing *Tooley v. Donaldson, Lufkin & Jenrette, Incorporated*, 845 A.2d 1031, 1039 (Del. 2004); *see also Dietrichson v. Knott*, 2017 Del. Ch. LEXIS 64, at *11 (Del. Ch. Apr. 19, 2017); *Schiff v. ZM Equity Partners, LLC*, No. 19CV4735, 2020 WL 5077712, at *10 (S.D.N.Y. Aug. 27, 2020) ("[a]lthough the standard under *Tooley* references corporations, the same principles apply to limited liability companies"); *Iacovacci v. Brevet Holdings, LLC*, 2023 U.S. Dist. LEXIS 50773, at *37 (S.D.N.Y. Mar. 24, 2023) (Delaware LLC members' assertion that they 'have been harmed personally by the harm to [the LLC]' caused by former member's usurpation of corporate opportunities is insufficient to establish direct individual harm).

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[116] The statement that the alleged wrongful diversion of funds does not affect the Dynamk LLCs is controverted by Claimant's assertion of the conversion claim as a derivative claim on behalf of the Dynamk LLCs in all previous iterations of the Third Amended Claim. (*See, e.g.,* Second Amended Claim at p. 1, claiming damages sustained by the Dynamk LLCs resulting from, *inter alia,* Respondent(s)' conversion). All derivative claims brought on behalf of the Dynamk LLCs were, however, denied with prejudice by the Arbitrator in her decision on Respondents' Dispositive Motion. (P.O. No. 7 at § VIII.A). Claimant's only remaining claims are asserted "individually, on behalf of Claimant M. Kranjac." (*See* Third Amended Claim).

285. To assess whether a claim is derivative or direct under Delaware law is determined by reference to two questions:

> '(1) who suffered the alleged harm (the [LLC] or the suing [member], individually), and (2) who would receive the benefit of any recovery or other remedy (the [LLC] or the [members], individually)?' The first prong of *Tooley* directs the Court's analysis to the nature of the alleged harm, the 'claimed direct injury must be independent of any alleged injury to the corporation. The stockholder must demonstrate that the duty breached was owed to the stockholder and that he or she can prevail without showing an injury to the corporation.' Under the second prong of *Tooley*, '[w]here all of the corporation's stockholders are harmed and would recover *pro rata* in proportion with their ownership of the corporation's stock solely because they are stockholders, then the claim is derivative in nature.'

Clifford Paper, 2021 WL 2211694, at *7; *see also Brookfield Asset Management v. Rosson*, 261 A.3d 1251, 1266 (Del. 2021).[117]

286. The Delaware Chancery Court in *Clifford Paper* applied the *Tooley* test in determining whether a member of a limited liability company suffered direct harm from the diversion of payments from the limited liability company to certain investors. The Court found that:

> [T]he diversion-of-payments claim is quintessentially derivative. Because it is the *Company's* funds Defendants are alleged to have diverted, the harm caused by Defendants' actions flows directly to the Company, and only derivatively to its members. In the same way, any recovery of such funds would flow first to the Company only then to be distributed *pro rata* to its members. 'Claims are treated as derivative when they naturally assert that the corporation's funds have been wrongfully depleted.'

Clifford Paper, 2021 WL 2211694, at *8; *see also* Dietrichson, 2017 WL 1400552, at *4–5 (explaining that plaintiff's recovery for defendant's self-interested diversion of

[117] The judicial gloss Claimant spins on the *Brookfield* decision that a direct claim for damages may be plead by an owner when there was a breach of duties owed to that owner "regardless of the resultant damage to the corporate entity" distorts the Delaware Supreme Court's analysis. (Cl. Responses II at § 1). The Court explained that a stockholder retains the right to bring an individual action for injuries affecting his legal rights as a stockholder because such a claim is distinct from an injury caused to the corporation alone. "In such individual suits the recovery or other relief flows directly to the stockholders not to the corporation." *Brookfield*, 261 A.3d at 1263 (an example of harm unique to stockholders would be board failure to disclose all material information when seeking stockholder action, quoting *In re J.P. Morgan Chase & Company S'holder Litig.*, 906 A.2d 766, 772 (Del. 2006) ("where it is claimed that a duty of disclosure violation impaired the stockholders' right to cast an informed vote, that claim is direct.").

funds "would [run to] the Company, not [plaintiff]. [Plaintiff] would only receive his portion of recovery as an indirect benefit and *pro rata* according to his membership interest under the Operating Agreement.") (internal citations omitted)).

287. Under the *Tooley* test, Claimant must demonstrate that the duty breached was owed to him and that the claimed direct injury is independent of any alleged injury to Capital. It is Capitol's funds that have been allegedly taken. The duty Ms. Kranjac allegedly breached is owed to Capital, not Claimant. Having already admitted that Capital was harmed by Ms. Kranjac's alleged diversion of Capital's funds (*see* Second Amended Claim at ¶ 1), Claimant has not met his burden of showing that he can prevail on his conversion claim without showing an injury to Capital. Indeed, Claimant himself recognizes that "under Delaware law, Respondents, all individuals, must show individual damage independent of the damage sustained by the [Dynamk LLCs]," citing *Kuroda*, 971 A.2d at 890. (Cl. PHB at p. 50). So, too, must Claimant make the same showing in order to prevail on his conversion claim.

288. Accordingly, for the foregoing reasons, Claimant Kranjac's conversion claim against Respondent Kranjac is hereby denied with prejudice.[118]

VI. RESPONDENTS/COUNTERCLAIMANTS' COUNTERCLAIMS[119] AGAINST CLAIMANT KRANJAC

289. One or more of Respondents/Counterclaimants has brought nine counterclaims against Mr. Kranjac. These counterclaims can be categorized as follows: (a) those asserted by Counterclaimants Kranjac and Vogt: breach of contract, breach of fiduciary duty, breach of covenant of good faith and fair dealing, and indemnification; (b) those asserted by Counterclaimant Kranjac: conversion, fraud and tortious interference with business relations; and (c) those asserted by all Counterclaimants: defamation. All Counterclaimants also request declaratory judgment/relief confirming certain rights and obligations of the Parties.

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[118] There is another infirmity with Claimant's conversion claim. Claimant has helpfully pointed out that "[a]n action for conversion cannot move forward when predicated on a claim for the payment of money" (Cl. PHB at p. 41; quoting *Kuroda*, 971 A.2d at 890), without claiming any applicable exception to the rule that would allow him to move forward with his claim. It appears that everything allegedly diverted by Ms. Kranjac is in the form of money or, in the case of Capital's American Express points, would be converted to money to the extent that such points have been depleted by Ms. Kranjac in purchasing goods or services on Capital's American Express card. Thus, on this additional ground, Claimant's conversion claim fails.

[119] Any counterclaim referred to in this Section VI may be referred to as a "counterclaim" or "claim" and any Party asserting a counterclaim may be referred to as "Respondent/Counterclaimant," "Counterclaimant" or "Respondent."

A. Breach of Contract Counterclaim of Counterclaimants Kranjac and Vogt (First Counterclaim)

290. For their First Counterclaim, Counterclaimants Kranjac and Vogt interpose a breach of contract counterclaim based on alleged breaches by Mr. Kranjac of the 2020 LLC Agreements.

291. As set forth above in paragraph 111, the elements of a breach of contract claim are: "'1) a contractual obligation; 2) a breach of that obligation by the defendant; and 3) a resulting damage to the plaintiff.'" *Humanigen*, 238 A.3d at 202; *see also Garfield v. Allen*, 277 A.3d 296, 328 (Del. Ch. 2022) (opining that the third element is more accurately described as "a causally related injury that warrants a remedy, such as damages or in an appropriate case, specific performance.") (internal citations omitted).

292. Ms. Kranjac and Mr. Vogt admit that "a plaintiff asserting a breach of contract claim must specifically identify the contractual provision purportedly breached," citing *Wal-Mart Stores*, 901 A.2d at 116. (*See* Resp. PHB at p. 25).

293. To that end, Ms. Kranjac and Mr. Vogt allege that the contractual provisions purportedly breached by Mr. Kranjac are set forth in Section 6.03 of the 2020 LLC Agreements which provides that:

> No Member/Manager shall have any authority to perform (i) any act in violation of any applicable law or regulation thereunder, (ii) any act in contravention of this Agreement or failing to do any act required by this Agreement, (iii) any act which would make it impossible to carry on the ordinary business of the Company, or (iv) any act without any consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of this Agreement.

(*See* Exs. R-1/C-65 and R-2/C-66 at § 6.03; Resp. PHB at pp. 43-44).[120]

294. In the view of Counterclaimants, Mr. Kranjac's intentional misconduct – including his willful misappropriation of funds from Capital's bank account without its consent, his false statements and baseless threats against employees and third parties without authorization or consent of the Dynamk LLCs, his disclosure of sensitive trade secrets and other confidential information to third parties without consent of the Dynamk LLCs, his willful misrepresentations regarding his authority to act on behalf of the Dynamk LLCs, his misuse of their email servers to conceal governmental emails related to his role as mayor, and his willful publications of the Dynamk's

[120] An additional contractual obligation under the 2020 LLC Agreements is the Manager's "total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company" and the prohibition from seeking to "employ such funds in any manner except for the benefit of the [Dynamk LLCs]." (*See* Exs. R-1/C-65 and R-2/C-66 at § 7.04).

confidential, proprietary and privileged information – constitute material breaches of the 2020 LLC Agreements. (Counterclaim at ¶ 53; Resp. PHB at p. 44).

295. Tellingly, Counterclaimants do not specify precisely which subsection(s) of Section 6.03 of the 2020 LLC Agreements the enumerated instances of Mr. Kranjac's intentional misconduct breached. Indeed, in explaining why their breach of fiduciary duty claim against Mr. Kranjac, as discussed below in Section VI.B, should not be dismissed as duplicative of their breach of their fiduciary duty claim against him, Respondents admit that:

> the factual record includes evidence supporting a claim for breach of fiduciary duty against [Mr. Kranjac] with respect to issues and matters not contemplated by the applicable contracts (e.g., the 2020 [LLC Agreements] and the 2021 LPA). Those include: [Mr. Kranjac's] misappropriation of Dynamk property and funds, his repeated threats against Respondents and third-parties (including critical Dynamk vendors), his intentional disclosure of privileged and confidential information in both public court filings, social media, and private communications, his publication of false statements to third-parties (via email and social media), and his insistence on continued public engagement (political and non-political) that negatively impacted the operations of Dynamk, etc.

(Resp. Responses I at § 11).

296. Thus, Counterclaimants acknowledge that much of Mr. Kranjac's alleged misconduct relates to issues and matters not contemplated by the 2020 LLC Agreements. His alleged misconduct does, however, violate two contractual provisions of the 2020 LLC Agreements.

297. The first provision is Section 6.01(B) which expressly provides that "Majority Approval of the Members shall be required prior to … commencement of any litigation or arbitration proceedings involving the Company." (*See* Exs. R-1/C-65 and R-2/C-66 at § 6.01(B)). Mr. Kranjac breached this provision by commencing this arbitration, individually and on behalf of the Dynamk LLCs without the Majority Approval of the Members of the Dynamk LLCs, which forced Dynamk to incur expense in defending against Mr. Kranjac's derivative claims. (Resp. PHB at p. 45). Mr. Kranjac's breach of Section 6.01(B) was willful and knowing inasmuch as the 2020 LLC Agreements were prepared by him or under his supervision. (Tr. 1, 45:12-14, 56:13-22, 538:15-22; Ex. C-1 at ¶ 3) and was taken in violation of the prohibition on a Member/Manager from "perform[ing] … (iv) any act without any consent or ratification which is required to be consented to or ratified by the Members pursuant to any provisions of this Agreement" (*See* Exs. R-1/C-65 and R-2/C-66 at § 6.03(iv)).

298. The second provision is Section 7.04 which provides that the Managers "shall have total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company" and are prohibited from "employ[ing] such funds in any manner except for the benefit of the Company." (Exs. R-1/C-65 and R-2/C-66 at § 7.04). Mr. Kranjac's misappropriation of funds from Capital's bank account in the amount of $297,769 without its consent breached Section 7.04 of the 2020 LLC Agreements and was taken in violation of the prohibition on a Member/Manager from "perform[ing] … (ii) any act in contravention of this Agreement …" (*See* Exs. R-1/C-65 and R-2/C-66 at § 6.03(ii)).

299. With respect to Mr. Kranjac's breaches of Sections 6.01(B) and 7.04 of the 2020 LLC Agreements, however, the analysis of Ms. Kranjac's conversion claim against Mr. Kranjac undertaken below in Section VI.D applies to Ms. Kranjac's and Mr. Vogt's breach of contract claim as well: to wit, their lack of standing to bring a breach of contract claim directly against Mr. Kranjac inasmuch as his breaches resulted in material harm to one or both of the Dynamk LLCs (*see* C-10 at 58:5-19; Resp. PHB at pp. 44-45) and their failure to assert a derivative claim on behalf of the Dynamk LLCs in this arbitration are procedural grounds which preclude them from moving forward on their breach of contract claim based on the contravention of Sections 6.03 (ii) and (iv), 6.01(B) and 7.04 of the 2020 LLC Agreements. *See Clifford Paper*, 2021 WL 2211694 (claims alleging a breach of an individual plaintiff's contract rights under LLC agreement are not direct because the resulting injury damages the LLC rather than the individual).

300. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac and Vogt, directly and individually, against Mr. Kranjac for breach of contract is hereby denied.

301. Respondents request that the Arbitrator issue an award confirming that under Section 6.01(B)(iv) of the 2020 LLC Agreements, Mr. Kranjac is not authorized to commence legal proceedings on behalf of, or involving, Capital without Majority Approval of its Members. or on behalf of, or involving, Advisors (or the DLS Fund) without Majority Approval of Advisor's Members. (Resp. Proposed Order at ¶ (viii) b).

302. Given her conclusion that Mr. Kranjac violated Section 6.01(B)(iv) of the 2020 LLC Agreements by commencing this arbitration on behalf of the Dynamk LLCs without the Majority Approval of the Members of the Dynamk LLCs, notwithstanding the procedural barriers to granting the breach of contract counterclaim against Mr. Kranjac for such violation, the Arbitrator makes the following declaration, confirming Section 6.01(B)(iv) of the 2020 LLC Agreements as modified by the Arbitrator:

Declaration #7:

Claimant is not authorized to make any claims or commence litigation or arbitration proceedings (i) on behalf of, or involving, Capital without Majority Approval of the Members of Capital; or (ii) on behalf

> of, or involving, Advisors (or the DLS Fund) without Majority Approval of the Members of Advisors. Section 6.01(B) of the 2020 LLC Agreements as modified by this declaration shall continue in full force and effect.

(*See* Exs. R-1/C-65 and R-2/C-66 at § 6.01(B)).

B. Counterclaim of Counterclaimants Kranjac and Vogt for Breach of Fiduciary Duty (Second Counterclaim)

303. As presaged above in paragraph 295, Counterclaimants Kranjc and Vogt assert as their Second Counterclaim a breach of fiduciary duty claim against Mr. Kranjac. As noted above in paragraph 184, to prevail on a claim for breach of fiduciary duty, a plaintiff must demonstrate that: (1) the defendant owed her a fiduciary duty; and (2) that the defendant breached that fiduciary duty. *Estate of Eller*, 31 A.3d at 897.

304. As discussed above in paragraph 185, as a co-managing Member of the Dynamk LLCs, under Delaware law, Mr. Kranjac owes default common law fiduciary duties to other Members. *See Feeley*, 62 A.3d at 662-63. As discussed above in paragraph 293, Mr. Kranjac also bears a contractual fiduciary duty to Respondents Kranjac and Vogt pursuant to Sections 6.06(A) and 7.04 of the 2020 LLC Agreements. (*See* Exs. R-1/C-65 and R-2/C-66 at §§ 6.06(A), 7.04).

305. Turning next to the question whether Mr. Kranjac breached his fiduciary duties to Respondents Kranjac and Vogt, the evidentiary record shows that Mr. Kranjac repeatedly and willfully breached his fiduciary duties owed to other Members, whether common law or contractual in nature, by threatening and refusing to work with Respondents Kranjac and Vogt; making unauthorized threats to Dynamk employees, advisors, consultants, vendors and investors; disclosing confidential information to third parties, and separately in public filings without consent; misrepresenting to employees and third parties his authority to act on behalf of the Dynamk LLCs without Majority Approval; and misusing the Dynamk email servers (forcing the Dynamk LLCs to be dragged into a contentious litigation where Mr. Kranjac was sanctioned publicly and repeatedly for contempt and referred for potential obstruction and perjury charges). These breaches have harmed the Dynamk LLCs, as well as Respondents Kranjac and Vogt personally.

306. With respect to Mr. Kranjac's breach of his fiduciary duty to Ms. Kranjac and Mr. Vogt, however, the analysis of Ms. Kranjac's conversion counterclaim against Mr. Kranjac undertaken below in Section VI.D applies to their breach of fiduciary duty counterclaim as well: to wit, their lack of standing to bring such a counterclaim directly against Mr. Kranjac inasmuch as his breach resulted in material harm to one or both of the Dynamk LLCs (*see* C-10 at 58:5-19; Resp. PHB at p. 45) and Ms. Kranjac's failure to assert a derivative claim on behalf of the Dynamk LLCs in this arbitration are procedural grounds which preclude Ms. Kranjac and Mr. Vogt from moving forward on their breach of contract counterclaim. *See Clifford Paper*, 2021

WL 2211694 (claim alleging a breach of fiduciary duty owed to an individual member under LLC agreement is not direct because the resulting injury damaged the LLC rather than the member).[121]

307. As Ms. Kranjac testified, her brother's willful breaches had a direct and material impact on the DLS Fund's ability to meet its goals and have harmed her, Mr. Vogt, and the Dynamk LLCs. (*See* C-10 at 58:5-19 ["His actions dramatically reduced our ability to do follow on investments and to provide additional runway to our portfolio companies during what went from the best funding environment to the worst funding environment in recent history for biotech. We were unable to, as a result of his overcharging us substantially for legal fees, we were experiencing a significant reduction in investor capital and we were not able to support portfolio companies. Probably reduced our ability to follow along by at least one and a half million, which is substantial."]). Thus, the harm sustained by Ms. Kranjac and Mr. Vogt is not independent of any injury to the Dynamk LLCs flowing from Mr. Kranjac's misconduct.

308. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac and Vogt, directly and individually, against Mr. Kranjac for breach of fiduciary duty is hereby denied with prejudice.

309. Respondents request that the Arbitrator issue an award ordering Claimant to "cease and desist from publishing any confidential and/or proprietary information which references, or relates to, Dynamk, Avant, their respective portfolio companies, and/or any of the Respondents." (Resp. Proposed Order at ¶ (viii) i).

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[121] In contrast to Mr. Kranjac's rebuttal of Ms. Kranjac's counterclaims against him for tortious interference with prospective business relations and conversion on the basis that she lacks standing to bring such claims directly against him (*see* Cl. Responses I at §§ 3, 14, 15), Mr. Kranjac advanced no argument that Ms. Kranjac lacks standing to bring a breach of fiduciary duty claim against him. However, Counterclaimants, in educating the Arbitrator on the way Delaware courts distinguish between direct and derivative claims and the requirement that in order to bring a direct claim, a claimed injury must be independent of any alleged injury to the LLC, submitted legal authorities on the application of such requirement to claims specifically based on the breach of fiduciary duties. *See Clifford Paper, 2021 WL 2211694, at *7* (claim alleging a breach of a defendant's fiduciary duty is not direct because the resulting injury damages the LLC rather than the individual plaintiff); *Tooley*, 845 A.2d at 1033 (distinguished direct claims from derivative claims in the context of breach of fiduciary duty claim); *Dietrichson*, 2017 WL 1400552, at *1–2, 11 (finding that LLC member's fiduciary duty claim was derivative under *Tooley*); *Iacovacci*, 2023 U.S. Dist. LEXIS 50773, at *37-38 (members of Delaware LLC failed to explain how they would be harmed directly by alleged breach of fiduciary duty independent from the harm to the LLC thereby precluding them from asserting directly such claim); *In re Good Tech Corp. Stockholder Litig.*, 2017 Del. Ch. LEXIS 109, at *3 (Del. Ch. May 12, 2017) (applying the *Tooley* test to breach of fiduciary duty claim). Thus, the Arbitrator's knowledge of the law and its clear applicability to breach of fiduciary duty claims preclude her from disregarding the law and declining to apply it to Ms. Kranjac's counterclaim. Counterclaimants have not provided the Arbitrator with any colorable justification for reaching a contrary outcome.

310. Given her finding that Mr. Kranjac violated his fiduciary duty as Manager of the Dynamk LLCs pursuant to Section 7.04[122] by disclosing confidential information to third parties, and separately in public filings without Majority Approval of the Dynamk LLCs and the DLS Fund, notwithstanding the procedural barriers to granting the breach of fiduciary duty counterclaim against Mr. Kranjac for such violation, the Arbitrator makes the following declaration:

Declaration #8:

Except to the limited extent necessary to comply with applicable law (including a lawful subpoena or order issued by a court of competent jurisdiction), Claimant shall cease and desist from publishing any confidential and/or proprietary information which references, or relates to, Dynamk, Avant, their respective portfolio companies, and/or any of Respondents.

C. Counterclaim of Counterclaimants Kranjac and Vogt for Breach of the Covenant of Good Faith and Fair Dealing (Third Counterclaim)

311. For their Third Counterclaim, Counterclaimants Kranjac and Vogt assert that because Claimant's willful and material misconduct prevented them from fully realizing the 'fruits' of their contractual relationships with the Dynamk LLCs, Claimant breached the covenant of good faith and fair dealing implied within each of the 2020 LLC Agreements. (Counterclaim at ¶¶ 63-64; Resp. PHB at pp. 45-46).

312. "Under Delaware law, an implied covenant of good faith and fair dealing inheres in every contract." *Winshall v. Viacom Int'l, Inc.*, 55 A.3d 629, 636 (Del. Ch. 2011). The covenant "requires a party in a contractual relationship to refrain from arbitrary or unreasonable conduct which has the effect of preventing the other party to the contract from receiving the fruits of the bargain." (*Id.*). "A party is liable for breaching the covenant when its conduct 'frustrates the overarching purpose of the contract by taking advantage of its position to control implementation of the agreement's terms.'" (*Id.*).

313. Ms. Kranjac and Mr. Vogt claim that Mr. Kranjac's willful and material misconduct, (including his willful misappropriation of funds from Capital's bank account, his false statements and baseless threats against third parties, his disclosure of sensitive trade secrets and other confidential information to third parties, all without the consent of the Dynamk LLCs; his willful misrepresentations regarding his authority to act on behalf of the Dynamk LLCs; his misuse of their email servers to conceal governmental emails related to his role as mayor and subsequent violation of at least nineteen (19) court orders related to the production of those emails; and his willful publication of Dynamk's confidential, proprietary and privileged information),

[122] Section 7.04 of the 2020 LLC Agreements provides that "[t]he Managers shall have total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company," which assets arguably include confidential information. (Exs. C-65/R-1 and C-66/R-2 at § 7.04).

constitute material breaches of the implied covenant which plainly frustrated the purpose of the 2020 LLC Agreements and prevented Ms. Kranjac and Mr. Vogt from fully realizing the "fruits" of their investment in Dynamk. Mr. Kranjac thus breached the covenant of good faith and fair dealing implied within each of the 2020 LLC Agreements. (Counterclaim at ¶¶ 63-64; Resp. PHB at pp. 45-46).

314. It is well settled under Delaware law that [t]he doctrine "does not apply when the contract addresses the conduct at issue." *Nationwide Emerging Managers, LLC v. Northpointe Holdings, LLC*, 112 A.3d 878, 896 (Del. 2015) (internal citations omitted); *see also Dunlap v. State Farm Fire & Cas. Co.*, 878 A.2d 434, 441 (Del. 2005) ("Existing contract terms control, however, such that implied good faith cannot be used to circumvent the parties' bargain, or to create a free- floating duty . . . unattached to the underlying legal document."); *Kuroda*, 971 A.2d at 888 (implied covenant claim premised on failure of defendants to pay money due under contract must fail because express terms of contract will control such claim.).

315. As discussed above in paragraph 189, the 2020 LLC Agreements impose fiduciary duties on Members. To the extent that the implied covenant claim of Ms. Kranjac and Mr. Vogt is premised on the failure of Mr. Kranjac to abide by his contractual fiduciary duties, the claim must fail because the express terms of the contract will control such a claim. *Kuroda*, 971 A.2d at 889. The alleged injuries sustained by Ms. Kranjac and Mr. Vogt that result from Mr. Kranjac's failure to perform in accordance with his contractual fiduciary duties are governed by the express provisions of the 2020 LLC Agreements.

316. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac and Vogt against Mr. Kranjac for breach of the implied covenant of good faith and fair dealing is hereby denied with prejudice.

D. Conversion Counterclaim of Counterclaimant Kranjac (Fourth Counterclaim)

317. Ms. Kranjac has interposed a counterclaim for conversion as the Fourth Counterclaim asserted against Mr. Kranjac, alleging that he has exercised wrongful dominion and control over "specific monies" that were held in Capital's bank account. Ms. Kranjac claims that she is entitled to an award that "requires [Mr. Kranjac] and KTP to reimburse Capital for misappropriated funds in the amount of $297,769, plus interest ..." (Resp. PHB at p. 49).

318. As stated above in paragraph 281, under Delaware law, "[c]onversion is 'any distinct act of dominion wrongfully exerted over the property of another, in denial of the plaintiff's right, or inconsistent with it.'" *Kuroda*, 971 A.2d at 889 (quoting *Drug, Inc. v. Hunt*, 168 A.2d 87, 93 (Del. 1933)).

319. It is uncontroverted that on September 15, 2022 Mr. Kranjac transferred the sum of $297,000 from Capital's bank account to his law firm, KTP. He did so against Ms. Kranjac's objection made since March 24, 2022 (Ex. R-62) and without Majority

Approval. (Tr. 1, 328:10-13; Tr. 2, 651:17-24; *see* Exs. R-15, R-50, R-52). He has refused to return those monies despite repeated demands. (*Id.*).

320. Mr. Kranjac defends his action of unilaterally withdrawing monies on the ground that all monies withdrawn were applied to satisfy unpaid invoices issued by KTP for rendering legal services to the Dynamk LLCs. (Tr. 1, 332:4-333:22; Cl. PHB at p. 43). While Mr. Kranjac testified that he had obtained the consent of the other Members of the Dynamk LLCs at that time, Messrs. Vogt and Mahler, to pay the invoices (Tr. 1, 332:4-333:19), he did not produce any documentary evidence substantiating such consent.

321. Even if his testimony that he had obtained the consent of the other Members is unpersuasive, Mr. Kranjac urges dismissal of his sister's conversion claim on procedural grounds as well; he argues that Ms. Kranjac has no standing to bring that claim directly against him because any claim to those monies may only be asserted by Capital inasmuch as those monies allegedly belong to Capital and were transferred from Capital's bank account. (Cl. Responses I at §§ 14, 15).[123]

322. Resolving this issue, in the same manner that Mr. Kranjac's conversion claim against his sister was resolved as discussed above in Section V.L, requires the application of the test established in the *Tooley* case. Under the first prong of the *Tooley* test, Ms. Kranjac must demonstrate that the duty breached was owed to her and that she can prevail without showing an injury to Capital. Under the second prong of the *Tooley* test, Ms. Kranjac must show that she would be entitled to the entire recovery rather than a *pro rata* portion of the recovery as an indirect benefit according to her Membership Interest. "Claims are treated as derivative when they naturally assert that the corporation's funds have been wrongfully depleted." *Clifford Paper*, 2021 WL 2211694, at *8.[124]

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[123] Given Mr. Kranjac's justifiable insistence that "Delaware law must apply to the claims set forth above" including conversion (*see* Cl. Responses I at § 6), it is curious that the only cases cited by Mr. Kranjac in support of his standing argument were decided by a Delaware court applying Illinois law and are therefore inapposite to the issue at hand. *See International Business Machines Corp. v. Comdisco, Inc.*, 1993 WL 259102, *24 (Superior Court of Delaware, New Castle County June 30, 1993); *International Business Machines Corp. v. Comdisco, Inc.*, 1991 WL 269965, 1324 (Superior Court of Delaware, New Castle County December 4, 1991. (*See* Cl. Responses I at §§ 14, 15).

[124] As discussed above in paragraph 286, a "diversion-of-payments claim is quintessentially derivative." Where it is the *Company's* funds that are alleged to have been diverted, the harm caused by such diversion "flows directly to the Company, and only derivatively to its members [and] any recovery of such funds would flow first to the Company only then to be distributed *pro rata* to its members." *Clifford Paper*, 2021 Del. Ch. LEXIS 109 at *8; *see also* Dietrichson, 2017 WL 1400552, at *4–5 (explaining that any recovery for wrongful diversion of funds "would [run to] the Company, not [plaintiff who] would only receive his portion of recovery as an indirect benefit and *pro rata* according to his membership interest under the Operating Agreement." (internal citations omitted)).

323. Applying the *Tooley* test, Ms. Kranjac has been harmed indirectly as a Member of Capital and that harm arose only because of her Membership Interest in Capital. The injury to Ms. Kranjac is not independent of any injury to Capital stemming from Mr. Kranjac's misappropriation of Capitol's funds. According to Ms. Kranjac, her injury lies in the reduction in the value of her Membership Interest in Capital (and her residual interest in its distributions) "from 51% of the value of Capital as an ongoing franchise to essentially zero after taking into account the deadlock and damages resulting from [Mr. Kranjac's] material misconduct." (Resp. Responses I at §15). Should there be any monetary recovery, such recovery would accrue to Capital, rather than to any Members individually. Consequently, Ms. Kranjac's conversion claim is a derivative claim and cannot be asserted directly against Mr. Kranjac.[125]

324. Respondents take the alternative position that Ms. Kranjac "can maintain" a derivative action on behalf of Capitol under the Delaware LLC Act which provides that the authority to manage a limited liability company's affairs is defined by its operating agreement. 6 *Del. C.* § 18-402. (Resp. Responses I at §15). While there is no question that Ms. Kranjac as the holder of the "Majority Approval of the Members" may commence any arbitration proceedings involving Capital (*see* Ex. R-2/C-66 at § 6.01(B)), she has not in fact brought any derivative claims on its behalf. Neither have Respondents submitted any legal authority in support of the power of a court or an arbitrator to turn a direct claim into a derivative claim without an amendment to the pleadings. Respondents amended their answers, affirmative defenses, and counterclaims three times in response to Claimant's filing of amended and restated statements of claim and never asserted any derivative counterclaims on behalf of the Dynamk LLCs in their responsive pleadings.

325. Even if the conversion claim had been brought by Ms. Kranjac derivatively on behalf of Capital, Mr. Kranjac raises another procedural deficiency relating to the entity against whom the conversion claim is brought. It is undisputed that it was KTP, Mr. Kranjac's law firm, which initially received the monies transferred from Capital's bank account.[126] The monies were deposited into the account of KTP which provided

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[125] Having argued in favor of a *Tooley* analysis of Claimant's conversion claim, Respondents appear to abandon the application of the *Tooley* test to Ms. Kranjac's conversion counterclaim, maintaining that Ms. Kranjac has the authority to assert a claim on her own behalf for damages to her interest in Capital which have allegedly been caused by her brother's conversion of Capital's assets. See *Alixpartners, LLP v. Mori,* 2019 Del. Ch. LEXIS 1373, at *20-21 (Del. Ch. Nov. 26, 2019) (explaining that standing under Delaware law requires the existence of an "injury in fact") (quoting *Historical Soc'y v. City of Dover Planning Comm'n*, 838 A.2d 1103, 1110 (Del. 2003)). Respondents' reliance on these Delaware decisions is misplaced because neither case presents facts analogous to the situation here. *See Alixpartners,* 2019 Del. Ch. LEXIS 1373, at *20-21 (claims against former director for breach of confidentiality provision in LLP Agreement, misappropriation of trade secrets, and conversion were brought by the partnerships themselves and not individual partners); *Historical Soc'y*, 838 A.2d at 1114 (individual landowners had standing to challenge determination of Planning Commission).

[126] Mr. Kranjac's claim that "[t]here is no evidence that Mr. Kranjac received those monies" (Cl. Responses I at §§ 14, 15) is, however, undercut by his statement that "[h]is firm is not the proper party"

and billed for the services generating the invoices for payment of those monies. (Exs. R-63 through R-74). Consequently, the conversion claim as asserted directly by Counterclaimant Kranjac against Mr. Kranjac fails as a matter of law.

326. Lastly, Delaware law provides another ground for denying Ms. Kranjac's conversion claim: the claim is duplicative of Counterclaimants Kranjac's and Vogt's breach of contract claim. Where the plaintiff's claim arises solely from a breach of contract, the plaintiff "generally must sue in contract, and not in tort." *Kuroda*, 971 A.2d at 889, quoting *Data Mgmt. Internationale, Inc. v. Saraga,* 2007 WL 2142848, at *3 (Del.Super.Ct. July 25, 2007) ("In preventing gratuitous 'bootstrapping' of contract claims into tort claims, courts recognize that a breach of contract will not generally constitute a tort.") (citations omitted). Thus, in order to assert a tort claim along with a contract claim, the plaintiff must generally allege that the defendant violated an independent legal duty, apart from the duty imposed by contract. (*Id.*). This, Ms. Kranjac has not done.

327. Respondents remove any doubt about the duplicative nature of the conversion claim brought against Mr. Kranjac with their averment that "Mr. Kranjac's intentional misconduct -- including his willful misappropriation of funds from Capital's bank account without consent ... – constitute[s] material breaches of the 2020 [LLC Agreements]." (Resp. PHB at p. 44; Counterclaim at ¶ 53). Even more specifically, Respondents contend that Mr. Kranjac's alleged misappropriation "violates Sections 6.01(A), 6.01(B), 6.02, 6.03, 6.04, 6.05, and 7.04 of the 2020 [LLC Agreements]."[127] (Resp. Responses I at § 14). Moreover, Mr. Kranjac had at all times "total fiduciary responsibility for the safekeeping and use of all funds and assets of the Company" and was contractually prohibited from seeking to "employ such funds in any manner except for the benefit of the Company." (Ex. R-2/C-66 at § 7.04).

328. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimant Kranjac, directly and individually, against Mr. Kranjac for conversion is hereby denied with prejudice.

[for bringing a claim based on the non-payment of legal bills] because "his compensation [from the Dynamk LLCs] would be tied to work performed by his firm." (Cl. Responses II at §1).

[127] As in the case of Claimant's conversion claim against Ms. Kranjac, she fails to establish that her conversion claim falls into the narrow exception to the general rule prohibiting claims for the conversion of money unless such money is "specifically identifiable" (*Kuroda*, 971 A.2d at 889), notwithstanding the lone reference to the "specific monies" that are the subject of her conversion counterclaim. (Resp. PHB at p. 49). Thus, on this additional ground, Ms. Kranjac's conversion claim fails.

E. Fraud Counterclaim of Counterclaimant Kranjac (Fifth Counterclaim)

329. In the Fifth Counterclaim, Counterclaimant Kranjac claims that Mr. Kranjac committed fraud[128] when he made material misrepresentations including "issuing grossly overstated invoices to Capital for services purportedly provided and knowingly misrepresenting the time he purportedly spent on work for Capital and [the DSL Fund]'s portfolio companies." (Resp. PHB at pp. 46-47; *see* Exs. R-63 through R-74). Ms. Kranjac argues that she justifiably relied upon her brother's false representations regarding the accuracy and reasonableness of these invoices in authorizing their payment and has been consequently harmed as a Member of each of the Dynamk LLCs. (Resp. PHB at p. 47).

330. Again, without reaching the merits of her counterclaim as to whether KTP's billing for legal services rendered to Capital and the DSL Fund's portfolio companies constituted fraud, Ms. Kranjac's fraud counterclaim fails for the same reason that her conversion counterclaim fails: She "has been consequently harmed as a member of each of the Dynamk [LLCs]." [Emphasis added.] (Resp. PHB at p. 47). Thus, the harm caused by Mr. Kranjac's purported overbilling flows directly to the Dynamk LLCs, and only derivatively to its Members. In the same way, any recovery of such funds would flow first to the Dynamk LLCs only then to be apportioned *pro rata* to its members. *Clifford Paper*, 2021 WL 2211694, at *8; *see also* Dietrichson, 2017 WL 1400552, at *4–5. Delaware law is clear that direct claims are available only where the member has suffered damage that is independent of any damage suffered by the limited liability company. *See Kuroda*, 971 A.2d at 887, citing *Tooley,* 845 A.2d at 1033.

331. Moreover, the same additional procedural deficiency that besets Ms. Kranjac's conversion counterclaim as discussed above in paragraph 325 is present here. Even if the fraud counterclaim had been brought by Ms. Kranjac derivatively on behalf of Capital, it is undisputed that it was KTP, Mr. Kranjac's law firm, with whom Capital contracted to provide legal services and it was KTP that issued the invoices for such services and received monies, at least initially, in payment therefor. (Exs. R-63 through R-74). Consequently, the fraud counterclaim as asserted directly by Ms. Kranjac against Mr. Kranjac fails as a matter of law.

332. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimant Kranjac, directly and individually, against Mr. Kranjac for fraud is hereby denied with prejudice.

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[128] The Parties agree that "[a] claim for fraud requires (i) a false representation, (ii) the defendant's knowledge of or belief in its falsity or the defendant's reckless indifference to its truth, (iii) the defendant's intention to induce action based on the representation, (iv) reasonable reliance by the plaintiff on the representation, and (v) causally related damages." *Trifecta Multimedia Holdings*, 318 A.3d at 463. (Cl. PHB at pp. 38-39; Resp. Responses I at § 6).

F. Counterclaim of Counterclaimants Kranjac, Vogt, Latapie and Davis for Defamation (Sixth Counterclaim)

333. For their Sixth Counterclaim, Counterclaimants interpose a counterclaim for defamation[129] based on the publication of numerous false statements made by Mr. Kranjac since early 2021, accusing them of wrongdoing and of conspiring against him or "freezing him out" of Dynamk. He has specifically made false statements about his sister to other Counterclaimants and to third parties, both orally and in writing. (*See, e.g.*, Ex. R-27 (stating that Ms. Kranjac "no longer wanted me as a partner" and "froze me out"), Ex. R-28 (stating that "investors and others" have been "damaged by Daniella's unlawful actions"), Ex. R-37 (stating that "[y]ou're basically using my money to fund your oppression of me"), Ex. R-43 (memorializing Mr. Kranjac's "barrage and verbal abuse" during due diligence call), Ex. R-46 (accusing Ms. Kranjac of "chang[ing] all processes to make certain Dynamk fails")). Counterclaimants complain that Mr. Kranjac's defamatory statements have irreparably harmed Ms. Kranjac's reputation in the eyes of her fellow Members, Dynamk employees, and third parties (including but limited to Dynamk's advisors, vendors, investors and portfolio companies).

334. Mr. Kranjac does not deny making such statements for the evidentiary record is replete with documentary evidence that such statements were made. Nor does he challenge Counterclaimants' view that such statements are false or mount any defense other than Counterclaimants' failure to establish the element of injury sustained by them as a result of such false statements. (*See* Cl. PHB at p. 42). For, as Mr. Kranjac points out, no evidence was adduced at the Hearing quantifying such reputational harm. While Counterclaimants request an award of compensatory damages "on their counterclaims in excess of $10,000,000" (Resp. PHB at p. 49), they do not specify the portion of such damages attributable to Mr. Kranjac's defamatory statements. (*See* Resp. Proposed Order at (v)).

335. Nonetheless, Counterclaimants are not limited to requesting relief in the form of monetary damages on their fraud counterclaim. Both sides request non-monetary relief in the form of specific performance or declaratory relief so long as such non-monetary relief falls "within the scope of the agreement of the parties." (*See* Cl. PHB at pp. 45-46; Cl. Responses II at § 6; Resp. PHB at pp. 49-50; Resp. Responses I at § 22; Resp. Proposed Order at ¶ (viii); Resp. Responses II at § 5).[130]

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[129] As set forth above in paragraph 260, under Delaware law, "the elements of defamation are: (1) defamatory communication; (2) the publication; (3) reference to the plaintiff; (4) third party's understanding of the communication's defamatory character; and (5) injury." *Preston Hollow Capital*, 216 A.3d at 9.

[130] In the context of a breach of contract claim, even if compensatory damages cannot be demonstrated, "likely remedies granted by a Delaware court would involve declaratory or equitable relief." *Garfield*, 277 A.3d at 329. It is more accurate to describe the injury element as "a causally related injury that warrants a remedy, such as damages or in an appropriate case, specific performance." (internal citations

336. Thus, in line with the agreement of the Parties and Delaware law, Counterclaimants have requested an award ordering, *inter alia*, Mr. Kranjac to cease and desist from publishing any false statements which reference, or relate to, Dynamk, Avant, their respective portfolio companies, "Dynamk II," "Dynamk- Avant," and/or any of the Counterclaimants.[131] (Resp. Proposed Order at ¶ (viii) j).

337. In light of the uncontroverted allegations concerning Mr. Kranjac's publication of false and defamatory statements, the Arbitrator declares, effective from the date of this Partial Final Award, that:

> Declaration #9:
>
> Claimant shall cease and desist from publishing any false and defamatory statements which reference, or relate to, Dynamk, Avant, their respective portfolio companies, "Dynamk II," "Dynamk-Avant," and/or any of Respondents.

338. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac, Vogt, Latapie and Davis against Mr. Kranjac for defamation, insofar as it seeks declaratory relief as set forth above in Declaration #9, is hereby granted.

G. Counterclaim of Counterclaimant Kranjac for Tortious Interference with (Prospective) Business Relations (Seventh Counterclaim)

339. Counterclaimant Kranjac interposes against Mr. Kranjac, as a Seventh Counterclaim, tortious interference with prospective business relations[132] alleging that her brother's intentional misconduct, including but not limited to (1) his misrepresentations to investors, advisors, and other third parties regarding his unilateral authority to act on behalf of Dynamk, (2) his threats to Dynamk's investors, advisors and vendors, (3) his publication of Dynamk's confidential and proprietary information in the 2024 NYSC Lawsuit, and (4) his public misstatements regarding his sister, Dynamk and Avant, have interfered with, and injured the business relationships of

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omitted). (*Id.*). The same can be said about a claim sounding in tort, such as fraud, which likewise requires an injury element.

[131] While Respondents style their request as "declaratory relief," the requested relief appears to be a request for an award for specific performance ordering Mr. Kranjac to "cease and desist" from publishing any false statements. (*See* Resp. Proposed Order at ¶ (viii) j).

[132] Notwithstanding that all Counterclaimants are listed as the parties bringing the tortious interference claim against Mr. Kranjac (Remaining Claims Chart at p. 2), Counterclaimants clarified that Ms. Kranjac is the only Counterclaimant asserting such claim against Mr. Kranjac. (Resp. Responses I at § 3). Counterclaimants also clarified in their post-hearing briefing that Ms. Kranjac's tortious interference claim under Delaware law is tortious interference with prospective business relations rather than tortious interference with contractual relations. (*See* Resp. Responses II at § 4).

Counterclaimants and Dynamk. As Ms. Kranjac further testified, prospective investors declined to invest in, co-invest with, or become involved with Dynamk and Avant due to her brother's ongoing material misrepresentations. (Tr. 2, 656:25-658:21). Ms. Kranjac claims that Mr. Kranjac's intentional misconduct has damaged each of the Dynamk LLCs and one or more of the Counterclaimants and is the proximate cause of the loss of business opportunities. (Counterclaim at ¶ 82; Tr. 2, 656:21-658:21).

340. Under Delaware law, "[t]o prove a claim for tortious interference with prospective business relations, a plaintiff must show: (1) a reasonable probability of a business opportunity; (2) intentional interference by a defendant with that opportunity; (3) proximate causation; and (4) damages." *Beard Research, Inc. v. Kates*, 8 A.3d 573, 607-08 (Del. Ch. 2010) (citations omitted); *see also Kuroda*, 971 A.2d at 886-887 (citations omitted).

341. Additionally, as discussed above in Sections V. L (Conversion), VI. D (Conversion) and VI.E (Fraud), Delaware law is clear that direct claims are available only where the member of a limited liability company has suffered damage that is independent of any damage suffered by the company. *Kuroda*, 971 A.2d at 887, citing *Tooley*, 845 A.2d at 1033. In an effort to meet this requirement, Ms. Kranjac contends that she has personally suffered direct and demonstrable harm stemming from her brother's "intentional and unjustified interference with [] contracts and relationships [between Dynamk and each of its Members, investors, accountants, administrators, advisors, banks, consultants and tax preparers which] has continued unabated for a period of years resulting in significant financial and reputational damages to [Ms. Kranjac] as well as other [Counterclaimants]." (Resp. Responses I at § 3).

342. Specific examples of personal harm Ms. Kranjac allegedly sustained due to her brother's unjustified interference with prospective business relations include lost profits/return on investment which Ms. Kranjac expected to receive from Dynamk and Avant, which has been significantly reduced due to her brother's willful and material misconduct. (Resp. Responses II at § 2). Thus, Ms. Kranjac has not shown that she can prevail on her tortious interference claim without showing an injury to Dynamk and Avant. *See Clifford Paper*, 2021 Del. Ch. LEXIS 109 at *8.

343. Because all the damage that Ms. Kranjac allegedly suffered as a result of her brother's allegedly tortious conduct only affected her through her interests in Dynamk and Avant,[133] any claim for those damages must be asserted by Dynamk and/or

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[133] Counterclaimants submitted in the post-hearing stage of this arbitration a summary chart setting forth their calculation for their damages. (*See* Resp. Responses I at Ex. 2). A portion of those damages is characterized as "lost commitments" to Avant Bio Fund II LP which presumably represents the lost profits/return on investment Ms. Kranjac was allegedly denied as the result of Mr. Kranjac's intentional misconduct. (*Id.* at p. 2). Nowhere in the summary chart is there listed any damages sustained by Ms. Kranjac individually apart from the injury that flows to her as a result of her interests in Dynamk/Avant.

Avant, and Ms. Kranjac has not properly asserted a derivative claim on behalf of any of the Dynamk LLCs or the Avant Entities.[134]

344. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimant Kranjac, directly and individually, against Mr. Kranjac for tortious interference with (prospective) business relations is hereby denied with prejudice.

H. Counterclaim of Counterclaimants Kranjac and Vogt for Contractual Indemnification (Eighth Counterclaim)

345. For the Eighth Counterclaim, Counterclaimants Kranjac and Vogt assert their right to be indemnified pursuant to Section 6.06(B) of the 2020 LLC Agreements for their costs and expenses incurred in connection with this arbitration.

346. As noted above in paragraph 232, the 2020 LLC Agreements provide that the Dynamk LLCs "shall indemnify the Members . . . against any loss or damage incurred by the Members by reason of any act or omission performed or omitted by them . . . in good faith on behalf of the Company and in a manner reasonably believed by the Members to be within the scope of the authority granted to them by this Agreement and in the best interests of the Company ..." (*See* Exs. R-1/C-65 and R-2/C-66 at § 6.06(B)). The Dynamk LLCs shall not, however indemnify any Member for any loss or damage incurred by reason of the Member's fraud, gross negligence, intentional misconduct or breach of the Members' fiduciary duty. (*Id.*).

347. All evidence presented at the Hearing confirms that actions taken by Ms. Kranjac and Mr. Vogt in response to Mr. Kranjac's willful and material misconduct were taken "in good faith on behalf of the Company and in a manner reasonably believed by the Members to be within the scope of the authority granted to them by this Agreement and in the best interests of the Company." All actions taken by Ms. Kranjac and Mr. Vogt were intended to limit liabilities caused by Mr. Kranjac's malfeasance and preserve Dynamk's ability to fulfill its obligations to the DLS Fund's limited partners.

348. Mr. Kranjac proffered no evidence that any loss or damage incurred by the Members was incurred by reason of the Member's fraud, gross negligence, intentional misconduct or breach of the Member's fiduciary duty. The only argument marshaled by Mr. Kranjac against Ms. Kranjac's and Mr. Vogt's indemnification counterclaim is

[134] As noted above in paragraph 324, just because Ms. Kranjac "can maintain" a derivative action on behalf of the Dynamk LLCs (there being no question that Ms. Kranjac as the holder of the "Majority Approval of the Members" may commence any arbitration proceedings involving the Dynamk LLCs (*see* Ex. R-2/C-66 at § 6.01(B)), does not mean that such a derivative action has been brought on their behalf in this arbitration. Nor has any action been brought directly or derivatively on behalf of any of the Avant Entities which were dismissed with prejudice as parties to this arbitration by the Arbitrator in her decision on Respondents' Dispositive Motion. (P.O. No. 7 at § VIII.G).

their failure "[f]or each and every claim they have, [to] show they were damaged." (Cl. PHB at p. 42).

349. Ms. Kranjac and Mr. Vogt are not, however, seeking a monetary award against Mr. Kranjac or the Dynamk LLCs for indemnification.[135] Rather, Ms. Kranjac and Mr. Vogt seek a declaration that each of them (and Mr. Latapie, Ms. Davis, and any other persons engaged in authorized acts on behalf of the Dynamk LLCs) are entitled to full indemnification from the Dynamk LLCs with respect to (a) each of the actions, omissions, claims, demands or prayers for relief, alleged by Mr. Kranjac in the Third Amended Claim, and (b) any damages resulting from Mr. Kranjac's fraud, gross negligence, intentional misconduct, and breaches of fiduciary duties. (*See* Resp. Proposed Order at ¶ (vii)).[136]

350. In light of the evidence adduced at the Hearing substantiating Mr. Kranjac's willful misconduct and breaches of his fiduciary duty, the Arbitrator declares that:

> Declaration #10:
>
> Pursuant to Section 6.06(B) of the 2020 LLC Agreements, each of Respondents (and Mr. Latapie, Ms. Davis, and any other persons engaged in authorized acts on behalf of the Dynamk LLCs) are entitled to full indemnification from Capital and Advisors with respect to any loss or damage incurred by reason of Mr. Kranjac's fraud, gross negligence, intentional misconduct and breach of his fiduciary duty.

351. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac and Vogt against Mr. Kranjac for contractual indemnification as set forth above in Declaration #10 as modified by the Arbitrator, is hereby granted.

I. Declaratory Judgment (Ninth Counterclaim)

352. For their Ninth Counterclaim, Counterclaimants assert a counterclaim for a declaratory judgment confirming certain rights and obligations of Mr. Kranjac and

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[135] An award of monetary damages is one possible form of relief that a plaintiff can receive for a breach of contract. If warranted, however, a plaintiff may obtain a decree of specific performance or other equitable relief. *See Garfield*, 277 A.3d at 329; *Eureka VIII*, 899 A.2d 95, 107, 113–16 (2006).

[136] Respondents likely recognize that indemnification pursuant to Section 6.06(B) of the 2020 LLC Agreements is an obligation of the Dynamk LLCs, not any individual Member. (*See* Exs. C-65/R-1 and C-66/R-2 at § 6.06(B); Tr. 1, 280:23-281:2). Mr. Kranjac also recognizes that the right of a Member to indemnification if exercised would be paid by the Dynamk LLCs if the Member were to prevail. (Tr. 1, 280:23-281:18). While Respondents do not include this request as part of their entitlement to declaratory relief, it appears that what they request is a declaration rather than an award of compensatory damages or injunctive relief requiring specific performance by the Dynamk LLCs of their indemnification obligation. (*See* Resp. Proposed Order at ¶¶ (vii) – (viii)).

Counterclaimants.[137] As stated above in paragraph 107, any declaration made by the Arbitrator is made within the section of this Partial Final Award discussing the dispute giving rise to the desire for such declaration after considering the competing versions, if any, proposed by each side.

353. Mr. Kranjac's sole defense against many of the counterclaims asserted against him by one or more of the Counterclaimants is that they have not met their burden of establishing such counterclaims under Delaware law "[f]or each and every claim they have, Respondents must show they were damaged [and] as no element for damage has been shown, Respondents' claims must be rejected." (Cl. PHB at p. 42).

354. Counterclaimants are not, however, limited to requesting relief in the form of monetary damages on their counterclaims. Both sides request non-monetary relief in the form of specific performance or declarations so long as such non-monetary relief falls "within the scope of the agreement of the parties." (*See* Cl. PHB at pp. 45-46; Cl. Responses II at § 6; Resp. PHB at pp. 49-50; Resp. Responses I at § 22; Resp. Proposed Order at ¶ (viii); Resp. Responses II at § 5).

355. Moreover, in the context of a breach of contract claim, even if compensatory damages cannot be demonstrated, "likely remedies granted by a Delaware court would involve declaratory or equitable relief." *Garfield*, 277 A.3d at 329. It is more accurate to describe the injury element as "a causally related injury that warrants a remedy, such as damages or in an appropriate case, specific performance." (internal citations omitted) (*Id.*). The same can be said about claims sounding in tort, which likewise require an injury element.

356. Accordingly, for the foregoing reasons, the counterclaim of Counterclaimants Kranjac, Vogt, Latapie and Davis against Mr. Kranjac for declaratory judgment is hereby granted pursuant to Declarations #1 through #10 as set forth below in paragraph 369(R).

VII. RETENTION OF JURISDICTION

357. Mr. Kranjac has asked the "AAA to retain jurisdiction so, upon review of the books, records, and systems of Dynamk and Avant, he may apply for a monetary award of damages, which will also include the monies Ms. Kranjac unlawfully diverted from [those] entities." (Cl. PHB at p. 46; *see also* Cl. Responses I at § 22; Cl. Responses II at § 6). Respondents have not consented to such retention.

358. As a general matter, once an arbitral tribunal has ruled on the claims submitted to it by the parties, it becomes *functus officio* and lacks any further power to act, except as has been otherwise agreed by the parties. The ICDR Rules are silent as to any

[137] "A declaratory judgment is better understood as a remedy than a sort of substantive claim or action." *Humanigen*, 238 A.3d at 202.

general retention of jurisdiction. Mr. Kranjac has submitted no legal authority that provides any authority for the Arbitrator to retain jurisdiction, absent agreement of the parties, which is lacking here.

359. Moreover, the Arbitrator finds that Mr. Kranjac's request that the Arbitrator retain jurisdiction is nothing more than his third attempt to engage in discovery after discovery was concluded on August 9, 2024. Finding that the discovery obtained during the tenure of Mr. Kranjac's former counsel was inadequate, his new counsel requested that the Hearing be adjourned for eight months while the Parties engaged in further discovery, notwithstanding that discovery had concluded by agreement of the Parties. The Arbitrator declined to re-open discovery as explained above in paragraphs 31-37.

360. Refusing to accept that there is no right to discovery in arbitration or the careful balancing of interests undertaken by the Arbitrator between conducting an efficient (not "accelerated") process (Post-Closing Memo at p. 1) and safeguarding the opportunity for each side to present their claims and defenses fairly, Mr. Kranjac again requested in Claimant's Post-Closing Motion, after the evidentiary record was closed, an order compelling Respondents to allow Mr. Kranjac to have access to the books and records of the Dynamk LLCs, making clear that Claimant's Post-Closing Motion was impelled by the denial of "additional time to conduct proper discovery." (Post-Closing Memo at p. 1). The Arbitrator declined to consider Claimant's Post-Closing Motion for the reasons explained above in paragraphs 60-63.

361. Continuing his end-run around the Arbitrator's ruling denying the re-opening of discovery, Mr. Kranjac requests that the Arbitrator retain jurisdiction so that he can re-engage in discovery for the purpose of determining the amount of a monetary award to which he believes he is entitled. The Arbitrator declines to retain jurisdiction on any issue other than all issues relating to the costs and expenses of the Parties, including attorneys' fees, incurred in this proceeding, absent the consent of both sides, which is lacking here.

VIII. ATTORNEYS' FEES AND OTHER COSTS

362. The Parties request that all fees and costs incurred in this arbitration, including all fees and deposits previously advanced by any of them, be assessed against the other side, pursuant to the authority conferred upon the Arbitrator under Article 37 (Costs of Arbitration) of the ICDR Rules, which provides in relevant part:

> The arbitral tribunal shall fix the costs of arbitration in its award(s). The tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

363. While the 2020 LLC Agreements are silent on whether an award rendered by an arbitrator pursuant to Section 10.04 thereof may include an award of the costs of

arbitration, including attorneys' fees (*see* Exs. C-65/R-1 and C-66/R-2 at § 10.04), all Parties have requested an award of attorneys' fees in their respective prayer for relief. (Cl. Responses II at § 6; Counterclaim at p. 58).

364. Accordingly, the Arbitrator is authorized to make an award of attorneys' fees and other arbitration costs.

365. At the conclusion of the Hearing, the Parties agreed, and the Arbitrator concurred, that all issues relating to the costs and expenses of the Parties incurred in this proceeding, including attorneys' fees, will be deferred until the decision on the merits of the claims/counterclaims is delivered to the Parties. At such time, in consultation with the Parties, the Arbitrator will set a schedule for submissions relating to all such costs and expenses. (Tr. 3, 389:13-17).

366. In line with the aforestated agreement, the Parties are invited to make written simultaneous submissions of not more than ten (10) pages, due three (3) weeks from the date of this Partial Final Award in support of an award of attorneys' fees and other costs incurred in this arbitration.[138] In the absence of any fee-shifting provision in the 2020 LLC Agreements, such submissions should explain why such fees and other costs should be apportioned in any manner other than to have them be borne equally by each side, and the fees and costs of their own counsel borne by each side. Depending on the Arbitrator's ruling, a further submission of itemized fees and costs may be required, in which case, in consultation with the Parties, the Arbitrator will set a schedule for submission of such itemized fees and costs.

IX. DISPOSITIVE PART OF THIS PARTIAL FINAL AWARD

367. This Partial Final Award is based upon careful evaluation of the evidentiary record, and the facts and legal authorities presented (including in post-hearing submissions). To the extent the Arbitrator's conclusions differ from any Party's position, any such difference is the result of the Arbitrator's determinations of burden of proof, relevance, weight of the evidence, credibility of the witnesses, and legal authorities.

368. The Arbitrator further notes that she has considered all arguments and evidence put forward by the Parties in relation to the claims, counterclaims, defenses, and requests for relief (including equitable and declaratory relief) set forth in the Parties' pleadings, whether or not they are explicitly addressed in this Partial Final Award. Any argument not expressly addressed in this Partial Final Award was found to be

[138] The Parties are silent as to the basis of their requests for an award of attorneys' fees and other costs of arbitration. (*See* Third Amended Claim; Counterclaim).

unavailing or unnecessary to consider, and any claim, counterclaim or request not expressly granted herein is denied.[139]

369. For the reasons stated in this Partial Final Award, the Arbitrator awards as follows:

A. **DENIES** with prejudice Claimant's claim against Respondent Kranjac for breach of contract **(First Count)**;

B. **DENIES** with prejudice Claimant's claim against Respondents Kranjac, Vogt, Latapie and Davis for breach of fiduciary duty **(Second and Third Counts)**;

C. **DENIES** with prejudice Claimant's claim against Respondents Kranjac and Vogt for shareholder oppression **(Fourth Count)**;

D. **DENIES** with prejudice Claimant's claims against Respondents Kranjac, Vogt, Latapie and Davis for:

   i. breach of the duties of care and loyalty **(Fifth Count)**;
   ii. *ultra vires* acts **(Sixth Count)**;
   iii. common law indemnification **(Seventh Count)**;

E. **DENIES** with prejudice Claimant's claim against Respondents Kranjac and Vogt for contractual indemnification **(Seventh Count)**;

F. **DENIES** with prejudice Claimant's claim against Respondent Kranjac for breach of contract **(Eighth Count)**;

G. **DENIES** with prejudice Claimant's claim against Respondents Kranjac, Vogt, Latapie and Davis for civil conspiracy **(Ninth Count)**;

H. **DENIES** with prejudice Claimant's claim against Respondents Kranjac and Vogt for contractual fraud **(Tenth Count)**;

I. **DENIES** with prejudice Claimant's claim against Respondent Kranjac for:

   i. fraudulent inducement **(Eleventh Count)**;
   ii. libel/defamation *per se* **(Twelfth Count)**;
   iii. breach of contract **(Thirteenth Count)**; and

[139] For the avoidance of doubt, such requests include, but are not limited to, Claimant's request for an award ordering "specific performance" relating to his belief that "DLA Piper is conflicted from representing Dynamk and Avant" without any indication of the "performance" he seeks. (Cl. Responses II at § 6).

iv. conversion.[140]

J. **DENIES** with prejudice the counterclaim of Counterclaimants Kranjac and Vogt. directly and individually, against Mr. Kranjac for breach of contract (**First Counterclaim**);

K. **DENIES** with prejudice the counterclaim of Counterclaimants Kranjac and Vogt, directly and individually, against Mr. Kranjac for breach of fiduciary duty (**Second Counterclaim**);

L. **DENIES** with prejudice the counterclaim of Counterclaimants Kranjac and Vogt against Mr. Kranjac for breach of the implied covenant of good faith and fair dealing (**Third Counterclaim**);

M. **DENIES** with prejudice the counterclaims of Counterclaimant Kranjac, directly and individually, against Mr. Kranjac for (i) conversion (**Fourth Counterclaim**), and (ii) fraud (**Fifth Counterclaim**);

N. **GRANTS** the counterclaim of Counterclaimants Kranjac, Vogt, Latapie and Davis against Mr. Kranjac for defamation insofar as it seeks declaratory relief requested by such Counterclaimants as modified and set forth below in paragraph R(ix) (**Sixth Counterclaim**);

O. **DENIES** with prejudice the counterclaim of Counterclaimant Kranjac, directly and individually, against Mr. Kranjac for tortious interference with (prospective) business relations (**Seventh Counterclaim**);

P. **GRANTS** the counterclaim of Counterclaimants Kranjac and Vogt for contractual indemnification insofar as it seeks declaratory relief requested by such Counterclaimants as modified and set forth below in paragraph R(x) (**Eighth Counterclaim**);

Q. **GRANTS** in part the counterclaim of Counterclaimants Kranjac, Vogt, Latapie and Davis against Mr. Kranjac for declaratory judgment (**Ninth Counterclaim**),[141] as modified and set forth below in paragraph R;

R. **DECLARES** as follows:

i. Declaration #1:

[140] As noted in footnote 115, conversion is not among the claims enumerated in the Counts set forth in the Third Amended Claim or the Remaining Claims Chart. Nonetheless, Claimant briefed the claim in his post-hearing briefing and confirmed that the claim has not been withdrawn. (Cl. PHB at pp. 46-47; Cl. Responses I at § 4).

[141] References to Counts in this paragraph 369 refer to the Counts asserted in the Third Amended Claim.

Claimant currently holds a forty-nine percent (49%) Membership Interest in Capital. The responsibilities for conducting the day-to-day management and operations of each of the Dynamk LLCs shall continue to be divided (not necessarily equally) between Claimant and Respondent Kranjac as co-Managers pursuant to Section 6.01(A) of the 2020 LLC Agreements.

ii. Declaration #2:

Given the separate businesses of the DSL Fund and Avant Bio, and that the DSL Fund has reached its "Full Investment Date" and the end of its "Investment Period" under the 2021 LPA and will no longer invest in new portfolio companies, the Avant Entities are not similar to, or in direct or indirect competition with any activities of the DSL Fund.

iii. Declaration #3:

Claimant does not have any right, title or interest, in Avant, its affiliates, or any other business ventures of any kind, nature and description affiliated with any of Avant or its affiliates.

iv. Declaration #4:

Claimant is not authorized to unilaterally withdraw or expend funds (a) from any bank account of Capital without Majority Approval of the Members of Capital; or (b) from any bank account of Advisors (or any bank account of the DLS Fund or any of its co-investment vehicles or portfolio companies) without Majority Approval of the Members of Advisors.

v. Declaration #5:

Claimant has no unilateral authority to make any management determinations or decisions (a) on behalf of, or regarding, Capital, without Majority Approval of its Members, or (b) on behalf of, or regarding Advisors or the DLS Fund, without Majority Approval of Advisor's Members.

Claimant shall make no false representations or communications (i) on behalf of, or which reference, Dynamk Capital LLC (or any variation of such name or in combination with the name "Avant"), without Majority Approval of Capital's Members, or (ii) Dynamk Fund Advisors LLC, or Dynamk Life Sciences Fund, L.P. (or any variations

of such names or in combination with the name "Avant"), without Majority Approval of Advisor's Members.

vi. Declaration #6:

The parties to the 2020 LLC Agreements shall comply with Section 7.01 thereof in its entirety including the provision that "[a]ll Members and their duly authorized representatives shall have the right to inspect and copy any or all of the Company's books and records … during reasonable business hours upon three (3) business days' notice to the other Members, and shall have, on demand, true and full information of all matters affecting the Company." Such right of inspection and copying may be limited upon Majority Approval to "view-only" files constituting the Company's books and records accessible on the accounting platform used by the Company. Section 7.01 of the 2020 LLC Agreements as modified by this declaration shall continue in full force and effect.

vii. Declaration #7:

Claimant is not authorized to make any claims or commence litigation or arbitration proceedings (i) on behalf of, or involving, Capital without Majority Approval of the Members of Capital; or (ii) on behalf of, or involving, Advisors (or the DLS Fund) without Majority Approval of the Members of Advisors. Section 6.01(B) of the 2020 LLC Agreements as modified by this declaration shall continue in full force and effect.

viii. Declaration #8:

Except to the limited extent necessary to comply with applicable law (including a lawful subpoena or order issued by a court of competent jurisdiction), Claimant shall cease and desist from publishing any confidential and/or proprietary information which references, or relates to, Dynamk, Avant, their respective portfolio companies, and/or any of Respondents.

ix. Declaration #9

Claimant shall cease and desist from publishing any false and defamatory statements which reference, or relate to, Dynamk, Avant, their respective portfolio companies, "Dynamk II," "Dynamk-Avant," and/or any of Respondents.

x. Declaration #10:

Pursuant to Section 6.06(B) of the 2020 LLC Agreements, each of Respondents (and Mr. Latapie, Ms. Davis, and any other persons engaged in authorized acts on behalf of the Dynamk LLCs) are entitled to full indemnification from Capital and Advisors with respect to any loss or damage incurred by reason of Mr. Kranjac's fraud, gross negligence, intentional misconduct and breach of his fiduciary duty.

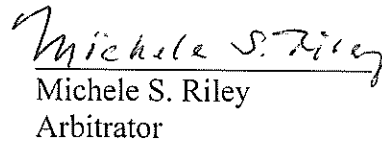
S. **DECLARES** that this Partial Final Award includes a determination of all issues submitted to the Arbitrator except for costs and expenses, including attorneys' fees, and that the Arbitrator shall retain jurisdiction to fix and apportion all such costs and expenses, and to render a later final award on such matter pursuant to Article 32(1) (Awards, Orders, Decisions and Rulings) of the ICDR Rules;

T. **ORDERS** the Parties to comply with the terms of the 2020 LLC Agreements as clarified or confirmed by the declarations of the Arbitrator set forth above in paragraph R; and

U. **ORDERS** the Parties to comply with the direction of the Arbitrator set forth above in Section VIII relating to submissions concerning an award of attorneys' fees and other costs and expenses of this arbitration.

The undersigned Arbitrator hereby certifies that, for the purposes of Article I of the New York Convention of 1958, on the Recognition and Enforcement of Foreign Arbitral Awards, this Partial Final Award was made in New York, New York, U.S.A.

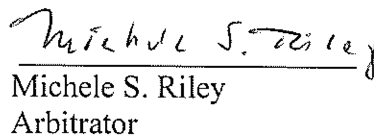
Dated: August 8, 2025
New York, New York



Michele S. Riley
Arbitrator

I, Michele S. Riley, do hereby affirm upon my oath as arbitrator that I am the individual described in and who executed this instrument which is my Partial Final Award.

Dated: August 8, 2025
New York, New York



Michele S. Riley
Arbitrator