

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SANJIV MEHRA, individually and in the right of and on :
behalf of The Kind Group LLC and EOS Products, LLC, :
 :
Plaintiff, :
 :
-against- :
 :
JONATHAN TELLER and SARAH SLOVER, :
 :
Defendants, and :
 :
THE KIND GROUP LLC and EOS PRODUCTS, LLC, :
 :
Nominal Defendants. :
 :
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**FIRST AMENDED
COMPLAINT**

Index No: 657027/2020

**Hon. Andrea Masley
IAS Part 48**

Plaintiff Sanjiv Mehra, individually and in the right of and on behalf of The Kind Group LLC (“Kind”) and EOS Products, LLC (“EOS Products”), by and through undersigned counsel, alleges the following against defendants Jonathan Teller and Sarah Slover.

INTRODUCTION

1. This is a derivative action to recover millions of dollars in company funds that defendant Jonathan Teller, a manager of Kind and CEO of EOS Products, improperly used to pay personal expenses, including, most significantly, over \$2.5 million paid to defend an ongoing lawsuit unrelated to Kind and brought against him and defendant Sarah Slover in the Delaware Court of Chancery. Teller intends to continue defending the Delaware lawsuit with company funds and specifically intends to pay outstanding legal bills totaling more than \$1 million with company money (in addition to the \$2.5 million already spent).

2. The use of Kind’s or EOS Products’ funds to defend the Delaware lawsuit violates each entity’s operating agreement, is inconsistent with principles of New York law, and is a violation of Teller’s fiduciary duties. The Delaware lawsuit relates to a shareholder dispute over

Teller's effort to dissolve a different company—non-party EOS Investor Holding Company LLC (“EOS Investor”), a Delaware LLC owned by Teller and plaintiff Sanjiv Mehra (and their associated entities)—so that Teller could eliminate Mehra's (and his associated trust's) control and economic rights under EOS Investor's operating agreement. The indemnity and advancement provisions in the operating agreements of Kind and EOS Products, on which Teller purports to rely to use company money to defend the Delaware lawsuit, do not apply to lawsuits between the members of EOS Investor or intra-company disputes (as opposed to claims by third parties). Teller is in violation of the agreements and his fiduciary duties in authorizing such payments for his own personal benefit.

3. Teller and Slover both signed “undertakings” to repay funds advanced on their behalf if it is determined they are not entitled to indemnification. Mehra, on behalf of Kind and EOS Products, seeks to enforce the repayment obligations in the “undertakings” in this action.

4. EOS's business consists of the manufacture and sale of a variety of lip balms, shave creams, and lotions, including a signature egg-shaped lip balm. For the decade prior to September 26, 2019, the date of Teller's challenged attempt to dissolve EOS Investor, Mehra and Teller were co-CEOs, and Mehra managed EOS's business to tremendous success. Since September 26, 2019, EOS Products' financial condition has declined to the point of near failure, and it is now losing millions of dollars each month, is saddled with millions of dollars of debt, and as of October 31, 2020, its assets were worth only about [REDACTED]¹ more than its liabilities. EOS Products is on the brink of defaulting on a secured revolving loan Teller caused it to incur. A default, which would be triggered by a single late payment or by insolvency, would cause

¹ Mehra has redacted the same information in this amended complaint that defendants proposed redacting in their motion to seal the original complaint (Motion Sequence 003), which remains pending at the time of filing. An unredacted copy of this amended complaint is being filed, under temporary seal, as an exhibit hereto.

Kind and EOS Products to suffer irreparable harm, as the lender will have the immediate right to take control of all the company's property and control all voting, control, managerial, and economic rights with respect to the business. Teller's improper use of company money to defend the Delaware lawsuit (or this action) and pay his personal expenses increases this very real risk of default and must be enjoined to prevent irreparable harm. Mehra's knowledge of the details of Kind's and EOS Products' current financial condition is based on records he obtained pursuant to a judgment in his favor, and against Kind, in a statutory books-and-records action, which Kind litigated for ten months while the business's financial condition continued to plummet and Teller continued to use the business's funds to pay personal expenses.

5. Mehra, on behalf of Kind and EOS Products, seeks, among other things, (i) to enjoin Teller (and Slover) from any further use of company money to defend the Delaware action or this action, and (ii) to require Teller (and Slover) to repay funds improperly used for their own benefit, including funds advanced on their behalf to defend the Delaware action.

THE PARTIES

6. Plaintiff Sanjiv Mehra is an individual residing in Scarsdale, New York. Mehra is a co-founder of EOS, along with Teller and another individual. Mehra individually holds about half of the Class B Common membership interests in Kind, as defined in Kind's operating agreement, which is attached as Exhibit 1 (the Seventh Amended and Restated Limited Liability Company Agreement of The Kind Group LLC, effective as of April 4, 2016 (the "Kind Operating Agreement")).

7. Defendant Jonathan Teller is an individual residing in New York, New York. Teller is a co-founder of EOS and holds about half of the Class B Common membership interests in Kind.

8. Defendant Sarah Slover is an individual residing in New York, New York. Slover is an employee of EOS Products.

9. Nominal defendants The Kind Group LLC (previously defined as “Kind”) and EOS Products, LLC (previously defined as “EOS Products”) are New York limited liability companies with their principal offices in New York City.

JURISDICTION AND VENUE

10. Jurisdiction is proper under CPLR §§ 301 and 302 and N.Y. LLC Law § 301. Teller resides in New York, New York, and Kind and EOS Products are New York limited liability companies with their principal places of business in New York, New York.

11. Venue is proper in New York County under CPLR § 503 because Teller, Kind, and EOS Products reside in New York County, and a substantial part of the events or omissions giving rise to the claims occurred in New York County.

FACTUAL ALLEGATIONS

I. Overview of the EOS Structure

12. The EOS business is operated primarily through nominal defendant EOS Products. The EOS business is owned primarily through two entities: non-party EOS Investor and nominal defendant Kind.

A. EOS Investor

13. EOS Investor, a Delaware LLC, is owned by Mehra, Teller, and their respective associated entities or trusts. EOS Investor is the company through which Mehra and Teller memorialized the terms of their business partnership. EOS Investor’s principal asset is its ownership interest of 100% of the “Preferred Interests” in Kind.

14. Teller and his associated entities own approximately 85% of EOS Investor’s membership interests. The other EOS Investor members associated with Teller are non-parties

Angry Elephant Capital, LLC and the Teller Children's 2015 Trust. Mehra, through his associated trust (the Sanjiv Mehra 2014 Irrevocable Trust (the "Mehra Trust")), owns the remaining 15% of EOS Investor's membership interests.

15. Under EOS Investor's operating agreement, Mehra and Teller share management control equally. Their shared-control arrangement included having Mehra and Teller as the sole members of EOS Investor's Board of Managers, each with one vote. Under EOS Investor's operating agreement, Teller cannot remove Mehra from the board without approval of 90% of the membership interests, which Teller does not control.

16. Their shared control was also memorialized by having EOS Investor set up to require approval of 90% of the membership interests whenever any approval or consent was required to be given by EOS Investor.

17. As to economic rights under EOS Investor's operating agreement, Mehra and Teller would split distributions fifty-fifty once distributions reached a certain level, and they agreed to honor those economic arrangements even if EOS Investor were to be dissolved.

18. On September 26, 2019, Teller purported to invoke a provision in EOS Investor's operating agreement to attempt to dissolve EOS Investor as part of a scheme to deprive Mehra of his control rights and his economic rights under EOS Investor's operating agreement. Mehra filed a lawsuit on October 10, 2019 in the Delaware Court of Chancery (captioned *Sanjiv Mehra et al. v. Jonathan Teller et al.*, C.A. No. 2019-0812-KJSM) alleging that the dissolution was invalid because Teller caused it in violation of (i) the terms of EOS Investor's operating agreement and (ii) Teller's fiduciary duties, under Delaware law, to EOS Investor and its members (the "Delaware Action"). As explained in detail in this complaint, Teller and Slover

are improperly using Kind's and EOS Products' funds for their personal defenses of the Delaware Action.

B. Kind

19. Kind's principal asset is its ownership in EOS Products.

20. Prior to September 26, 2019, Kind's membership interests were held as shown in the following chart. The Class B membership interests that Mehra and Teller held individually (as reflected in the chart) were separate from the control-sharing arrangements embodied in EOS Investor's operating agreement.

Class of Membership Interests in Kind	Holders of Membership Interests	Approx. Percentage of all Membership Interests
Preferred Interests	EOS Investor	66.3%
Class A Common Interests	Angry Elephant Capital, LLC (associated with Teller)	0.15%
Class B Common Interests	Jonathan Teller, Sanjiv Mehra, Bion Bartning	19.10%
Class C Common Interests	Various individuals	14.42%

21. Prior to September 26, 2019, Mehra and Teller were the sole managers of Kind's Board of Managers, with Mehra being a designee of the "Restricted Members" (a group consisting of the members holding Preferred Interests, Class A Interests, and Class B Interests) and Teller being a designee of the Restricted Members and Preferred Members. Mehra and Teller each had one vote.

C. EOS Products

22. Kind owns 100% of the membership interests in EOS Products, which serves as the EOS business's primary operating entity. Kind is also the sole member of the Board of Managers of EOS Products.

23. Prior to September 26, 2019, Mehra and Teller were the co-CEOs of EOS Products. Their agreement to serve as co-CEOs was separate from the shared-control arrangement embodied in EOS Investor's operating agreement.

II. Indemnity and Advancement Provisions

A. Kind's Operating Agreement

24. Section 4.12 of Kind's Operating Agreement contains the following provision relating to indemnification and advancement of expenses to managers of Kind:

Indemnification - The Company shall indemnify and hold harmless Managers (and any Person that appoints any Person to serve as a Manager) and Officers for all costs, losses, liabilities, and damages **paid or accrued by such Person in connection with the business of the Company** (except to the extent any such costs, losses, liabilities or damages arise out of or in connection with the gross negligence, bad faith or willful misconduct of such Person) to the fullest extent allowed by the laws of the State of New York. The Company **may advance expenses** related to costs of defense to the Board of Managers or any Officer for any claim for which indemnification under this Section 4.12 would be available **upon written undertaking** by the indemnitee to return all such advanced amounts in the event it is finally determined by a court of competent jurisdiction that indemnification under this Section 4.12 is not available to such indemnitee.

[Ex. 1 § 4.12 (emphasis added).]

25. Kind is a New York limited liability company, and Kind's Operating Agreement is governed by New York law. (*See* Ex. 1 § 16.7.)

26. Under section 4.12, indemnification is only available for liabilities incurred "in connection with the business of the Company." (Ex. 1 § 4.12.) The "Company" is defined as Kind (Ex. 1 at 3), and, under section 3.1 of Kind's Operating Agreement, Kind's "principal business . . . shall be to create, operate and invest in consumer goods businesses and retail and online services as well as provide consulting services to businesses." (Ex. 1 § 3.1.)

27. Section 4.12 does not authorize indemnification for liabilities or costs arising from disputes among the members of a separate company (EOS Investor) set up to define rights between only a subset of Kind's members (Mehra and Teller). Nor does section 4.12 cover disputes among the Kind members themselves (as opposed to disputes with third parties).

28. Under section 4.12, advancement of expenses is permissive, not mandatory. And advancement is only available "for any claim for which indemnification under this Section 4.12 would be available." The indemnitee also must provide a written undertaking to return "all such advanced amounts" if a court determines the person is not entitled to indemnification.

B. EOS Products' Operating Agreement

29. EOS Products' operating agreement also provides for indemnification and advancement in certain circumstances. A copy of the current version of EOS Products' operating agreement is attached as Exhibit 2 (the "EOS Products Operating Agreement").

30. Section 5.8 governs indemnification and advancement and provides as follows:

Indemnification. The Company shall indemnify and hold harmless managers of the Board of Managers (and any Person that appoints any Person to serve as a manager on the Board of Managers) and Officers for all costs, losses, liabilities, and damages (except for costs, losses, liabilities and damages arising out of or in connection with bad faith, or willful misconduct) **paid or accrued by such person in connection with the business of the Company** to the fullest extent allowed by the laws of the State of New York. The **Company may advance expenses** related to costs of defense to the Board of Managers or any Officer for any claim for which indemnification under this Section 5.8 would be available **upon written undertaking by the indemnitee** to return all such advanced amounts in the event it is finally determined by a court of competent jurisdiction that indemnification under this Section 5.8 is not available to such indemnitee.

[Ex. 2 § 5.8 (emphasis added).]

31. Like Kind, EOS Products is a New York limited liability company, and its operating agreement is governed by New York law. (See Ex. 2 § 18.6.)

32. “Company” is defined as EOS Products, and under section 3.1, EOS Products’ “principal business purpose” is the “manufacture and/or wholesale supply of personal care products.” (Ex. 2 § 3.1.)

33. EOS Products’ “Board of Managers” consists solely of Kind. And the term “Officers” is defined in EOS Products’ Operating Agreement in the following way: “The Board of Managers may from time to time appoint and remove officers of the Company (‘Officers’) and who shall, under the direction of the Board of Managers, conduct and discharge the day-to-day affairs of the Company.”

34. Like Kind’s Operating Agreement, EOS Products’ Operating Agreement does not authorize indemnification or advancement for liabilities or costs arising from disputes among the members or officers themselves (as opposed to disputes with third parties).

35. EOS Products’ Operating Agreement also provides for permissive (not mandatory) advancement for claims for which indemnification would be available, provided that the person provides a written undertaking to return “all such advanced amounts” if a court determines the person is not entitled to indemnification.

III. The Delaware Action

36. On October 10, 2019, Mehra filed the Delaware Action. A copy of the original complaint (without its exhibits) is attached as Exhibit 3.

37. The plaintiffs in the Delaware Action are Mehra and the trustee of the Mehra Trust.

38. The defendants in the Delaware Action are Teller and the other members of EOS Investor associated with Teller: Angry Elephant Capital, LLC and the successor trustee of the Teller Children’s 2015 Trust. EOS Investor itself is also a defendant (for relief purposes) and so is Sarah Slover, an employee of EOS Products who aided and abetted Teller’s wrongful acts. Neither Kind nor EOS Products is a party to the Delaware Action.

39. The claims asserted against Teller in the Delaware Action are for breach of contract based on his breaches of the operating agreement of EOS Investor; breach of fiduciary duty based on his breaches of his fiduciary duties, under Delaware law, relating to EOS Investor; and declaratory relief seeking a declaration that the dissolution of EOS Investor was invalid and a declaration of the plaintiffs' rights under the EOS Investor operating agreement.

40. The actions giving rise to the Delaware Action concerned Teller's attempt to dissolve EOS Investor under a provision of its operating agreement requiring the Board of Managers to dissolve the company in the event of a "deadlock," as part of a scheme to deprive Mehra of his (and his associated trust's) control rights and economic rights under EOS Investor's operating agreement.

41. Teller, with the aid of Slover and his personal lawyers, came up with a secret plan to dissolve EOS Investor so that Teller could take full control of Kind for his own personal financial benefit. Teller testified in the Delaware Action that his acts in relation to EOS Investor were motivated by his interests as an investor in EOS, that he hired Morrison Cohen LLP as his personal attorneys for advice on how to end the shared-control agreement that he had with Mehra (which, in this case was planning the dissolution of EOS Investor), and that he personally paid Morrison Cohen's fees for their advice on how to dissolve EOS Investor.

42. Teller's actions that formed the basis of the claims in the Delaware Action involved Teller's calling a meeting of the Board of Managers of EOS Investor (which consisted solely of Mehra and Teller), proposing a resolution designed expressly to create a deadlock of the Board of Managers, unilaterally declaring the deadlock, and unilaterally purporting to dissolve EOS Investor and distribute the membership interests EOS Investor held in Kind to the respective EOS Investor members. Slover attended the meeting as the "secretary" of EOS Investor, and she

made clear that she was there only in that capacity and not in any role as an employee of EOS Products. After dissolving EOS Investor, Teller then breached his duties to give effect to the economic rights that had been agreed between Teller and Mehra under EOS Investor's operating agreement, in breach of Teller's obligations under EOS Investor's operating agreement.

43. Teller now purports to be in sole control of Kind and EOS Products. He purports to be the sole member of Kind's Board of Managers and the sole CEO of EOS Products.

44. The claims brought against Teller in the Delaware Action do not concern "the business of" Kind or EOS Products, as required for a party to invoke the indemnification or advancement provisions of either company's operating agreement. The claims in the Delaware Action concern Teller's attempted dissolution of EOS Investor and the parties' control and economic rights and obligations among themselves relating to that entity.

IV. Improper Use of Kind's and EOS Products' Funds to Finance the Defense of the Delaware Action

45. While Teller testified that the planning of the dissolution of EOS Investor giving rise to the Delaware Action was a personal matter on which he engaged Morrison Cohen for personal legal advice, when Mehra filed the Delaware Action challenging that dissolution, Teller—using his de facto control of the company's bank accounts—used Kind's and EOS Products' money to defend it.

46. Teller has caused Kind and/or EOS Products to advance at least over \$2.5 million in legal fees and expenses in connection with the Delaware Action, and he intends to advance an additional more-than \$1 million in outstanding but unpaid fees and expenses with company money.

47. Teller, purportedly as the sole member of Kind's Board of Managers or the sole CEO of EOS Products, approved the advancement of these funds for the defense of the Delaware Action, which provide a direct benefit to him.

48. Teller has used company funds for his own attorneys' fees, Slover's attorneys' fees, costs and expenses of litigation, and even to pay the legal fees incurred by Teller's friend Stephen Cornick in responding to a subpoena in the Delaware Action.

49. Upon information and belief, Teller and Slover also used Kind's or EOS Products' funds to pay a sanctions award issued against the defendants in the Delaware Action for failing to comply with a discovery order.

50. Teller and Slover each signed an "undertaking" promising to repay all funds advanced on their behalf in connection with the Delaware Action if it is ultimately determined that they are not entitled to indemnification. Curiously, the undertakings were un-dated.

51. In addition, Teller has improperly used Kind's or EOS Products' funds for personal expenditures. As one example, in September 2019, Teller hired Mercury Public Affairs, LLC for personal public-relations services. The engagement letter for the project was between Teller individually (not Kind or EOS Products) and Mercury, and the services were designed to bolster Teller's personal narrative in connection with EOS Investor's dissolution. Yet, without informing EOS Products' accounting staff, Teller caused EOS Products to provide him \$25,000 to cover the costs of Mercury's services, and he later attempted to conceal from Mehra that he had done so. As another example, in an approximately one-year period from 2019-2020, Teller spent over \$30,000 in company funds on taxi and Uber rides, regularly spending between \$200 and \$400 a day on such services. Upon information and belief, Teller has been using company funds to travel between New York City and his vacation home in the Hamptons. These are

personal travel expenses, as the duties of the company's employees and executives do not require travel that regularly results in hundreds of dollars in daily Uber charges, and as EOS Products does not pay for ordinary commuting expenses for its employees. These expenditures are unfair to Kind and EOS Products, given the companies' precarious financial condition.

V. Teller's Mismanagement and the Risk of Irreparable Harm from Teller's Misuse of Funds

52. As explained below, since ousting Mehra from EOS's management on September 26, 2019, Teller has severely mismanaged its business, and his continued improper use of company money to fund the Delaware Action (and this action) presents a real risk of immediate, irreparable harm to Kind and EOS Products.

53. Teller has caused EOS Products to become heavily indebted and to incur large losses. Before Teller ousted Mehra, EOS Products operated with no outside financing and no long-term debt. As of October 2020, Teller had saddled the company with over \$20 million in loans, such that the value of EOS Products' assets exceeded its liabilities by only approximately [REDACTED], placing the company on the brink of insolvency. And the company is now losing millions of dollars each month and has lost over \$10 million between October 2019 and October 2020.

54. Teller has demonstrated bad faith in his actions, including by concealing from Mehra the losses that the business was incurring, as well as actions taken at Kind or EOS Products that Teller was required to disclose to Mehra, as a member of Kind, under the clear terms of Kind's Operating Agreement.

55. Teller sought to conceal losses from Mehra by not sending him and his associated entities Form K-1's for 2019 that would have revealed the losses. Mehra saw the 2019 Form K-1's from Kind for the first time in late November 2020 (over a month after the tax-filing

deadline) when they were produced pursuant to the judgment against Kind in the books-and-records action.

56. Between October 2019 and March 2020, Teller himself made a series of loans to EOS Products totaling approximately \$7.42 million, at above-market interest rates of either 6% or 4%. Teller approved the terms of these loans unilaterally on behalf of EOS Products. Under the loan agreements, Teller caused EOS Products to promise to pay him interest monthly. EOS Products' profit-and-loss statements and balance sheets reflect that, as of October 2020, Teller had caused EOS Products to accrue approximately \$300,000 in interest-payment liabilities to him. Teller concealed the fact of these loans from Mehra despite having an obligation to disclose them. Under Kind's Operating Agreement, if Teller and Mehra are not Kind's sole managers (a state of affairs that exists as a result of Teller purporting to appoint himself sole Manager of Kind after his unlawful actions on September 26, 2019), then Kind or EOS Products cannot incur more than \$10,000 in debt without the approval by written consent or vote of a majority of Kind's "Preferred Interests." Any such consents or notices of voting must promptly be provided to all the members, including Mehra. (*See* Ex. 1 §§ 5.3, 6.6, 6.8.) Teller flouted these obligations by failing to approve the loans by written consent or vote and failing to provide Mehra notice that the actions had been taken. Mehra had to file the books-and-records lawsuit, litigate it for nearly a year to victory, and then serve follow up requests to Kind to obtain the information about these loans. This is additional evidence of Teller's bad faith.

57. With respect to the loans Teller made, the interest provides him a direct financial benefit as a lender; this self-interested conduct is unfair to Kind or EOS Products. Especially given EOS Products' precarious financial condition described above and below, continued accrual or payment of interest to Teller could push EOS Products into insolvency.

58. Teller also caused Kind and EOS Products to close on a secured, asset-based revolving loan from Siena Lending Group LLC. As of October 2020, EOS Products had drawn approximately [REDACTED] of the loan and is incurring approximately [REDACTED] in monthly interest on the loan. Teller concealed the fact of the Siena loan from Mehra for months, despite his contractual obligation to provide notice and only after Mehra prevailed in the related books-and-records lawsuit and served follow up notice.

59. Upon information and belief—given EOS Products’ operating losses and dwindling cash balances—some portion of the funds borrowed by EOS Products was then used to pay at least \$2.5 million in legal fees and expenses associated with the Delaware Action. Instead of using his own money to pay those fees, Teller is causing Kind and/or EOS Products to pay his legal fees with borrowed money and incur an interest expense, including an interest expense that accrues to his direct personal benefit.

60. Under the Siena loan agreement, Kind and EOS Products pledged all their property as collateral for the loan, including all voting, management, control, and economic rights associated with Kind’s ownership of EOS Products. Under the terms of the loan, it constitutes an event of default if EOS Products fails to make an interest payment when due on the first of each month or becomes “insolven[t],” a term not defined in the loan agreement, but which commonly means a scenario where assets exceed liabilities or where a business is unable to pay its debts as they come due.

61. The consequences of an event of default are harsh for Kind and EOS Products, and the harm irreparable. Upon a default, Siena has the immediate right to take control of the collateral and take actions it deems appropriate. In a default, Siena has the immediate right to take over full voting, management, and control rights of EOS Products, without any fiduciary

duties to act in the best interests of Kind's members like Mehra. Any such loss of control of its rights to operate and control its business and assets would cause irreparable harm to Kind and EOS Products.

62. Teller's continued use of company money for the Delaware Action (or this action) poses a real risk that the company will run out of cash and default on the Siena loan, resulting in irreparable harm. As of October 2020, EOS Products' available cash position dwindled to only about [REDACTED], compared with the over \$1 million in outstanding Delaware legal bills that Teller intends to pay with company money. Paying those bills would wipe out the company's cash position, require the company to borrow additional money to fund the remainder, and cause Kind and EOS Products to miss the next interest payment, since there is insufficient money coming in to fund the operating costs of the business. Indeed, EOS Products has operated at a loss for eight of the first ten months of 2020, with September and October being the worst, with operating losses of about [REDACTED] in each of those months. Paying the Delaware Action's legal bills would impair EOS Products' ability to borrow money to fund these ongoing losses and create a real risk of imminent insolvency and business failure (and thus another risk of default under the Siena loan).

VI. Making a Demand on Kind or EOS Products Would Be Futile

63. Mehra did not make a demand on Kind or EOS Products to pursue the relief requested in this action.

64. Making such a demand would have been futile.

65. As a result of the challenged dissolution of EOS Investor, Teller purports to be the sole member of Kind's Board of Managers. Kind in turn is the sole member of EOS Products' Board of Managers, and Teller purports to be EOS Products' sole CEO.

66. As a result of the challenged dissolution of EOS Investor, Teller also controls a majority of the Preferred Interests in Kind, as defined in Kind's Operating Agreement.

67. Acting as the sole decisionmaker, Teller decided to advance himself and Slover (and his friend Stephen Cornick's) legal fees and expenses in the Delaware Action using Kind's and EOS Products' assets, to use company money for other personal expenses, and to incur more than \$20 million in debt on EOS Products' balance sheet.

68. Teller has a direct financial interest in the use of Kind's and EOS Products' funds to finance the defense of the Delaware Action, as well as in having EOS Products pay him interest on the loans he made to the company.

69. Upon information and belief, Teller failed to fully inform himself about the legality of using Kind's and EOS Products' funds to finance his defense of the Delaware Action or about the appropriateness of having EOS Products incur \$20 million in debt.

70. Because Teller—acting as the sole member of Kind's Board of Managers (and with Kind controlling EOS Products)—has a direct financial interest in the challenged transactions and failed to inform himself about the transactions, demand is excused.

FIRST CAUSE OF ACTION

Breach of Contract
(Against Teller and Slover)
(Derivative Claim)

71. Mehra repeats and realleges each and every allegation above as if fully set forth herein.

72. Mehra, as a Class B Common member of Kind, has standing to assert derivative claims on behalf of Kind and its wholly owned and controlled subsidiary EOS Products.

73. Kind's Operating Agreement is a valid and enforceable contract.

74. The EOS Products Operating Agreement is a valid and enforceable contract.

75. Teller, as a member of the Board of Managers of Kind and a member of Kind, is bound by the terms of Kind's Operating Agreement.

76. Teller, in acting on behalf of Kind in its capacity as EOS Products' Board of Managers, is bound by EOS Products' Operating Agreement.

77. Teller breached Kind's Operating Agreement, including by authorizing advancement of legal fees and expenses for the defense of the Delaware Action in violation of section 4.12 of Kind's Operating Agreement.

78. Teller breached EOS Products' Operating Agreement, including by authorizing advancement of legal fees and expenses for the defense of the Delaware Action in violation of section 5.8 of EOS Products' Operating Agreement.

79. The "undertakings" signed by Teller and Slover are valid and enforceable contracts, requiring each of them to return all funds advanced on their behalf if it is determined they are not entitled to indemnification.

80. Upon a determination in this action that Kind's and EOS Products' operating agreements do not permit indemnification in connection with the Delaware Action, Teller and Slover will be required to return the funds advanced on their behalf and will be in breach of their respective undertakings until such amounts are repaid.

81. Mehra seeks to enforce Teller's and Slover's undertakings on behalf of Kind and EOS Products.

82. As a direct and proximate result of Teller's and Slover's breaches, Kind and EOS Products have been harmed in an amount to be proven at trial.

83. Because Teller's continued use of company money to fund the Delaware Action or this action creates a danger of irreparable harm by creating a risk of business failure and default

on the Siena loan and resulting loss of control of Kind and EOS Products over their business, the harm cannot be addressed simply by awarding money damages.

SECOND CAUSE OF ACTION

Breach of Fiduciary Duty
(Against Teller)
(Derivative Claim)

84. Mehra repeats and realleges each and every allegation above as if fully set forth herein.

85. Mehra, as a Class B Common member of Kind, has standing to assert derivative claims on behalf of Kind and its wholly owned and controlled subsidiary EOS Products.

86. Teller, as a manager of Kind, owed fiduciary duties to Kind and its members.

87. Teller, acting on Kind's behalf in its capacity as the manager of EOS Products (as well as acting as CEO of EOS Products), owed fiduciary duties to EOS Products.

88. Teller breached his fiduciary duties to Kind and EOS Products, including by directing that funds of Kind and EOS Products be used for his direct financial benefit to pay his legal fees and expenses in the Delaware Action; using company funds for personal purposes, such as, for example, personal public-relations services and taxi/Uber services; and causing EOS Products to borrow money from him and then paying himself interest on the loans.

89. Through his breaches, Teller personally gained in fact a financial profit or other advantage to which he was not legally entitled.

90. As a direct and proximate result of Teller's breaches, Kind and EOS Products have been harmed in an amount to be proven at trial.

91. Because Teller's continued use of company money to fund the Delaware action or this action creates a danger of irreparable harm by creating a risk of business failure and default

on the Siena loan and resulting loss of control of Kind and EOS Products over their business, the harm cannot be addressed simply by awarding money damages.

THIRD CAUSE OF ACTION

Avoidance of Transaction under N.Y. LLC Law § 411(b) (Derivative Claim)

92. Mehra repeats and realleges each and every allegation above as if fully set forth herein.

93. Mehra, as a Class B Common member of Kind, has standing to assert derivative claims on behalf of Kind and its wholly owned and controlled subsidiary EOS Products.

94. Under New York LLC Law § 411, where an LLC manager approves a transaction in which the LLC manager has “a substantial financial interest” and where the manager’s approval “was necessary for the approval of such contract or transaction,” then “the limited liability company may avoid the contract or transaction unless the party or parties thereto shall establish affirmatively that the contract or transaction was fair and reasonable as to the limited liability company at the time it was approved by the managers, a class of managers or the members.”

95. Teller had a substantial financial interest in his decision to use Kind’s and EOS Products’ funds to finance the Delaware Action, and in his decision to approve EOS Products to borrow money from him and accrue interest in a manner not fair to Kind or EOS Products.

96. Teller’s approval—given his purported status as the only manager of Kind and only CEO of EOS Products—was necessary to causing funds of Kind and EOS Products to be used to fund the Delaware Action and to approving the loans accruing to his benefit.

97. Teller has not established that the transactions were fair and reasonable as to Kind or EOS Products at the time he approved them.

98. Mehra, on behalf of Kind and EOS Products, is entitled to have the LLCs avoid their advancement or payment of funds for the Delaware Action and the interest owed on the loans made by Teller by recovering funds from Teller.

PRAYER FOR RELIEF

Mehra demands a judgment in favor of Kind and EOS Products and against Teller and Slover granting the following relief:

1. A preliminary injunction stating that:
 - a. Pending the final determination of this action, nominal defendants The Kind Group LLC and EOS Products, LLC are prohibited from advancing any funds to pay legal fees or litigation expenses in connection with (i) the Delaware Action; and (ii) this action.
2. A permanent injunction:
 - a. enjoining Teller and Slover from causing Kind or EOS Products to advance themselves legal fees and expenses in the Delaware Action;
 - b. enjoining Teller and Slover from causing Kind or EOS Products to indemnify themselves for any liabilities or costs incurred in the Delaware Action;
 - c. enjoining Teller and Slover from causing Kind or EOS Products to spend any company funds in connection with the Delaware Action;
 - d. enjoining Teller and Slover from causing Kind or EOS Products to advance themselves legal fees and expenses in defending this action;
 - e. enjoining Teller and Slover from causing Kind or EOS Products to indemnify themselves for any liabilities or costs incurred in this action.
3. An order requiring Teller to reimburse Kind or EOS Products for all funds of Kind or EOS Products spent in connection with the Delaware Action or this action, any other personal expenses, and any interest paid to him under the loans to EOS Products or Kind.
4. An order enforcing Teller's and Slover's obligations under their respective undertakings to return all funds advanced on their behalf in the Delaware Action.

5. An order avoiding the transactions whereby Teller authorized Kind or EOS Products to use their funds in connection with the Delaware Action and to pay himself interest on loaned funds.
6. Damages in an amount to be determined at trial.
7. Pre-judgment and post-judgment interest.
8. Attorneys' fees and costs Mehra incurs in connection with this action.
9. Such other relief as the Court determines just and proper.

Dated: February 16, 2021

s/ Patrick J. Smith

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