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Philadelphia, PA 19103

and

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CIVIL ACTION

JUNE TERM, 2021

No. 210601197

JURY TRIAL DEMANDED

CLASS ACTION

COMMERCE PROGRAM

EMILY FANTINI
c/o McLaughlin & Lauricella, P.C.
One Commerce Square
2005 Market St., Ste. 2300
Philadelphia, PA 19103

and

DANIEL REYES
c/o McLaughlin & Lauricella, P.C.
One Commerce Square
2005 Market St., Ste. 2300
Philadelphia, PA 19103

on behalf of themselves and all others similarly
situated,

Plaintiffs

vs.

AON INVESTMENTS USA, INC.
200 East Randolph St., Ste. 1000
Chicago, IL 60601

and

HEWITT ENNISKNUPP, INC.
200 East Randolph St., Ste. 1000
Chicago, IL 60601

and

AON HEWITT INVESTMENT CONSULTING,
INC.
200 East Randolph St., Ste. 1000
Chicago, IL 60601

and

PORTFOLIO ADVISORS LLC
9 Old King's Highway South
Darien, CT 06820

(continued on next page)

and

HAMILTON LANE ADVISORS, L.L.C.
110 Washington St., Ste. 1300
Conshohocken, PA 19428

and

AKSIA LLC
599 Lexington Ave., 46th Floor
New York, NY 10022

JOINTLY AND SEVERALLY,

Defendants.

NOTICE TO DEFEND

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades o otros derechos importantes para usted.

Lleve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal

office set forth below to find out where you can get legal help.

Philadelphia Bar Association
Lawyer Referral and Information Service
One Reading Center
Philadelphia, Pennsylvania 19107
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servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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Filadelfia, Pennsylvania 19107
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THIRD AMENDED CLASS ACTION COMPLAINT

Plaintiffs, by their attorneys, state as follows:

1. This case arises from Defendants' wrongful actions and inactions with respect to the funds held in trust for the members of the Public School Employees Retirement System (PSERS). PSERS is the administrator of cost-sharing multiple-employer retirement plans (collectively, the "Plan") for employees of the public school system within the Commonwealth of Pennsylvania. Defendants' actions and inactions have triggered an increased contribution obligation from Plaintiffs and the putative Class members, and otherwise injured Plaintiffs and the putative Class members. Plaintiffs bring this action, on behalf of themselves and others similarly situated, to be made whole for injuries, and for injunctive relief, damages, and other relief.

2. The four Defendant investment advisors here appear to believe that their obligations to Plaintiffs are limited to the express contractual obligations with PSERS. Not so. Each Defendant owed (and three of them still owe) a fiduciary duty to the Plan participants to examine, evaluate, and monitor PSERS's investments, and to undertake all actions and inactions in good faith, with loyalty and honesty, for the sole benefit of the Plan participants, and not for the benefit of any

Defendant, the underlying investments, the investment managers, PSERS staff, or anyone else. Defendants are fiduciaries here, not mere contractors.

THE PARTIES

3. Plaintiff Kevin Steinke is a public school teacher who is a resident of the Commonwealth of Pennsylvania.

4. Plaintiff Steinke is a current contributing participant in PSERS and has been since he joined PSERS in 2018.

5. PSERS and its agents issued notice to Plaintiff Steinke that effective July 1, 2021, he was required to contribute (through payroll deductions) an increased percentage of his paycheck from his teaching position to the Plan.

6. After July 1, 2021, the percentage that Plaintiff Steinke was required to contribute to PSERS increased.

7. Plaintiff Louis Fantini is a public school teacher who is a resident of Philadelphia County in the Commonwealth of Pennsylvania.

8. Plaintiff Louis Fantini is a current contributing participant in PSERS and has been since he joined PSERS in 2016.

9. PSERS and its agents issued notice to Plaintiff Louis Fantini that effective July 1, 2021, he was required to contribute (through payroll deductions) an increased percentage of his paycheck from his teaching position to the Plan.

10. After July 1, 2021, the percentage that Plaintiff Louis Fantini was required to contribute to PSERS increased.

11. Plaintiff Emily Fantini is a public school teacher who is a resident of Philadelphia County in the Commonwealth of Pennsylvania.

12. Plaintiff Emily Fantini is a current contributing participant in PSERS and has been since she joined PSERS in 2016.

13. PSERS and its agents issued notice to Plaintiff Emily Fantini that effective July 1, 2021, she was required to contribute (through payroll deductions) an increased percentage of her paycheck from her teaching position to the Plan.

14. After July 1, 2021, the percentage that Plaintiff Emily Fantini was required to contribute to PSERS increased.

15. Plaintiff Daniel Reyes is a public school teacher who is a resident of Philadelphia County in the Commonwealth of Pennsylvania.

16. Plaintiff Reyes is a current contributing participant in PSERS and has been since he joined PSERS in 2019.

17. PSERS and its agents issued notice to Plaintiff Reyes that effective July 1, 2021, he was required to contribute (through payroll deductions) an increased percentage of his paycheck from his teaching position to the Plan.

18. After July 1, 2021, the percentage that Plaintiff Reyes was required to contribute to PSERS increased.

19. Plaintiffs seek to represent themselves and a proposed class of current public school employees who are participants in the PSERS retirement system and who have been required to pay additional direct contributions, and who have suffered additional damages and injuries as a result of Defendants' actions and/or inactions.

20. Defendant Aon Investments USA, Inc. is an Illinois corporation. Aon's registered agent for service of process in Harrisburg is located at 2595 Interstate Drive, Suite 103, Harrisburg,

Pennsylvania. Defendant Aon Investments USA, Inc. is a registered investment advisor and provides investment advisory services to pension funds, including PSERS.

21. In 2013, Defendant Hewitt EnnisKnupp, Inc. was an Illinois Corporation with its principal office located at 200 East Randolph, Chicago, Illinois, 60601. Hewitt EnnisKnupp, Inc. no longer exists as a separate legal entity.

22. In 2019, Defendant Aon Hewitt Investment Consulting, Inc., was an Illinois Corporation with its principal office located at 200 East Randolph, Chicago, Illinois, 60601.

23. Hewitt EnnisKnupp, Inc. changed its name to Aon Hewitt Investment Consulting, Inc. Thus, on information and belief, Defendant Aon Hewitt Investment Consulting, Inc. is a successor in interest to Hewitt EnnisKnupp, Inc.

24. In March 2020, Defendant Aon Hewitt Investment Consulting, Inc. became Aon Investments USA Inc.

25. Aon Investments USA Inc is thus a successor in interest to Aon Hewitt Investment Consulting, Inc., and Aon Hewitt Investment Consulting, Inc. itself is, in turn, a successor in interest to Hewitt EnnisKnupp, Inc.

26. Defendant Aon Investments USA Inc. is legally responsible for all obligations of itself, Hewitt EnnisKnupp, Inc. and Aon Hewitt Investment Consulting, Inc. Aon Investments USA is also legally responsible for all damages caused by itself, Hewitt EnnisKnupp, Inc., and Aon Hewitt Investment Consulting.

27. As used herein, the term “Aon” includes Aon Investments USA, Inc., Aon Hewitt Investment Consulting, Inc., and Hewitt EnnisKnupp, Inc.

28. From and after approximately December 6, 2013, Aon served as PSERS’s General Investment Consultant, and thereby was obligated to assist PSERS and its staff by, among other

things: establishing and modifying PSERS's investment allocations; recommending investment opportunities; analyzing performance for each asset class and individual portfolio; and reporting the Plan's performance results to PSERS's Board.

29. On information and belief, Defendant Portfolio Advisors LLC ("Portfolio Advisors") is a Connecticut LLC whose principal place of business is located at 9 Old Kings Hwy S, Darien, Connecticut.

30. From and after August 8, 2012 through August 7, 2017, Portfolio Advisors assumed duties as PSERS's Investment Consultant for private equity, venture capital, and private debt investments. For part of this time, Portfolio Advisors was paid an additional annual amount to provide an investment program in which PSERS would (and did) make co-investments within the Commonwealth of Pennsylvania.

31. During this time, Portfolio Advisors was obligated to assist PSERS and its staff by, among other things: identifying, screening, and recommending suitable private equity, venture capital and private debt investment opportunities; conducting due diligence on those opportunities; and calculating and reporting the total return for these investments.

32. Defendant Hamilton Lane Advisors, LLC ("Hamilton Lane") is a Pennsylvania Limited Liability Company with a place of business and an address for service of process at 110 Washington Street, Suite 1300, Conshohocken, Pennsylvania 19428.

33. From and after September 15, 2017, Hamilton Lane assumed duties as PSERS's Investment Consultant for alternative, private credit, private infrastructure, and private real estate investments.

34. During this time, Hamilton Lane was obligated to assist PSERS and its staff by, among other things: identifying and recommending suitable private market investment

opportunities; conducting due diligence of the Plan's private market managers; recommending performance benchmarks for the total private markets program; calculating and reporting the total return for the Plan's private markets portfolio; preparing and reporting the total return (gross and net of fees) for the private markets program; and calculating PSERS's custom benchmarks for its private market investments.

35. Upon information and belief, Defendant Aksia, LLC is a New York LLC, with a principal place of business in New York City, located at 599 Lexington Avenue, 46th Floor, New York, New York.

36. From and after September 16, 2015, Aksia LLC was obligated to provide non-discretionary hedge fund investment consulting and to perform measurement services for PSERS funds. This included the obligation to recommend suitable hedge fund investments. Aksia's obligations were expanded in a subsequent contract with PSERS.

JURISDICTION AND VENUE

37. Each of the Plaintiffs is a citizen and a resident of the Commonwealth of Pennsylvania.

38. All members of the Proposed Class are current participants in the PSERS retirement system, and work as public school employees. The Class includes employees who are on temporary leave, including sick leave, maternity leave, and the like.

39. The vast majority of the members of the proposed Plaintiff Class are citizens and residents of the Commonwealth of Pennsylvania.

40. Defendant Aon regularly conducts and transacts business within the Commonwealth of Pennsylvania.

41. Upon information and belief, Defendant Portfolio Advisors regularly conducts and transacts business within the Commonwealth of Pennsylvania.

42. Defendant Hamilton Lane regularly conducts and transacts business within the Commonwealth of Pennsylvania.

43. Defendant Aksia regularly conducts and transacts business within the Commonwealth of Pennsylvania.

44. The principal damages resulting from the wrongful conduct of each named Defendant were sustained within the Commonwealth of Pennsylvania.

45. Plaintiffs are unaware of any other class action having been filed within the three years preceding this filing, which asserts the same or similar factual allegations against any of the Defendants on behalf of the same or other persons.

46. The amount in controversy exceeds \$50,000 exclusive of interest, costs, and attorneys' fees, and Plaintiffs seek equitable relief.

GENERAL ALLEGATIONS

1. Overview of the Pennsylvania Public School Employees Retirement Plans

47. Within the public sector, part of an employee's compensation has traditionally been provided in the form of a retirement pension—a form of deferred compensation.¹

¹ Government employees have typically been provided either a defined benefit pension or a defined contribution retirement plan. In a defined-benefit plan, the employer guarantees that the employee will receive a specific benefit amount upon retirement, regardless of the performance of the underlying investments. In a defined-contribution plan, the employer makes retirement contributions for the employee, but the amount ultimately paid to the employee at retirement depends on the plan's investment performance.

48. Pennsylvania’s public school employees are generally enrolled as participants in PSERS, which holds their retirement funds in trust. As of March 31, 2022, PSERS held assets valued at approximately \$75.9 billion.

49. The Plan is currently underfunded—and has been underfunded for several years. This means that the Plan currently lacks sufficient assets to pay all obligations that it will be required to pay in the future.

50. Membership in PSERS is mandatory for nearly all qualifying Pennsylvania public school employees. At present, there are approximately 491,000 PSERS participants, including approximately 248,000 active members and approximately 243,000 retirees.

51. The Public School Employees’ Retirement Board (“the Board” or “PSERB”) is the administrator of PSERS’s cost-sharing, multiple-employer retirement plan to which the public school employers, the Commonwealth itself, and school employees (members) each contribute.

52. This suit centers on the investments, administration, and management of the PSERS Plan. The Defendants’ wrongdoing has injured Plaintiffs and those similarly situated by, among other things, causing increases in their contributions and depleting and wasting plan assets, thereby thwarting the overall objective of the System which is to provide benefits to its members through a carefully planned and well-executed investment program.

2. PSERB’s Role as Fiduciary and Administrator of the Retirement System

53. The Public School Employees’ Retirement Board is an independent administrative board of the Commonwealth. [24 Pa. C.S. § 8501(a)].

54. The Board is composed of 15 members. PSERS also employs numerous internal investment professionals, as well as external investment managers and consultants, to assist the Board in achieving its investment objectives.

55. Pursuant to statute, Board members, their employees, and their agents stand in a fiduciary relationship to the participants in the system:

(e) Fiduciary status of board.--The members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto. The board may, when possible and consistent with its fiduciary duties imposed by this subsection or other law, including its obligation to invest and manage the fund for the exclusive benefit of the members of the system, consider whether an investment in any project or business enhances and promotes the general welfare of this Commonwealth and its citizens, including, but not limited to, investments that increase and enhance the employment of Commonwealth residents, encourage the construction and retention of adequate housing and stimulate further investment and economic activity in this Commonwealth. The board shall, through the Governor, submit to the General Assembly annually, at the same time the board submits its budget covering administrative expenses, a report identifying the nature and amount of all existing investments made pursuant to this subsection.
[24 Pa. C.S. § 8521(e)].²

56. The above statute thus requires the Board, and each of its agents, to act for the “exclusive benefit of the members of the system” including the Plaintiffs.

57. In addition, Pennsylvania law imposes specific obligations on Board members regarding their management and control of the retirement fund:

(a) Control and management of fund.--The members of the board shall be the trustees of the fund. Regardless of any other provision of law governing the investments of funds under the control of an administrative board of the State government, the trustees shall have exclusive control and management of the said fund and full power to invest the same, in accordance with the provisions of this section, subject, however, to the exercise of that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion and intelligence who are familiar with such matters exercise in the management of their own affairs not in regard to speculation, but in regard to the permanent disposition of the fund, considering the probable income to be derived therefrom as well as the probable safety

² Unless otherwise expressly stated, **all emphasis appearing in any quote in this Third Amended Complaint is added for emphasis** and does not appear in the original material cited.

of their capital. The trustees shall have the power to hold, purchase, sell, lend, assign, transfer, or dispose of any of the securities and investments in which any of the moneys in the fund shall have been invested as well as of the proceeds of said investments, including any directed commissions which have accrued to the benefit of the fund as a consequence of the investments, and of any moneys belonging to said fund, subject in every case to meeting the standard of prudence set forth in this subsection. [24 Pa. C.S. § 8521(a)].

58. In addition to its statutory fiduciary obligations, PSERS has adopted its own Ethics Policy. The Preamble to that policy provides that: “[C]entral to the fulfillment of their Fiduciary duties, is the obligation of... [the Board] to maintain the highest ethical and Fiduciary standards as it serves the members of the System, including not only avoidance of actual impropriety, but also the perception of impropriety...”

59. Section 3(f) of PSERS’s Ethics Policy also states that, in hiring consultants and contractors, the Board “...shall avoid any involvement in the decision-making process, particularly with respect to hiring, contracting, or investments that involve ‘Kickbacks’ or ‘Pay-to-Play’ practices.”

60. PSERS’s Ethics Policy additionally provides that Trustees “may not have a financial or personal interest in PSERS’s activities that conflicts with PSERS’s interests or affects or appears to affect their independence, objectivity, or loyalty to PSERS. They cannot take any official action on matters that will result in a benefit to themselves, immediate Family, or their business associates, unless such benefit is no greater than that which accrues to a large class, such as across-the-board retirement benefit increases.” (Policy, page 98).

3. *Changes to Traditional “Pure” Defined Benefit Pension Plans*

61. As retirement costs have increased, many state governments, like that of the Commonwealth of Pennsylvania, have changed their laws affecting public pensions to find new ways to fund retirement benefits and to make changes to established benefit programs.

62. By statute adopted in 2010, the Pennsylvania legislature combined certain aspects of PSERS's defined benefit plan with aspects of a defined contribution plan to create a structure to finance the cost of the System's pension obligations, for many (but not all) of the participants in the PSERS retirement plan.

63. This new approach marked a significant change. Traditionally, Pennsylvania public school employees bore no direct risk of change in contribution rate to their retirement plan. However, beginning in 2011, the Legislature dictated that certain PSERS participants be subject to a new "shared risk" arrangement that could result in an increase in the amount of their paychecks that is contributed to PSERS.

64. In fact, beginning in 2011, for most PSERS participants still working (i.e., not yet retired), the actual percentage of their pay that each participant must contribute to PSERS is subject to change based on the performance of PSERS investments.

65. The Board (with the assistance of its professional advisors) was obligated to establish an assumed rate of return (i.e., a performance benchmark) for the Plan as a whole. This assumed performance rate could be increased or decreased as necessary (and in fact was altered at various times).

66. Under the 2011 amendments, after this performance rate was established, the Board was statutorily obligated to conduct a "shared risk" assessment of the Plan's trailing performance every three years to ascertain whether the actual performance of the Plan's investments (i.e., rate of return net of fees) met the target performance rate. In other words, every three years the Board was required to look back at the Plan's annualized performance rate over several years and determine if the Plan met the targeted performance levels.

67. By statute, this shared risk assessment was to be undertaken for a three-year retrospective period in 2014 (for July 1, 2011 to June 30, 2014); for a six-year period in 2017 (for July 1, 2011 to June 30, 2017); for a nine-year period in 2020 (for July 1, 2011 to June 30, 2020); for a ten-year period in 2023 (for July 1, 2014 to June 20, 2023), and for a ten-year period every three years thereafter for the ten year period ending in June of the year in which the shared risk assessment is undertaken. [24 Pa. S. C. § 8321(b)].

68. In simple terms, if a shared risk assessment showed that the Plan as a whole performed at or slightly above the target performance rate (as adjusted), then for the following three-year period the percentage to be paid by public school employees from their paychecks would not increase. That is, the amount of the participants' required contributions from their own salary would remain level (unchanged).

69. Conversely, if the Plan's investments did not perform at the target performance rate (or very close to it), then an obligation would be triggered which would increase the mandatory contribution percentage for certain categories of plan participants. (The specific increase for each individual is based on which class that individual is a part of.) If the Plan does not perform at the target investment performance rate, the required participant contributions would **automatically** increase for a 3-year period.

70. For the shared risk assessment conducted in 2014 and 2017, the PSERS Plan's performance met the target investment rate, so no obligation was triggered to increase the percentage contribution for any participants. However, as addressed in more detail below, the results of the shared risk assessment conducted in 2020 were problematic.

4. Changes to Traditional Investments for Public Pension Plans

71. Historically, public pensions invested heavily in conservative, publicly traded, stable investments (primarily stocks and bonds, or mutual funds comprised of either or both), so

the downside risk to pension fund participants was limited. Investing in index-type funds (with limited fees for active management of assets) was (and is) considered a particularly solid investment choice.

72. Investing in publicly traded investments permits transparent examination of the costs associated with these investments: the costs and fees are easily discernable. It is therefore possible to retrospectively compare the cost of each such publicly traded investment with the return achieved, and also to compare the return on investment among differing investments.

73. In recent years, however, as performance pressures have mounted on public pension funds, many public pensions have moved a small portion of their assets out of traditional, stable investments into so-called “alternative” or nontraditional investments, most of which are in the nature of private investments.

74. Alternative investments broadly refer to investments and investment vehicles other than traditional stocks, bonds, and other publicly traded investments. Non-traditional, alternative investments include private equity investments, hedge funds, private credit, and venture capital opportunities, as well as private real estate investments and other nonpublic opportunities. They are widely considered to be moderate to very high-risk investments.

75. Unlike public investment options (such as stocks and bonds traded in public markets), however, when a pension plan investor (such as PSERS) agrees to engage in a private investment, the investment is typically structured as a limited partnership. The investor acts as a limited partner and the private equity adviser acts as the general partner. The limited partner (investor) and the general partner (advisor/manager) enter into a formal Limited Partnership Agreement. The Limited Partnership Agreement typically obligates the limited partner to commit a certain dollar amount to the investment, to be paid over a period of time. The Agreement also

dictates how the investment's expenses and those of the general partner advisor are to be paid, how the general partner's fees are to be paid, and dictates the specific formula for distributions to be made from the investment to both the limited partner and the general partner. Although the amount of the limited partner's contribution is agreed at the beginning of the relationship, the actual funds are not typically paid in a lump sum. This kind of investment is not typically a liquid investment; it often lasts ten years or more.

76. There are several different kinds of fees, costs, and expenses associated with non-public investments structured as a limited partnership. Typically, the Partnership Agreement for such an investment includes all of the following:

- [A] **management fees:** The general partner (investment manager) charges each investor management fees annually; these fees are usually a percentage of the amount that the investor contributes to the investment.
- [B] **expenses of the limited partnership:** The general partner has the discretion to pay the expenses and costs of operating the limited partnership, out of the partnership funds. This category of expense can vary widely from investment to investment, depending on, among other things, the capabilities and integrity of the general partner.
- [C] **carried interest:** After the annual management fees are collected and the expenses paid, each Limited Partnership Agreement explains how its net profits are to be distributed. An agreed percentage of the profits is typically distributed to the investors first (often 8%), then often the general partner and the investors split the remaining profits in agreed-upon percentages. Until recently, many limited partnerships provided that the general partner would receive 20% of any profits while the limited partners split the remaining 80% of any profits. The portion of this distribution which goes to the general partner is called the general partner's "carried interest."

77. Alternative investments are almost never publicly traded, and they often lack transparency which makes it difficult to accurately ascertain the complete cost of the investment's fees, costs, and expenses. It is therefore often impossible for anyone other than the investment manager to ascertain the total extent of the fees, costs, and expenses. This means that it may be

difficult or impossible to compare the overall costs of an alternative investment with the return achieved, and difficult or impossible to compare the fees, costs, and expenses of one alternative investment with another.

78. A further difficulty in evaluating alternative and nontraditional investments arises in the context of establishing benchmarks for the purpose of examining and evaluating the performance of an individual fund and of a sector within an alternative space. Unlike well-established and recognized benchmarks in the public investment realm, it is common in the alternative space for financial advisors to create their own performance benchmarks. Benchmarks in this space are often seen as malleable and constructed in a manner that increases the likelihood that the fund advisor who recommended them will appear to meet its investments goals.

79. At all times relevant to this lawsuit, PSERS's portfolio has maintained an extremely high percentage of alternative and non-traditional investments, compared to other public pension portfolios of comparable size.

80. According to the December 2018 Final Report and Recommendations: Public Pension Management and Asset Investment Review Commission, "[i]n 2016, PSERS had the highest allocation to alternatives in the nation at 56% ... above the national average of 26%." [EXHIBIT 1], PPMAIRC Report, p 111]. Thus at least in 2016, PSERS held the dubious honor of being the public pension that held the highest percentage of "alternative" investments and the lowest percentage of traditional investments in the country.

81. At the same time, PSERS investment returns were consistently among the lowest (worst) among public pensions of similar size. As of June 30, 2017, there were 52 public pension funds in the US with greater than \$10 billion in assets. PSERS's returns ranked as follows among this group:

One year: 48 out of 52
Three years: 43 out of 52
Five years: 49 out of 52
Ten years: 50 out of 52.

EXHIBIT 2, PPMAIRC Report Appendix I, Submissions and Exhibits to the December 2018 Final Report and Recommendations: Public Pension Management and Asset Investment Review Commission, at unnumbered PDF p 145 of 700, (page entitled “Performance Consistency Across Time Periods and Peer Groups”)].

82. The December 2018 PPMAIRC report also concluded that “PSERS is among the highest-cost public pension funds” **EXHIBIT 1**, PPMAIRC Report, p 18], and recommended that PSERS establish a policy including “public reporting or and access to all investment costs and expenses at fund and manager level, [and] full disclosure of all costs of private market investments.” [Id.]

5. Who Does What?

83. Separate from the activities of its Board, PSERS employs about 365 employees, some 50 of whom are highly paid members of its investment unit.

84. Until recently, PSERS employed non-party Glenn R. Grell as PSERS’s Executive Director. On November 18, 2021, the Board moved Mr. Grell to the position of Senior Investment Advisor effective January 1, 2022 and accepted his retirement to be effective February 28, 2022.

85. Until recently, the PSERS investment unit was headed by non-party James H. Grossman Jr., who acted as PSERS’s Chief Investment Officer. Mr. Grossman was paid \$485,421 yearly – more than double what the governor earned. On November 18, 2021, the Board moved Mr. Grossman to the position of Senior Investment Advisor effective December 9, 2021 and accepted his retirement to be effective May 1, 2022.

86. The two individuals who served as Grossman's deputies while he acted as Chief Investment Officer were each paid \$399,611 per year.

87. One of these deputies, non-party Charles J. Spiller, was until recently employed as PSERS's Deputy Chief Investment Officer, Non-Traditional Investments. Spiller had been in charge of building up PSERS's direct-investments portfolio (which includes such properties as a Florida shopping mall, a California pistachio farm, and a string of Midwestern and Southern mobile-home parks). On December 17, 2021, Spiller announced that he would be retiring in March 2022.

88. PSERS employs William Stalter as an additional real estate advisor and pays him \$241,801 annually. Upon information and belief, Stalter is still employed at PSERS.

89. While employed by PSERS in any capacity, Grell, Grossman, Spiller, and Stalter each owed fiduciary duties to act in the best interests of PSERS and its participants and not in their own interests. As fiduciaries they were/are prohibited from profiting directly or indirectly from the investment decisions made on behalf of the PSERS and with PSERS funds. [24 Pa. C. S. § 8521(e)].

90. Grossman was responsible for the investment activities of PSERS and making sure these activities complied with the investment policy established by the PSERS Board. Grell oversaw the management of PSERS and was responsible for achieving the objectives of the agency established by the Board. Spiller was responsible for numerous non-traditional investments, including the direct purchase of real estate located near the PSERS office, as addressed below.

91. Grell, Grossman, Stalter, and Spiller served as PSERS's primary conduits between the Plan and its investment advisors and consultants (i.e., Aon, Portfolio Advisors, Hamilton Lane, and Aksia).

92. In addition to its own investment unit employees, PSERS also engages an extensive network of professionals, including accountants, actuaries, investment managers, investment advisors, and third-party administrators and advisors.

93. The Board also retains outside investment consultants, such as Aon, Portfolio Advisors, Hamilton Lane, and Aksia.

94. Unlike a private retirement plan (i.e., a 401(k) or similar plan), the actual participants in the PSERS defined benefit plan have no ability to direct or control how any monies withheld from their paycheck for their retirement are invested. These participants are thus wholly dependent on investment advisors and other fiduciaries to treat them fairly, diligently, and honestly.

95. Thus, active participants in PSERS's defined benefit plans such as Plaintiffs and the Class are required by law to remit mandatory contributions to the Fund, yet they have no ability to steer their contributions toward conservative investments and away from risky, aggressive, or alternative investments, with high-fee, high-risk structures.

96. The defined benefit Plan participants (those who are not yet receiving benefits) have only one role in the process: to contribute monies to the Fund. These participants have no choice but to trust and rely on the Board and its investment advisors to prudently invest and manage their contributions and all of the retirement monies.

6. Defendant Portfolio Advisors LLC

97. On or about August 8, 2012, PSERS entered into a \$8,000,000.00 Consulting Agreement contract with Defendant Portfolio Advisors LLC ("Portfolio Advisors"), by which Portfolio Advisors agreed to provide non-discretionary **private equity, venture capital and private debt investment** consulting services for a five-year period. **[EXHIBIT 3]**, Portfolio

Advisors 2012-2017 Contract]. These investments are considered alternative, non-traditional investments.

98. PSERS thus paid Portfolio Advisors (out of PSERS's funds) at least: \$1,600,000.00 for the year August 8, 2012 – August 7, 2013; \$1,600,000.00 for the year August 8, 2013 – August 7, 2014; \$1,600,000.00 for the year August 8, 2014 – August 7, 2015; \$1,600,000.00 for the year August 8, 2015 through August 7, 2016, and \$1,600,000.00 for the year August 8, 2016 through August 7, 2017. [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, pp 1-2].

99. Among many other things, that agreement obligated Portfolio Advisors to perform the following services:

- A. “Apply consistent methods for **evaluating the return on investment** of each of the BOARD's private equity, venture capital and private debt investments and report the results of such evaluations....” [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 1 (unnumbered), Par 2(c)].
- B. “Attend BOARD meetings ... and **assure that the BOARD has a comprehensive and common understanding** of the status and progress of the Fund's private equity, venture capital and private debt assets....” [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 1 (unnumbered), Par 2(e)].
- C. “Screen private equity, venture capital and private debt opportunities, and **recommend approximately 15 to 20 new investments** totaling approximately \$2.5 billion in commitments **per year** for private equity, opportunistic high yield fixed income and private debt.” [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 2, Par 2(e)].
- D. “Evaluate investment opportunities ... **evaluating the economics of the proposed investment** and the track record of the manager, comparing the proposal's attributes to the BOARD's investment strategy and identifying any significant issues.” [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 2, Par 2(g)(i)].
- E. “Conduct in-depth analysis, reference checks and due diligence reviews of the prospective general partner and its organization.

Research the background and histories of principals involved in the investment decision-making process of prospective investments.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 2, Par 2(g)(iv)].

- F. “Conduct third party **due diligence investigation**, typically including interviews with prior and present investors, former employees, CEO’s and other senior executives of past successful and unsuccessful portfolio investments to gauge their assessment of the general partner’s strengths and weaknesses.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 3, Par 2(g)(ix)].
- G. “**Compare** the terms, conditions, and attributes of the proposed investment **to other similar and available opportunities**.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 3, Par 2(g)(x)].
- H. “**Review the proposed terms** and structure of the investment, and identify, if appropriate, any provisions or terms that should be **subject to negotiation**.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 3, Par 2(g)(xi)].
- I. “**Recommend specific private equity, venture capital and private debt investments** to the BOARD.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 3, Par 2(i)].
- J. “Perform data gather functions through direct contact with partnerships/advisors.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 3, Par 2(s)].
- K. “Provide **quarterly and annual reporting** capabilities on all portfolios, partnerships, investments, and filtered sub-levels that includes **return calculations, cash flow summary and detail, diversification, commitment information**, and other related information.” **[EXHIBIT 3]**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 4, Par 2(u)].

100. Portfolio Advisor’s \$1,600,000 fee per year “is based upon an assumed annual commitment rate of approximately \$2.5 billion and a growing portfolio of Private Equity, Private Debt and Opportunistic High Yield investments that in mid-2012 will represent approximately 200

funds and will grow to approximately 275 funds over the next five years.” [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum 2 (Contract Extension Through 2017), p 1.].

101. The 2012-2017 contract provided that Portfolio Advisors was an independent contractor. [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 5, Par 5].

102. The contract also addressed Portfolio Advisors’ standard of care in performance of its obligations, requiring that it:

... shall perform investment consulting and administrative services under this Agreement subject to the **exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are familiar with such matters exercise in the management of their own affairs**, not in regard to speculation but in regard to the permanent disposition of the Fund, considering the probable income to be derived therefrom as well as the probable safety of their capital. **PORTFOLIO ADVISORS acknowledges that it is a “fiduciary” with respect to the BOARD and the Fund** as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to this Agreement. [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 5, Par 4].

103. The federal ERISA statute addressing “fiduciary duties” requires, among other things, that:

... a fiduciary shall discharge his duties with respect to a plan **solely in the interest of the participants and beneficiaries** and—
(A) for the exclusive purpose of:
 (i) providing benefits to participants and their beneficiaries; and
 (ii) defraying reasonable expenses of administering the plan;
(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. [29 U.S.C. § 1104(a)].

104. In addition to liability for Portfolio Advisors’ own fiduciary breaches, the ERISA statutes also ground liability against a fiduciary for breach committed by a co-fiduciary in the following situations:

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, **a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary** with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, **he has enabled such other fiduciary to commit a breach**; or

(3) if **he has knowledge of a breach** by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

[29 U.S.C. § 1105(a)].

105. Separate and apart from its contractual obligations, Portfolio Advisors owed a fiduciary duty to the Plan participants to recommend investments that provide the greatest return on the Plan participants' funds at the least cost and expense. This fiduciary duty required that the fee and expense structure of each proposed investment be transparent and comprehensible, and that each recommendation represent an actual choice among several possible investments. It further required that the investment recommendations be characterized by loyalty to Plan participants over loyalty to investment managers or general partners.

106. Portfolio Advisors was also statutorily obligated to operate as a fiduciary to the Plan participants by virtue of its status as an agent of the PSERS's Board. In relevant part, 24 Pa. C.S. § 8521(e) provides:

(e) Fiduciary status of board.--The members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto.

107. Similarly, Portfolio Advisors, as an agent of the Board, was required to act for the “exclusive benefit of the members of the system.” [24 Pa. C.S. § 8521(e)].

108. The fact that the contract between PSERS and Portfolio Advisors denominated Portfolio Advisors as an independent contractor is not inconsistent with its status as an agent of PSERS. *See Kemether v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 15 F. Supp. 2d 740, 747 (E.D. Pa. 1998) (acknowledging that when one party acts on another’s behalf, there are three possible relationships between them: “[t]he actor may be: (1) a servant, (2) an agent independent contractor, or (3) a non-agent independent contractor.”); *ClinMicro Immunology Ctr., LLC v. PrimeMed, P.C.*, No. 3:CV-11-2213, 2013 WL 3776264, at *8 (M.D. Pa. July 17, 2013) (“An **independent contractor** is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He **may or may not be an agent.**”) quoting *Cohen v. Salick Health Care, Inc.*, 772 F.Supp. 1521, 1528 (E.D. Pa.1991).

109. Under the facts and circumstances here, including the fact that PSERS and Portfolio Advisors shared highly confidential investment information, and shared Portfolio Advisors’ proprietary software (its “on-line state-of-the-art web-enabled proprietary portfolio management system, PRIVILEGe®, which is used to summarize performance and certain financial data”) for evaluating investment performance, Portfolio Advisors was an agent of PSERS within the meaning of 24 Pa. C.S. § 8521(e).

110. In the alternative, Portfolio Advisors at all relevant times owed fiduciary duties to Plaintiffs and the Plan participants by virtue of 20 Pa.C.S. § 7206.

111. On August 3, 2015, Portfolio Advisors and PSERS entered into a First Amendment to the 2012-2017 Contract. [**EXHIBIT 4**, Portfolio Advisors 2015 First Amendment].

112. The Amendment stated that the PSERS Board had “approved an investment program for which PSERS will make co-investments in companies that are headquartered in Pennsylvania and in real properties that are located in Pennsylvania.” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 3, second Whereas clause]. The Amendment also stated that PSERS aims “to make co-investments of approximately \$5,000,000 to \$25,000,00 per investment ... with the goal of investing an aggregate of \$20,000,000 to \$50,000,000 per year with respect to the Program.” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 4, par. 3].

113. Among other things, the Amendment relating to the new Co-investment program obligated Portfolio Advisors to:

- A. “Sourc[e] deal flow from pre-existing relationships with sponsors with whom PSERS had previously committed to one or more investments” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 4, par. 2(b)].
- B. “Mak[e] excess PORTFOLIO ADVISORS deal flow available to PSERS from pre-existing relationships with sponsors with whom PORTFOLIO ADVISORS had previously committed to one or more investments as set forth more particularly elsewhere herein.” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 4, par. 2(c)].
- C. “Perform[] due diligence on co-investment opportunities for the Program.” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 4, par. 2(d)].
- D. “Provid[e] reporting and administration services with respect to the Program.” [EXHIBIT 4, Portfolio Advisors 2015 First Amendment, unnum. p. 4, par. 2(h)].

114. The Amendment required PSERS to pay an additional \$300,000 per year to Portfolio Advisors for these services, and further required that, **even following termination** of the First Amendment, the Program, or Portfolio Advisors’ services, **“PORTFOLIO ADVISORS**

shall continue to earn and be paid the lower of 1% of the cost of the co-investments or the Co-Investment Fee, whichever is lower, for so long as PORTFOLIO ADVISORS continues to serve[] as the general partner of the Co-Investment Vehicle.” **[EXHIBIT 4]**, Portfolio Advisors 2015 First Amendment, unnum. p. 5, par. 7],

115. The Amendment also imposed additional open-ended financial obligations on PSERS. Specifically, the Amendment obligated Portfolio Advisors to form a co-investment vehicle as a Delaware limited partnership to hold the co-investments, and required PSERS to pay all costs and expenses for **formation and operation** of that vehicle:

A to-be-formed affiliate of PORTFOLIO ADVISORS will serve as the general partner of the Co-investment Vehicle. **PSERS shall be responsible for all expenses** associated with the formation and operation of the Co-Investment Vehicle including of its general partner. **[EXHIBIT 4]**, Portfolio Advisors 2015 First Amendment, unnum. p. 5, par. 6].

116. PSERS did not renew the contract with Portfolio Advisors in 2017, but instead entered into a similar contract with Defendant Hamilton Lane Advisors LLC.

117. In light of the fact that Portfolio Advisors’ obligations were undertaken with regard to funds held for the benefit of the Plan participants, Portfolio Advisors owed the Plan participants a fiduciary duty, including a duty of good faith and fair dealing. Portfolio Advisors breached this obligation in numerous ways, as set forth herein.

118. While Portfolio Advisors was acting as an advisor to PSERS, it recommended that PSERS invest Plan participants’ funds into the following alternative investments (among others), in the following amounts, which the Board approved in the following resolutions:

[A]	Aisling Capital IV, LP	\$50M	08/06/15	Reso. 2015-46
[B]	Aisling Capital IV, LP	\$50M	05/25/17	Reso. 2017-08
[C]	Apollo Investment Fund IX, L.P.	\$250M	06/16/17	Reso. 2017-18
[D]	Apollo Investment Fund VIII, L.P.	\$200M	10/04/13	Reso. 2013-35
[E]	Apollo European Equity Capital Partners IV, L.P.	\$200M	10/07/16	Reso. 2016-32

[F]	Apollo European Principal Finance Fund (Dollar A), L.P.	\$200M 03/09/12	Reso. 2012-09
[G]	Avenue Energy Opportunities Fund, L.P.	\$200M 12/09/14	Reso. 2014-58
[H]	Avenue Energy Opportunities Fund, II, L.P.	\$100M 06/16/17	Reso. 2017-17
[I]	Avenue Europe Special Situations Fund III (U.S.), L.P.	\$200M 10/06/15	Reso. 2015-53
[J]	Bain Capital Asia Fund III, L.P.	\$250M 08/06/15	Reso. 2015-47
[K]	Bain Capital Fund XII, L.P.	\$150M 06/16/17	Reso. 2017-20
[L]	Baring Asia Private Equity Fund VI, L.P.	\$100M 08/21/14	Reso. 2014-41
[M]	Blue Point Capital Partners III (B), L.P.	\$50M 06/22/12	Reso. 2012-29
[N]	Blue Point Capital Partners III (B), L.P.	\$25M 10/21/14	Reso. 2014-51
[O]	Bridgepoint Europe IV, L.P.	\$150M 06/13/14	Reso. 2014-22
[P]	Bridgepoint Development Capital III, L.P.	\$75M 06/10/16	Reso. 2016-21
[Q]	Carlyle Energy Mezzanine Opportunities Fund II, L.P.	\$250M 12/09/14	Reso. 2014-57
[R]	Catterton Growth Partners II, L.P.	\$75M 04/26/13	Reso. 2013-17
[S]	Catterton Growth Partners III, L.P.	\$100M 10/06/15	Reso. 2015-53
[T]	Catterton Partners VI, L.P.	\$100M 06/22/12	Reso. 2012-30
[U]	Centerbridge Capital Partners III, L.P.	\$100M 08/07/14	Reso. 2014-37
[V]	Cerebus Institutional Partners VI, L.P.	\$200M 06/11/15	Reso. 2015-27
[W]	Cerebus Levered Loan Opportunities Fund II, L.P.	\$225M 09/28/12	Reso. 2012-50
[X]	Cerebus PSERS Levered Loan Opportunities Fund, L.P.	\$300M 06/11/15	Reso. 2015-28
[Y]	Clearlake Capital Fund IV, LP	\$75M 04/30/15	Reso. 2015-22
[Z]	Coller International Partners VIII, LP	\$100M 04/30/15	Reso. 2015-23
[AA]	Crestview Partners III, L.P.	\$150M 06/12/13	Reso. 2013-20
[BB]	Denham Mining Fund, LP	\$150M 12/08/17	Reso. 2017-57
[CC]	Equistone Partners Europe Fund V, L.P.	£250M 01/21/15	Reso. 2015-03
[DD]	Hayfin SOF II USD L.P.	\$200M 03/11/16	Reso. 2016-08

[EE]	Hayfin Special Opportunities Credit Fund (Parallel), L.P.	€200M 09/28/12	Reso. 2012-48
[FF]	HgCapital 8, L.P.	£95M 12/07/16	Reso 2016-42
[GG]	HGGC Fund II, L.P.	\$100M 01/21/15	Reso. 2015-04
[HH]	HGGC Fund III, L.P.	\$125M 12/07/16	Reso. 2016-43
[II]	ICG Europe Fund V, L.P.	€200M 09/28/12	Reso. 2012-47
[JJ]	ICG Europe Fund VI, L.P.	€150M 03/12/15	Reso. 2015-12
[KK]	Incline Equity Partners IV, L.P.	\$100M 10/07/16	Reso. 2016-33
[LL]	International Infrastructure Finance Company II, L.P.	\$100M 05/10/16	Reso. 2016-12
[MM]	LBC-PSERS Credit Fund, L.P.	\$350M 12/08/15	Reso. 2015-61
[NN]	LBC Credit Partners III, L.P.	\$200M 09/28/12	Reso. 2012-49
[OO]	LBC Credit Partners III, L.P.	\$200M+ 05/01/14	Reso. 2014-17
[PP]	L Catterton VIII, L.P.	\$100M 03/11/16	Reso. 2016-10
[QQ]	LLR Equity Partners IV, L.P.	\$200M 06/12/12	Reso. 2012-31
[RR]	LLR Equity Partners V, L.P.	\$200M 12/07/16	Reso. 2016-41
[SS]	New Mountain Partners IV, L.P.	\$100M 03/15/13	Reso. 2018-14
[TT]	New Mountain Partners V, L.P.	\$200M 06/15/17	Reso. 2017-19
[UU]	NPG Natural Resources XI, L.P.	\$100M 06/13/14	Reso. 2014-23
[VV]	Odyssey Investment Partners Fund V, L.P.	\$100M 12/10/13	Reso. 2013-47
[WW]	Orchid Asia VI, L.P.	\$75M 03/13/14	Reso. 2014-24
[XX]	PAI Europe VI, L.P.	€100M 02/05/12	Reso.2012-60
[YY]	Palladium Equity Partners IV, L.P.	\$75M 01/23/14	Reso. 2014-04
[ZZ]	Park Square-PSERS Credit Opportunities, L.P.	\$200M 08/07/14	Reso. 2014-35
[AAA]	Partners Group Secondary 2011 (USD), L.P. Inc.	\$100M 09/09/12	Reso. 2012-12
[BBB]	Partners Group Secondary 2015 (USD), L.P.	\$100M 03/12/15	Reso.2015-10
[CCC]	Platinum Equity Capital Partners -A III, L.P.	\$200M 01/19/12	Reso. 2012-03
[DDD]	Platinum Equity Capital Partners IV, L.P.	\$300M 12/07/16	Reso. 2016-34
[EEE]	PSERS TAO Partners Parallel Fund, L.P.	\$250M 10/06/15	Reso. 2015-52
[FFF]	PSERS TAO Partners Parallel Fund, L.P.	\$250M 05/01/14	Reso. 2014-18
[GGG]	Sankaty Credit Opportunities VI, L.P.	\$250M 06/11/15	Reso. 2015-28

[HHH] Searchlight Capital II, L.P.	\$100M 10/06/15	Reso. 2015-51
[III] The Sixth Cinven Fund, L.P.	€100M 03/11/16	Reso. 2016-09
[JJJ] Strategic Partners Fund VI, L.P.	\$150M 03/14/14	Reso. 2014-10
[KKK] Strategic Partners Fund VII, L.P.	\$250M 03/11/16	Reso. 2016-07
[LLL] Strategic Partners Real Assets II, L.P.	\$200M 06/16/17	Reso. 2017-15
[MMM] Summit Partners Credit Fund II, L.P.	\$200M 10/04/13	Reso. 2013-42
[NNN] Summit Partners Growth Equity Fund IV, L.P.	\$100M 06/11/15	Reso. 2015-30
[OOO] Summit Partners Venture Capital Fund IV, L.P.	\$50M 06/11/15	Reso. 2015-30
[PPP] Tenaya Capital VI, L.P.	\$50M 03/09/12	Reso. 2012-13
[QQQ] Tenaya Capital VIII, LP	\$100M 09/07/14	Reso. 2014-36
[RRR] The Energy & Minerals Group Fund III, LP	\$100M 05/01/14	Reso. 2014-16
[SSS] Trilantic Capital Partners IV L.P.	\$100M 04/12/12	Reso. 2012-22
[TTT] Venor Special Situations Fund II, L.P.	\$100M 03/12/15	Reso. 2015-11

119. Upon information and belief, Portfolio Advisors also recommended that PSERS invest in additional investments, other than the investments enumerated here.

120. Portfolio Advisors was obligated to evaluate the return on investment of each of PSERS's private equity, venture capital and private debt investments, including but not limited to the above enumerated investments. [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract, Addendum I, p 1 (unnumbered), Par 2(c)].

121. The benchmarks for private market/alternative investment performance that Portfolios Advisors recommended to PSERS were lower than they reasonably should have been. This conclusion is based on a variety of factors, including the conclusions of the 2018 PPMAIRC Report.

122. Portfolio Advisors' obligations did not end once it recommended that PSERS invest in certain investments. Portfolio Advisors had a duty to evaluate, examine, and monitor the

investments already included in PSERS's portfolio, and this required Portfolio Advisors to identify the specific investments that were more expensive than other investments, and those which performed below the level of other investments, and to recommend to PSERS that these investments be sold or otherwise removed from the portfolio.

123. Portfolio Advisors also had a duty to familiarize itself with relevant Pennsylvania law that affected or should affect its investment recommendations, including specifically the shared risk provisions of Pennsylvania statutes that subjected Plan participants to the risk of mandatory increased contributions to PSERS if the Fund failed to meet its targeted returns over certain periods. Upon information and belief, Portfolio Advisors either failed to consider the shared risk statutes, or ignored the impact of the shared risk obligations, and thereby breached its fiduciary obligations by making investment recommendations that unreasonably increased the risk that the Plan participants would be surcharged under this statutory scheme.

124. A report prepared by Verus in 2022 purported to examine certain aspects of the fees, costs, and expenses paid by PSERS for various investments held by PSERS as of June 20, 2021. The Verus report contains information from which one can identify which specific investments in PSERS portfolio were charging the highest fee amounts (i.e., the highest percentages for each category of fee).

125. Relevant to private equity investments, the Verus report concludes that "PSERS active carry for active private equity fund is 18.4%"

126. According to the Verus report, the following **private equity investments**, recommended by Portfolio Advisors, include a carried interest amount of 20%, plus a management fee of 2%. (This percentage of fees meant that the fees charged by these investments were **above the average amount of fees** charged, without even considering expenses):

[T]	Catterton Partners VI, L.P.	\$100M ³	06/22/12	Reso. 2012-30
[PPP]	Tenaya Capital VI, L.P.	\$50M	03/09/12	Reso. 2012-13
[R]	Catterton Growth Partners II, L.P.	\$75M	04/26/13	Reso. 2013-17
[GG]	HGGC Fund II, L.P.	\$100M	01/21/15	Reso. 2015-04
[VV]	Odyssey Investment Partners Fund V, L.P.	\$100M	12/10/13	Reso. 2013-47
[WW]	Orchid Asia VI, L.P.	\$75M	03/13/14	Reso. 2014-24
[L]	Baring Asia Private Equity Fund VI, L.P.	\$100M	08/21/14	Reso. 2014-41
[HHH]	Searchlight Capital II, L.P.	\$100M	10/06/15	Reso. 2015-51
[J]	Bain Capital Asia Fund III, L.P.	\$250M	08/06/15	Reso. 2015-47
[PP]	L Catterton VIII, L.P.	\$100M	03/11/16	Reso. 2016-10
[HH]	HGGC Fund III, L.P.	\$125M	12/07/16	Reso. 2016-43
[KK]	Incline Equity Partners IV, L.P.	\$100M	10/07/16	Reso. 2016-33

127. These (and perhaps additional) investments recommended by Portfolio Advisors have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS Fund's overall underperformance. Portfolio Advisors should have recommended that these overpriced investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

128. With regard to **private credit investments** recommended by Portfolio Advisors, the Verus report show that the following investments also appear to have **higher than average fees**:

[G]	Avenue Energy Opportunities Fund, L.P.	\$200M	12/09/14	Reso. 2014-58
[Q]	Carlyle Energy Mezzanine Opportunities Fund II, L.P.	\$250M	12/09/14	Reso. 2014-57
[DD]	Hayfin SOF II USD L.P.	\$200M	03/11/16	Reso. 2016-08
[EE]	Hayfin Special Opportunities	€200M	09/28/12	Reso. 2012-48

³ The figures shown in this column are the total investment amount, not the amount of fees.

	Credit Fund (Parallel), L.P.		
[FF]	HgCapital 8, L.P.	£95M 12/07/16	Reso 2016-42
[II]	ICG Europe Fund V, L.P.	€200M 09/28/12	Reso. 2012-47
[GGG]	Sankaty Credit Opportunities VI, L.P.	\$250M 06/11/15	Reso. 2015-28
[MMM]	Summit Partners Credit Fund II, L.P	\$200M 10/04/13	Reso. 2013-42

129. These (and perhaps other) investments recommended by Portfolio Advisors have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS Fund's overall underperformance. Portfolio Advisors should have recommended that these investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

130. To the extent that Portfolio Advisors did not recommend jettisoning these (and upon information and belief, other) expensive investments or otherwise recommend investments with less expensive fees in the first place, Portfolio Advisors concealed the fact that these (and, upon information and belief, other additional) investments were costing the Plan participants excessive fees.

131. As a fiduciary to the Plan participants, Portfolio Advisors was required to disclose excessive fees, costs, and expenses. It failed to do so, thereby concealing the fact that the Fund paid excessive fees, costs, and expenses under Portfolio Advisors' watch.

132. Under the totality of the circumstances, including but not limited to the risk adjusted/fee adjusted expected returns, the shared risk statutes, and the underfunded status of the Fund, Portfolio Advisors should have concluded that PSERS's portfolio was overextended in the alternative/non-traditional space (based on, *inter alia*, peer review and professional standards), and

should have told the Board that its investment allocations were overweighted with alternative/non-traditional investments; should have recommended the sale of a portion of these investments; and/or should have otherwise renegotiated (or recommended the renegotiation) of the terms of these investment partnership agreements to reduce the fees, costs, and expenses.

133. Portfolio Advisors improperly scooped up business from PSERS immediately after it officially ended its contract with PSERS. On October 5, 2017 (less than two months after Portfolio Advisors ceased offering its service advisor services to PSERS), the PSERS Board voted: (1) to invest \$125,000,000.00 in **Portfolio Advisors** Secondary Fund III, L.P., and (2) to establish a separately managed account through which PSERS was authorized to invest another \$200 million to exploit so-called market dislocations. That resolution required that “[a]ny additional capital deployed through the separately managed account shall be reported to the Board in a timely manner.” [PSERB Resolution 2017-37, available on PSERS website].

134. Although Portfolio Advisors was no longer an advisor to PSERS in 2021 when Plaintiffs’ contributions increased, that 2021 shared risk increase was based on a nine-year performance period, and the actions and inactions taken by Portfolio Advisors (and the other Defendants) between 2012 and 2017, and 2017 and beyond, were causes of the injuries suffered by Plaintiffs and the Class, as set forth herein.

7. Defendant Hamilton Lane Advisors LLC

135. On or about September 15, 2017, PSERS entered into a \$7,000,000.00 consulting agreement contract with Defendant Hamilton Lane Advisors LLC (“Hamilton Lane”), by which Hamilton Lane agreed to provide non-discretionary **private markets investment** consulting services (i.e., for the Plan’s alternative investments) for a five-year period. [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract]. These investments are alternative, non-traditional investments.

136. PSERS thus has already paid Hamilton Lane (out of PSERS's funds) at least \$1,400,000.00 for the year September 15, 2017 – September 14, 2018; \$1,400,000.00 for the year September 15, 2018 – September 14, 2019; \$1,400,000.00 for the year September 15, 2019 – September 14, 2020; and \$1,400,000.00 for the year September 15, 2020 through September 14, 2021, and PSERS is obligated to pay Hamilton Lane at least \$1,400,000.00 for the year September 15, 2021 – September 14, 2022. [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, pp. 1-2].

137. Among many other things, that agreement obligated Hamilton Lane to perform the following services:

- A. “An **in-depth review of [PSERS] existing portfolio** of Primary Investments and Co-Investments (“Portfolio”) including ... [r]eviewing existing Portfolio Funds to highlight portfolio Primary Investments and Co-Investments to which [PSERS] should make additional commitments and **identify at-risk commitments.**” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, p. 1, Par. 2(a)].
- B. “Identifying and communicating to [PSERS] **significant** events that may materially **affect the Portfolio's value,** including market changes, changes in a Portfolio Fund's management and substantial increases or reductions in investment values.” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, p. 2, Par. 2(d)].
- C. “[Hamilton Lane] will review private markets investment objectives, policies, and asset allocation and will **make recommendations** on private markets investment objectives, policies, and **asset allocation changes,** if any, annually.” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(1)].
- D. “[Hamilton Lane] will provide “gate-keeper” services which may include sourcing, screening, securing allocations, conducting due diligence, assisting in contract negotiations, [and] **providing manager selection recommendations.**” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(8)].
- E. “[Hamilton Lane] will work with the Board and staff to **identify new private market investment opportunities,** including in-depth investment due diligence, investment opportunities, including in-depth investment due diligence, covering areas including investment strategy,

operational due diligence and personnel.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(9)].

- F. “[Hamilton Lane] will perform **regular investment due diligence reviews of PSERS’s private markets managers** including but not limited to, investment strategy and personnel, and provide no less than annual written updates of those reviews and any other manager visits/meetings as they are completed with current recommendations.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par A.(11)].
- G. “[Hamilton Lane] will **recommend a performance benchmark** for the total private markets program as well as individual private markets portfolios.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(16)].
- H. “[Hamilton Lane] will **recommend suitable private markets investment opportunities** and practical implementation methods.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par A.(17)].
- I. “[Hamilton Lane] will **present the Private Markets performance results to the Board quarterly, including** relative results versus pre-established benchmarks, and the **returns relative to the risks taken.**” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par A.(22)].
- J. “...PSERS’s historical performance data, by private markets portfolio and private markets composite, will be uploaded and [] the database will be updated on a quarterly basis, and monthly for private high yield.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(25)].
- K. “[Hamilton Lane] will prepare a **quarterly report containing calculated total return** for each private markets composite, and each individual private markets portfolio, and **compare PSERS’s** calculated data and data calculated by [Hamilton Lane] with benchmarks and **with comparable data for a similar population of funds.** Returns should be calculated for the following time periods: one-month, three-months, fiscal year, calendar year-to-date, one-year, three-year, five-year, ten-year, and since inception.” [EXHIBIT 5, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par B.(1)].
- L. “[Hamilton Lane] will prepare a quarterly report **containing the calculated total return (gross and net of fees) for the private markets program,** and individual private markets fund commitments, and

compare PSERS calculated data with benchmarks and with data for a similar of funds by asset class and portfolio management styles for all of the public market portfolios and composites. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, and since inception.” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. B.(2)].

- M. “[Hamilton Lane] will be responsible for collecting and compiling underlying investment exposure details (quarterly)” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par B.(7)].
- N. “[Hamilton Lane] shall be responsible for **collecting quarterly details on fees and profit sharing (carried interest)** on an annual basis and maintain ITD data that PSERS sends during the transition.” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par B.(8)].
- O. “[Hamilton Lane will be **responsible for calculating performance** in a variety of ways (portfolio, region, strategy, currency, industry, vintage year, etc.)” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. B.(9)].
- P. “[Hamilton Lane] will be responsible for **calculating PSERS’s custom benchmark** on a quarterly basis.” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. B.(11)].
- Q. “[Hamilton Lane] will be responsible for conducting an annual reconciliation of PSERS’s year-end NAVs for each partnership and comparing that to PSERS’s reported performance and multiple.” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Schedule II, Rider B, Par. B.(17)].
- R. “[Hamilton Lane] will submit written **recommendations recommending selection of investments** reflecting its investment and operational analysis.” **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider C, Par. 20, p. 19 of 44].

138. Hamilton Lane was obligated to recommend allocation changes within the private markets space. **[EXHIBIT 5]**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. A.(1)].

139. The 2017 contract provides that Hamilton Lane is an independent contractor and not an employee of PSERS. [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider A, Par. 5, p. 2 of 25].

140. The contract also addresses Hamilton Lane’s standard of care in performance of its obligations, requiring that it:

... shall perform investment consulting and administrative services under this Agreement subject to the **exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the management of like matter**, not in regard to speculation but in regard to the permanent disposition of the Assets, considering the probable income to be derived therefrom as well as the probable safety of the invested capital. [**Hamilton Lane**] **acknowledges that it is a “fiduciary” with respect to the Client and the Assets** as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to this Agreement. For the avoidance of doubt, the obligations of the Consultant arising under the immediately preceding sentence shall not extend to the diversification requirements under ERISA.” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Par 13(a), p. 9].

141. The federal ERISA statute addressing “fiduciary duties” requires, among other things, that:

. . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
(A) for the exclusive purpose of:
 (i) providing benefits to participants and their beneficiaries; and
 (ii) defraying reasonable expenses of administering the plan;
(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. [29 U.S.C. § 1104(a)].

142. In addition to liability for Hamilton Lane’s own fiduciary breaches, the ERISA statutes also ground liability against a fiduciary for breach committed by a co-fiduciary in the following situations:

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, **a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary** with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, **he has enabled such other fiduciary to commit a breach**; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

[29 U.S.C. § 1105(a)].

143. Separate and apart from its contractual obligations, Hamilton Lane owed a fiduciary duty to the Plan participants to recommend investments that provide the greatest return on the Plan participants' funds at the least cost and expense. This fiduciary duty required that the fee and expense structure of each proposed investment be transparent and comprehensible, and that each recommendation represent an actual choice among several possible investments. It further required that the investment recommendations be characterized by loyalty to Plan participants over loyalty to investment managers or general partners.

144. Hamilton Lane was also statutorily obligated to operate as fiduciary to the Plan participants by virtue of its status as an agent of the PSERS Board. In relevant part, 24 Pa. C.S. § 8521(e) provides:

(e) Fiduciary status of board.--The members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto.

145. Similarly, Hamilton Lane, as an agent of the Board, is required to act for the “exclusive benefit of the members of the system.” [24 Pa. C.S. § 8521(e)].

146. The fact that the contract between PSERS and Hamilton Lane denominates Hamilton Lane as an independent contractor is not inconsistent with its status as an agent of PSERS. *See Kemether v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 15 F. Supp. 2d 740, 747 (E.D. Pa. 1998) (acknowledging that when one party acts on another’s behalf, there are three possible relationships between them: “[t]he actor may be: (1) a servant, (2) an agent independent contractor, or (3) a non-agent independent contractor.”); *ClinMicro Immunology Ctr., LLC v. PrimeMed, P.C.*, No. 3:CV-11-2213, 2013 WL 3776264, at *8 (M.D. Pa. July 17, 2013) (“An **independent contractor** is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He **may or may not be an agent.**”) quoting *Cohen v. Salick Health Care, Inc.*, 772 F.Supp. 1521, 1528 (E.D. Pa.1991).

147. Under the facts and circumstances here, including the fact that PSERS and Hamilton Lane shared highly confidential investment information, shared Hamilton Lane’s proprietary software for evaluating investment performance, and that Hamilton Lane conducted extensive investment training of PSERS’s personnel, Hamilton Lane was an agent of PSERS within the meaning of 24 Pa. C.S. § 8521(e).

148. Hamilton Lane’s duties to Plan participants are further evidenced by additional terms in its agreement with PSERS. For example, Hamilton Lane’s contract with PSERS requires Hamilton Lane to “**maintain during any period in which it is providing Services a policy of errors and omissions insurance for the protection of the Fund...**” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Par 20, p. 12].

149. By way of further example, the same contract contains an indemnification clause which imposes an obligation on Hamilton Lane toward the beneficiaries of the Plan. That clause states in relevant part:

Indemnification. [Hamilton Lane] shall hold and save harmless the Commonwealth of Pennsylvania, [PSERS], **the Public School Employees' Retirement Board** collectively **and its members** and their designees individually (together, the "Board"), their beneficiaries, directors, officers, agents, and employees, from and against claims, demands, actions, or liability of any nature, including attorneys' fees and court costs ("Losses"), based upon or arising out of any services performed, of the failure to perform services by [Hamilton Lane], its directors, officers, employees, and agents under this Agreement. [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Par 6(b), p. 6].

150. In the alternative, Hamilton Lane owed fiduciary duties to Plaintiffs and the Plan participants by virtue of 20 Pa.C.S. § 7206.

151. As alleged, the Hamilton Lane 2017-2022 contract with PSERS became effective on September 15, 2017.

152. However, on September 7, 2017 (eight days **prior** to the effective date of this contract) Hamilton Lane issued a letter recommending that the PSERS Board invest millions of dollars in a limited partnership secondary fund in which **Portfolio Advisors** (the investment advisor who had only recently been itself acting as PSERS's advisor on alternative investments) was the general partner:

Based on the above, Hamilton Lane recommends that PSERS commit up to \$125 million in **Portfolio Advisors Fund III, L.P.** In addition, Hamilton Lane is supportive of the creation of a separately managed account with discretion for PSERS to invest additional capital to exploit market dislocations if and when the occur. Hamilton Lane makes this recommendation considering the general partner's qualifications and PSERS's overall investment guidelines. [**EXHIBIT 6**, September 20, 2017 Memorandum prepared by PSERS staff, attaching Hamilton Lane recommendation letter as pdf pp. 6-7].

153. That same letter stated that Hamilton Lane personnel had conducted the due diligence on this Portfolio Advisors fund on August 28, 2017 (well prior to the date on which the PSERS/Hamilton Lane contract became effective. [**EXHIBIT 6**, September 20, 2017 Memorandum prepared by PSERS staff, attaching Hamilton Lane recommendation letter as pdf p. 7].

154. According to PSERS's website, on October 5, 2017 (less than two months after Portfolio Advisors ceased offering its advisor services to PSERS), the PSERS Board followed Hamilton Lane's recommendation and voted: (1) to invest \$125,000,000.00 in **Portfolio Advisors Secondary Fund III, L.P.** and (2) to establish a separately managed account through which PSERS was authorized to invest another \$200 million to Portfolio Advisors to exploit so-called market dislocations. The PSERS Board's resolution required that "[a]ny additional capital deployed through the separately managed account shall be reported to the Board in a timely manner." [PSERB Resolution 2017-37, available on PSERS website]. The timing of this recommendation strongly suggests that Hamilton Lane was cooperating with Portfolio Advisors, rather than acting solely for the best interests of the Plan participants.

155. In light of the fact that Hamilton Lane's obligations were undertaken with regard to funds held for the benefit of the Plan participants, Hamilton Lane owed the Plan participants a fiduciary duty, including a duty of good faith and fair dealing. Hamilton Lane breached this obligation in numerous ways, as set forth herein.

156. From the time that Hamilton Lane began acting as an advisor to PSERS until the end of 2021, it recommended that PSERS invest Plan participants' funds into the following alternative investments (among others), in the following amounts, which the Board approved in the following resolutions:

[A]	AG Europe Realty Fund III, L.P.	\$100M 08/09/19	Reso. 2019-40
[B]	Apax Digital, L.P.	\$100M 09/02/17	Reso. 2017-23
[C]	Apax Digital II L.P.	\$175M 03/05/21	Reso. 2021-06
[D]	Apax X USD, L.P.	\$150M 12/06/19	Reso. 2019-60
[E]	Bain Capital Asia Fund IV, L.P.	\$200M 10/12/18	Reso. 2018-45
[F]	Bain Capital Distressed and Special Situations 2019 (A), L.P.	\$200M 05/23/19	Reso. 2019-23
[G]	Bell Institutional Fund VII, L.P.	\$100M 08/09/19	Reso. 2019-37
[H]	Blue Point Capital Partners IV, L.P.	\$70M 12/08/17	Reso. 2017-53
[I]	Bridgepoint Europe VI, L.P.	€100M 12/08/17	Reso. 2017-54
[J]	Bridgeport Development Capital IV, L.P.	£125M 06/12/20	Reso. 2020-20
[K]	Brookfield Global Transition Fund LP	\$300M 12/17/21	Reso. 2021-75
[L]	Brookfield Strategic Real Estate Partners IV, L.P.	\$300M 11/19/21	Reso. 2031-64
[M]	Cabot Industrial Value Fund VI, L.P.	\$100M 08/09/19	Reso. 2019-38
[N]	Cabot UK Core-Plus Industrial Fund SCSp	£50M 03/08/19	Reso. 2019-08
[O]	Carlyle Realty Partners IX, L.P.	\$200M 05/05/21	Reso. 2021-05
[P]	Clearlake Capital Partners V, L.P.	\$200M 12/08/17	Reso. 2017-58
[Q]	Clearlake Capital Partners VI, L.P.	\$200M 12/06/19	Reso. 2019-62
[R]	Clearlake Flagship Plus Partners L.P.	\$75M 08/07/20	Reso. 2020-28
[S]	Clearlake Opportunities Partners (P) II, L.P.	\$100M 03/08/19	Reso. 2019-09
[T]	Denham Mining Fund, LP	\$150M 12/08/17	Reso. 2017-57
[U]	DRA Growth and Income Master Fund X, LLC	\$100M 08/09/19	Reso. 2019-39
[V]	Equistone Partners Europe Fund VI, SCSp	€85M 12/08/17	Reso. 2017-55
[W]	Exeter Industrial Value Fund II, L.P.	\$100M 03/08/19	Reso. 2019-07
[X]	Exeter Industrial Value Fund V, L.P.	\$100M 10/11/19	Reso. 2019-48
[Y]	Greenoaks Capital Opportunities Fund III LP	\$100M 10/09/20	Reso. 2020-39
[Z]	Hahn & Company III, L.P. & Hahn & Company III-S, L.P.	\$150M 05/23/19	Reso. 2019-25
[AA]	Hg Genesis 9 A L.P.	€100M 03/06/20	Reso. 2020-04
[BB]	Hg Saturn 2A L.P.	\$100M 03/06/20	Reso. 2020-05
[CC]	ICG Europe Fund VII SCSp	\$150M 03/09/18	Reso. 2018-09
[DD]	ICG Europe Fund VIII SCSp	€200M 12/17/21	Reso. 2021-74

[EE]	Incline Elevate Fund, L.P.	\$75M 05/23/19	Reso. 2019-24
[FF]	Incline Elevate Fund II, L.P.	\$100M 10/09/21	Reso. 2021-43
[GG]	Incline Equity Partners V, L.P.	\$150M 12/06/19	Reso. 2019-59
[HH]	Insight Partners XI, L.P.	\$150M 12/06/19	Reso. 2019-61
[II]	Insight Partners Fund XII, L.P.	\$100M 08/11/21	Reso. 2021-39
[JJ]	Insight Partners Opportunities Fund I, L.P.	\$168M 10/11/21	Reso. 2020-40
[KK]	Insight Venture Partners X, L.P.	\$150M 12/08/17	Reso. 2017-58
[LL]	ISQ Global Infrastructure Fund III, L.P.	\$400M 06/07/20	Reso. 2020-30
[MM]	K4 Private Investors, L.P.	\$100M 03/09/18	Reso. 2018-08
[NN]	Lindsay Goldberg V, L.P.	\$150M 12/07/18	Reso. 2018-58
[OO]	LLR Equity Partners VI, L.P.	\$200M 08/07/20	Reso. 2020-45
[PP]	New Mountain Partners VI, L.P.	\$175M 03/06/20	Reso. 2020-06
[QQ]	New Mountain Partners VI, L.P.	\$75M 08/07/10	Reso. 2020-32
[RR]	NGP Natural Resources XII, L.P.	\$225M 08/10/18	Reso. 2018-31
[SS]	Oak HC/FT Partners IV, L.P.	\$100M 01/14/21	Reso. 2021-01
[TT]	Orchid Asia VII, L.P.	\$75M 10/05/17	Reso. 2017-39
[UU]	PAI Europe VII, L.P.	€125M 10/05/17	Reso. 2017-38
[VV]	PGIM Real Estate Capital VII, SCSp	\$125M 08/07/20	Reso. 2020-30
[WW]	Platinum Equity Capital Partners V, L.P.	\$300M 08/09/19	Reso. 2019-36
[XX]	Platinum Equity Small Cap Fund, L.P.	\$200M 03/09/18	Reso. 2018-06
[YY]	Polaris Fund V, L.P.	¥10.B 10/0920	Reso. 2020-40
[ZZ]	Portfolio Advisors Secondary Fund III, L.P.	\$125M 09/20/17	Reso. 2017-37
[AAA]	Portfolio Advisors Secondary Fund IV, L.P.	\$150M 12/06/19	Reso. 2019-58
[BBB]	Sante Health Ventures III, L.P. and Sante Health Ventures IV, L.P.	\$150M 01/17/19	Reso. 2019-02
[CCC]	Searchlight Capital III, L.P.	\$150M 03/08/19	Reso. 2019-10
[DDD]	Summit Partners Growth Equity Fund X, L.P.	\$150M 01/17/19	Reso. 2019-03
[EEE]	Summit Partners Growth Equity Fund XI-A, L.P.	\$150M 08/11/21	Reso. 2021-40
[FFF]	Trilantic Capital Partners VI (North America), L.P.	\$150M 05/24/18	Reso. 2018-23
[GGG]	TSSP Opportunistic Partners	\$150M 05/24/18	Reso. 2018-22

IV, L.P.			
[HHH]	Tulco, LLC	\$100M 12/07/19	Reso. 2018-58
[III]	Valar Velocity Fund 3 LP	\$30M 12/03/20	Reso. 2020-51
[JJJ]	Webster Capital IV, L.P.	\$75M 03/09/18	Reso. 2018-07

157. Upon information and belief, Hamilton Lane also recommended that PSERS invest in additional investments, other than the investments enumerated here.

158. Hamilton Lane was responsible for calculating performance of the PSERS plan in a variety of ways [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. B.(9)]. It was obligated to calculate “total return for each private markets composite, and each individual private markets portfolio” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par B.(1)], and to “prepare a quarterly report containing the calculated total return (**gross and net of fees**) for the private markets program, and individual private markets fund commitments.” [**EXHIBIT 5**, Hamilton Lane 2017-2022 Contract, Rider B, Schedule II, Par. B.(2)].

159. PSERS’s website contains documents purporting to be PSERS’s Annual Final Asset Listing as of June 30 each year. These documents list a value for every PSERS asset. However, for many years (including at least for years ending June 30, 2015, 2016, 2017, 2018, and 2020) a substantial number of the alternative/nontraditional investments (including specifically a number of those for which Hamilton Lane was responsible) do not include a value, but simply state “not disclosed.” The totals shown for each category of investment in that document thus include a zero value for the investments whose value was “not disclosed.” When the category totals in the Annual Final Asset Listing documents are compared to the category totals included in the Comprehensive Annual Financial Reports (“CAFR”), it appears that the value of several investments was not included. Upon information and belief, Hamilton Lane failed to include the value of certain investments in its computations and failed to ensure that the value of these

investments was included in the value of assets reported in the Comprehensive Annual Financial Reports.

160. Hamilton Lane also had a duty to familiarize itself with relevant Pennsylvania law that affected or should have affected its investment recommendations, including specifically the shared risk provisions of Pennsylvania statutes that subjected Plan participants to the risk of mandatory increased contributions to PSERS if the Fund failed to meet its targeted returns over certain periods. Hamilton Lane either failed to consider the shared risk statutes, or ignored the content of the shared risk obligations, and thereby breached its fiduciary obligations by making investment recommendations that unreasonably increased the risk that the Plan participants would be surcharged under this statutory scheme.

161. Hamilton Lane's obligations did not end once it recommended that PSERS invest in certain investments. Hamilton Lane had a duty to evaluate, examine, and monitor the investments already included in PSERS's portfolio, and this required Hamilton Lane to identify the specific investments that were more expensive than other investments, and those which performed below the level of other investments, and to recommend to PSERS that these investments be sold or otherwise removed from the portfolio.

162. A report prepared by Verus in 2022 purported to examine certain aspects of the fees, costs, and expenses paid by PSERS for various investments held by PSERS as of June 20, 2021. The Verus report contains information from which one can identify which specific investments in PSERS portfolio were charging the highest fee amounts (i.e. the highest percentages for each category of fee).

163. Relevant to private equity investments, the Verus report concludes that "PSERS active carry for active private equity fund is 18.4%"

164. According to the Verus report, the following **private equity investments**, recommended by Hamilton Lane, include a carried interest amount of 20%, plus a management fee of 2%. This percentage of fees meant that the fees charged by these investments were **above the average amount** of fees charged (without even considering expenses)):

[TT]	Orchid Asia VII, L.P.	\$75M 10/05/17	Reso. 2017-39
[E]	Bain Capital Asia Fund IV, L.P.	\$200M 10/12/18	Reso. 2018-45
[MM]	K4 Private Investors, L.P.	\$100M 03/09/18	Reso. 2018-08
[XX]	Platinum Equity Small Cap Fund, L.P.	\$200M 03/09/18	Reso. 2018-06
[BBB]	Sante Health Ventures III, L.P.	\$150M 01/17/19	Reso. 2019-02
[JJJ]	Webster Capital IV, L.P.	\$75M 03/09/18	Reso. 2018-07
[GG]	Incline Equity Partners V, L.P.	\$150M 12/06/19	Reso. 2019-59
[Z]	Hahn & Company III, L.P. &	\$150M 05/23/19	Reso. 2019-25
[EE]	Incline Elevate Fund, L.P.	\$75M 05/23/19	Reso. 2019-24
[GG]	Incline Equity Partners V, L.P.	\$150M 12/06/19	Reso. 2019-59
[Y]	Greenoaks Capital Opportunities Fund III LP	\$100M 10/09/20	Reso. 2020-39

165. These (and perhaps other) investments recommended by Hamilton Lane have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS's Fund's overall underperformance. Hamilton Lane should have recommended that these investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, well prior to June 30, 2021. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

166. With regard to **private credit** investments recommended by Hamilton Lane, the Verus report shows that the following investment also appears to have **higher than average fees**:

[S]	Clearlake Opportunities Partners (P) II, L.P.	\$100M 03/08/19	Reso. 2019-09
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167. These (and perhaps other) investments recommended by Hamilton Lane have also cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS Fund's overall underperformance. Hamilton Lane should have recommended that this investment be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, well prior to June 30, 2021. To the extent that this investment could not have been liquidated, it was inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

168. To the extent that Hamilton Lane did not recommend jettisoning the above (and upon information and belief, other) expensive investments or otherwise recommend investments with less expensive fees in the first place, Hamilton Lane concealed the fact that these (and, upon information and belief other, additional) investments were costing the Plan participants excessive fees.

169. Hamilton Lane did not consider the potential impact of Pennsylvania's shared risk statute on the PSERS Plan participants in performing its obligations.

170. As a fiduciary to the Plan participants, Hamilton Lane was required to disclose excessive fees, costs, and expenses. It failed to do so, thereby concealing the fact that the Fund paid excessive fees, costs, and expenses under Hamilton Lane's watch.

171. The benchmarks for private market/alternative investment performance that Hamilton Lane recommended to PSERS were lower than they reasonably should have been. This conclusion is based on a variety of factors, including the conclusions of the 2018 PPMAIRC Report.

172. Finally, under the totality of the circumstances, including but not limited to the risk adjusted/fee adjusted expected returns, the shared risk statutes, and the underfunded status of the

Fund, Hamilton Lane should have concluded that PSERS's portfolio was overextended in the alternative/non-traditional space (based on, *inter alia*, peer review and professional standards), and should have told the Board that its investment allocations were overweighted with alternative/non-traditional investments, should have recommended the sale of a portion of these investments, and/or should have otherwise renegotiated (or recommended the renegotiation) of the terms of these investment partnership agreements to reduce the fees, costs and expenses.

8. Defendant Aksia LLC

173. On or about September 16, 2015, PSERS entered into a \$3,500,000.00 Consulting Agreement contract with Defendant Aksia LLC ("Aksia"), by which Aksia agreed to provide non-discretionary **hedge fund investment** consulting services for a five-year period. [**EXHIBIT 7**, Aksia 2015-2020 Contract].

174. PSERS thus paid at least \$700,000.00 from the PSERS funds to Aksia for services under this contract, for each of five years. Those five years ended September 15, 2016, September 15, 2017, September 15, 2018, September 15, 2019, and September 15, 2020. [**EXHIBIT 7**, Aksia 2015-2020 Contract, pp 1-2].

175. Among many other things, that agreement obligated Aksia to perform the following services:

- A. "[Aksia] will maintain a disciplined and comprehensive process to **screen institutional quality hedge fund managers** down to an appropriate number for consideration by PSERS." [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 33 of 37, Par. A(6)].
- B. "[Aksia] will **provide "gate-keeper" services** which may include: sourcing, screening, securing allocations, conducting due diligence, assisting in contract negotiations, [and] **providing manager selection recommendations**." [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 33 of 37, Par. A.(8)].
- C. "[Aksia] will work with the Board and staff to **identify new hedge fund investment opportunities**, including in-depth investment due diligence,

covering areas including investment strategy, personnel, risk management, operations (including pricing, independent administrator, and independent auditor), infrastructure, regulatory and compliance reviews, etc.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 33 of 37, Par. A.(9)].

- D. “[Aksia] will perform **regular investment due diligence reviews of PSERS’s hedge fund managers** including but not limited to, investment strategy, personnel, risk management, operations (including pricing, independent administrator, and independent auditor), infrastructure, regulatory and compliance reviews, etc. and provide no less than annual written updates of those reviews and any other manager visits/meetings as they are completed with current recommendations.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 33 of 37, Par A.(11)].
- E. “[Aksia] will recommend **suitable** hedge fund investment opportunities and practical implementation methods.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 34 of 37, Par. A.(13)].
- F. “[Aksia] will **present the hedge fund performance results to the Board quarterly**, including relative results versus pre-established benchmarks, and the returns relative to the risks taken.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 34 of 37, Par. A.(18)].
- G. “[Aksia] will prepare a monthly report containing **calculated total returns for each hedge fund composite, and each individual hedge fund portfolio**, and compare PSERS’s calculated data with benchmarks and with comparable data for a similar population of funds. Returns should be calculated for the following time periods: one month, three months, fiscal year, calendar year-to-date, one year, three year, five year, ten year, and since inception.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 35 of 37, Par. B.(1)].
- H. “[Aksia] will prepare a quarterly report containing the **calculated total return (gross and net of fees) for the hedge fund program**, and individual hedge funds, and compare PSERS calculated data with benchmarks and with data for a similar population of funds by asset class and portfolio management styles for all of the public market portfolios and composites. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5–year, 10-year, and since inception.” [EXHIBIT 7, Aksia 2015-2020 Contract, Rider C, p. 35 of 37, Par. B.(3)].

176. The 2015 Aksia-PSERS contract provides that Aksia “shall perform its services as an independent contractor.” [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider A, Par. 7, unnumbered p. 2].

177. The contract also addresses Aksia’s standard of care in performance of its obligations, requiring that it “will serve in a fiduciary capacity and will acknowledge in writing the contractor’s fiduciary status, without qualification.” [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 32 of 37].

178. The contract expressly incorporates this obligation contained in Rider C, into the parties’ contract. [**EXHIBIT 7**, Aksia 2015-2020 Contract, p. 2 (incorporating Riders A, B, C, and D by reference and making them part of the executed purchase order).

179. On or about January 27, 2021, PSERS entered into a \$5,500,000.00 Consulting Agreement contract with Aksia, by which Aksia agreed to provide non-discretionary **hedge fund and private credit investment** consulting and performance measurement services for a five-year period. [**EXHIBIT 8**, Aksia 2021-2026 Contract].

180. PSERS is therefore obligated to pay Aksia \$1,100,000.00 from PSERS funds for hedge fund and private credit investment services as well as for unspecified special projects and services, for each of the following annual periods: February 1, 2021 – January 31, 2022; February 1, 2022 – January 31, 2023; February 1, 2023 – January 31, 2024; February 1, 2024 – January 31, 2025; and February 1, 2025 – January 31, 2026. [**EXHIBIT 8**, Aksia 2021-2026 Contract, pp. 1-2].

181. Among many other things, that agreement obligated Aksia to perform the following services:

- A. “Prepare a written annual, 3-year and 10-year investment plan by February 1 of each calendar year for PSERS’s hedge fund and private

credit allocations. [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 1, Par A(3)].

- B. “Prepare and deliver by March 1 of each year, an annual written report that contains a **comparative analysis of PSERS’s hedge fund and private credit results with the annual investment plan** provided for in subsection 3. [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 1, Par A(4)].
- C. “**Recommend suitable investment opportunities** and practical implementation methods; research supporting such recommendations must have been completed within the prior 12 months. [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 1, Par A(5)].
- D. “Assist the Board and PSERS’s Investment Office Professionals in **identification of new investment opportunities**, including in depth due diligence covering areas including investment strategy, personnel, risk management, operations (including pricing, independent administrator, and independent auditor), infrastructure, regulatory and compliance reviews, etc.” [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 2, Par. A.(11)].
- E. “Provide on-going monitoring and oversight reports as requested for PSERS’s hedge fund and private credit investment managers, including:
...
 - b. **analysis of each manger’s absolute and relative performance in relation to benchmarks, investment objectives, and peer groups**, including analysis of any ex post risk-adjusted performance.
...
 - d. updated **research on each investment manager in the Fund’s portfolio** updated at least once every 18 months to include a review of investment performance, process, and the manager’s organization.
...
 - f. **advice on manager retention/termination**. [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 2, Par. A.(12)].
- F. “Prepare detailed quarterly and annual reporting (confidential and public versions.)” [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 3, Par. A.(19)].
- G. “**Present performance results** to the Board quarterly, including relative **results versus pre-established benchmarks**, and the returns relative to the risks taken.” [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 3, Par. A.(29)].

- H. “Prepare a written monthly report containing calculated **total return (gross and net of fees) for each composite, and each individual portfolio, and compare** PSERS calculated data with benchmarks and with comparable data for a similar population of funds. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, and since inception.” **[EXHIBIT 8]**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 4, Par. B.(1)].
- I. “Prepare a written quarterly report containing **calculated total return (gross and net of fees) for the total hedge fund and private credit allocations, and each individual private credit and hedge fund**, and compare PSERS calculated data with benchmarks and with data for a similar population of funds by asset class and portfolio management styles. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, 15-year, 20-year, 25-year, 30-year, and since inception.” **[EXHIBIT 8]**, Aksia 2021-2026 Contract, Rider 1, unnumbered pp. 4-5, Par. B.(3)].

182. The 2021 Aksia-PSERS contract provides that Aksia “shall perform its services as an independent contractor.” **[EXHIBIT 8]**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 8, Par. 7].

183. The contract also addresses Aksia’s standard of care in performance of its obligations, requiring that it:

... shall perform services under the Purchase Order subject to the **exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the management of like matters**, not in regard to speculation but in regard to the permanent disposition of the Fund, considering the probable income to be derived therefrom as well as the probable safety of the invested capital. **[Aksia] acknowledges that it is a “fiduciary” with respect to PSERS and the Fund** as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to the Purchase Order.” **[EXHIBIT 8]**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 11, Par 23].

184. The federal ERISA statute addressing “fiduciary duties” requires, among other things, that:

. . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—

(A) for the exclusive purpose of:

(i) providing benefits to participants and their beneficiaries; and

(ii) defraying reasonable expenses of administering the plan;

(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. [29 U.S.C. § 1104(a)].

185. In addition to liability for Aksia's own fiduciary breaches, the ERISA statutes also ground liability against a fiduciary for breach committed by a co-fiduciary in the following situations:

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, **a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary** with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, **he has enabled such other fiduciary to commit a breach**; or

(3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

[29 U.S.C. § 1105(a)].

186. Separate and apart from its contractual obligations, Aksia owed a fiduciary duty to the Plan participants to recommend investments that provide the greatest return on the Plan participants' funds at the least cost and expense. This fiduciary duty required that the fee and expense structure of each proposed investment be transparent and comprehensible, and that each recommendation represent an actual choice among several possible investments. It further required

that the investment recommendations be characterized by loyalty to Plan participants over loyalty to investment managers or general partners.

187. In addition to its contractual obligation to act as a fiduciary, Aksia was also statutorily obligated to operate as fiduciary to the Plan participants by virtue of its status as an agent of the PSERS's Board. In relevant part, 24 Pa. C.S. § 8521(e) provides:

(e) Fiduciary status of board.--The members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto.

188. Similarly, Aksia, as an agent of the Board, is required to act for the “exclusive benefit of the members of the system.” [24 Pa. C.S. § 8521(e)].

189. The fact that the contract between PSERS and Aksia denominates Aksia as an independent contractor is not inconsistent with its status as an agent of PSERS. *See Kemether v. Pennsylvania Interscholastic Athletic Ass'n, Inc.*, 15 F. Supp. 2d 740, 747 (E.D. Pa. 1998) (acknowledging that when one party acts on another's behalf, there are three possible relationships between them: “[t]he actor may be: (1) a servant, (2) an agent independent contractor, or (3) a non-agent independent contractor.”); *ClinMicro Immunology Ctr., LLC v. PrimeMed, P.C.*, No. 3:CV-11-2213, 2013 WL 3776264, at *8 (M.D. Pa. July 17, 2013) (“An **independent contractor** is a person who contracts with another to do something for him but who is not controlled by the other nor subject to the other's right to control with respect to his physical conduct in the performance of the undertaking. He **may or may not be an agent.**”) quoting *Cohen v. Salick Health Care, Inc.*, 772 F.Supp. 1521, 1528 (E.D.Pa.1991).

190. Under the facts and circumstances here, including the fact that PSERS and Aksia shared highly confidential investment information, shared Aksia's proprietary software for

evaluating investment performance, and that Aksia conducted training of PSERS's personnel, Aksia was an agent of PSERS within the meaning of 24 Pa. C.S. § 8521(e).

191. Aksia's duties to Plan participants are further evidenced by additional terms in its agreements with PSERS. For example, see **EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered p. 7, Par C.(5) (requiring Aksia to **"maintain during any period in which it is providing Services a policy of errors and omissions insurance for the protection of the Fund..."**) and Rider 1, unnumbered p. 5, Par C.(2) (requiring Aksia to hold harmless the Commonwealth, PSERS, and its members).

192. In the alternative, Aksia owed fiduciary duties to Plaintiffs and the Plan participants by virtue of 20 Pa.C.S. § 7206.

193. In light of the fact that Aksia's obligations were undertaken with regard to funds held for the benefit of the Plan participants, Aksia owed the Plan participants a fiduciary duty, including a duty of good faith and fair dealing. Aksia breached this obligation in numerous ways, as set forth herein.

194. From the time that Aksia began acting as an advisor to PSERS until the end of 2021, it recommended that PSERS invest Plan participants' funds into the following investments (among others), in the following amounts, which the Board approved in the following resolutions:

[A]	AKAZ Offshore Fund Ltd	\$200M 10/12/18	Reso. 2018-47
[B]	Anderson Global Macro Fund, Ltd.	\$150M 01/23/14	Reso. 2014-03
[C]	Bain Capital Special Situations Asia II, L.P.	\$125M 12/17/21	Reso. 2021-73
[D]	Brigade Structured Credit Offshore Fund	\$200M 08/07/14	Reso. 2014-34
[E]	Capstone Commonwealth Fund L.P.	\$80M 06/10/21	Reso. 2021-29
[F]	Caspian Opportunistic Dislocation Strategy	\$200M 10/12/18	Reso. 2018-48
[G]	Cederberg Greater China Equity Fund	\$200M 12/17/18	Reso. 2018-60

[H]	ECM Feeder Fund 2, LP	\$200M 05/24/18	Reso. 2018-21
[I]	Falko Regional Aircraft Opportunities Fund II L.P.	\$100M 03/08/19	Reso. 2019-11
[J]	Galton Onshore Mortgage Recovery Fund IV, L.P.	\$150M 12/07/16	Reso. 2017-28
[K]	HS Group Sponsor Fund II LTD.	\$200M 08/09/18	Reso. 2018-11
[L]	Independence Reinsurance Partners, LP	\$200M 08/06/15	Reso. 2015-45
[M]	Nimbus Weather Fund, Ltd	\$150M 09/15/17	Reso. 2017-27
[N]	Oceanwood Opportunities Fund	\$200M 08/07/14	Reso. 2014-33
[O]	OWS Credit Opportunity Offshore Fund III, Ltd.	\$200M 10/06/15	Reso. 2015-50
[P]	PIMCO BRAVO Fund III, L.P.	\$250M 10/05/17	Reso. 2017-40
[Q]	PIMCO Commercial Real Estate Debt Fund, L.P.	\$200M 07/03/18	Reso. 2018-31
[R]	PIMCO Commodity Alpha Fund Ltd.	\$200M 12/09/14	Reso. 2014-50
[S]	Sixth Street Fundamental Strategies Partners (A), L.P.	\$200M 04/30/20	Reso. 2020-25
[T]	Sixth Street Opportunities Partners V (A), L.P.	\$150M 11/19/21	Reso. 2021-63
[U]	Sixth Street Specialty Lending Europe II, L.P.	\$125M 12/03/20	Reso, 2020-50
[V]	SASOF III LP	\$250M 01/21/15	Reso. 2015-02
[W]	SASOF IV LP	\$150M 08/11/17	Reso. 2017-24
[X]	SASOF V LP	\$150M 12/06/19	Reso. 2019-57
[Y]	SSG Capital Partners V, L.P.	\$300M 08/09/19	Reso. 2019-41
[Z]	Steadview Capital Partners L.P.	\$200M 08/10/18	Reso. 2018-38
[AA]	TCI Real Estate Partners Fund III LP	\$400M 10/12/18	Reso. 2018-46
[BB]	The Children's Investment Fund, L.P.	\$400M 12/08/17	Reso. 2017-51
[CC]	The Varde Scratch and Dent Fund 1-A, L.P.	\$75M 06/10/16	Reso. 2016-23
[DD]	The Varde Scratch and Dent Fund, L.P.	\$150M 06/13/14	Reso. 2014-20
[EE]	Triton Value Fund (Cayman) L.P.	\$200M 10/12/18	Reso. 2018-49
[FF]	Two Sigma Risk Premium Enhanced Fund, L.P.	\$200M 12/07/16	Reso. 2016-44
[GG]	Venor Capital Offshore Ltd.	\$150M 06/10/16	Reso. 2016-24

195. Upon information and belief, Aksia also recommended that PSERS invest in additional investments, other than the investments enumerated here.

196. Between 2015 and 2020, Aksia was responsible for calculating the performance of the hedge funds in the PSERS plan in a variety of ways. [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 35 of 37, Par. B.(1)]. Aksia was obligated to calculate “total returns for each hedge fund composite, and each individual hedge fund portfolio” and **compare** the data **with comparable data for similar funds**. [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 34 of 37, Par. A.(18)]. Aksia was likewise obligated to prepare quarterly reports containing the total return (gross and net of fees) for each of the individual hedge funds. [**EXHIBIT 7**, Aksia 2015-2020 Contract, Rider C, p. 35 of 37, Par. B.(3)].

197. Beginning in January 2021, Aksia’s obligations expanded from hedge funds to include private credit allocations. [**EXHIBIT 8**, Aksia 2021-2026 Contract, Rider 1, unnumbered pp. 4-5, Par. B.(3)]. Under the 2021-2026 contract, Aksia’s obligations were similar to those under the 2015-2020 contract. Id.

198. As alleged, PSERS’s website contains documents purporting to be PSERS’s Annual Final Asset Listing as of June 30 each year. These documents list a value for every PSERS asset. However, for many years (including at least the years ending June 30, 2015, 2016, 2017, 2018, and 2020) a substantial number of the alternative/nontraditional investments (including specifically a number of those for which Aksia was responsible) do not include a value, but simply state “not disclosed.” The totals shown for each category of investment in that document thus include a zero value for the investments whose value was “not disclosed.” When the category totals in the Annual Final Asset Listing documents are compared to the category totals included in the

Comprehensive Annual Financial Reports, it appears that the value of several investments was not included. Upon information and belief, Aksia failed to include the value of certain investments in its computations and failed to ensure that the value of these investments was included in the value of assets reported in the Comprehensive Annual Financial Reports.

199. Aksia's obligations did not end once it recommended that PSERS invest in certain investments. Aksia had a duty to evaluate, examine, and monitor the investments already included in PSERS's portfolio, and this required Aksia to identify the specific investments that were more expensive than other investments, and those which performed below the level of other investments, and recommend to PSERS that these investments be sold or otherwise removed from the portfolio.

200. The benchmarks for private market/alternative investment performance that Hamilton Lane recommended to PSERS were lower than they reasonably should have been. This conclusion is based on a variety of factors, including the conclusions of the 2018 PPMAIRC Report.

201. Aksia also had a duty to familiarize itself with relevant Pennsylvania law that affected or should have affected its investment recommendations, including specifically the shared risk provisions of Pennsylvania statutes that subjected Plan participants to the risk of mandatory increased contributions to PSERS in the event that the Fund failed to meet its targeted returns over certain periods. Upon information and belief, Aksia either failed to consider the shared risk statutes, or ignored the content of the shared risk obligations, and thereby breached its fiduciary obligations by making investment recommendations that unreasonably increased the risk that the Plan participants would be surcharged under this statutory scheme.

202. A report prepared by Verus in 2022 purported to examine certain aspects of the fees, costs, and expenses paid by PSERS for various investments held by PSERS as of June 20,

2021. The Verus report contains information from which one can identify which specific investments in PSERS portfolio were charging the highest fee amounts (i.e. the highest percentages for each category of fee).

203. With regard to public investments, the Verus examination concluded that the fees for this part of the portfolio were generally reasonable. However, the report identified two specific investments that Aksia had recommended to PSERS that had **costs that were grossly out of line** with both the costs of other investments in PSERS's portfolio, and with the peer group costs as computed by Verus.

204. Specifically, according to the Verus report, although PSERS's costs averaged 0.51% for these investments, **two funds had costs that were double that amount**: The Children's Fund (1.00%) and Steadview (1.00%).

205. The Verus report computed that the top 25% quartile costs in PSERS's peer group for The Children's Fund was 0.65%, and for Steadview was 0.82%. Thus, these objective measurements show that the **costs/expense to PSERS for these two funds were far above other funds** of this type.

206. These (and perhaps other) investments recommended by Aksia have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS's Fund's overall underperformance. Aksia should have recommended that these investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, well prior to June 30, 2021. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

207. With regard to **private credit investments** recommended by Aksia, according to the Verus report, the following investments also appears to have **higher than average fees**:

[P]	PIMCO BRAVO Fund III, L.P.	\$250M 10/05/17	Reso. 2017-40
[Y]	SSG Capital Partners V, L.P.	\$300M 08/09/19	Reso. 2019-41

208. These (and perhaps other) investments recommended by Aksia have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS Fund's overall underperformance. Aksia should have recommended that these investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, well prior to June 30, 2021. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

209. With regard to **absolute return** investments recommended by Aksia, according to the Verus report, the following investments also appear to have higher than average fees:

[A]	AKAZ Offshore Fund Ltd	\$200M 10/12/18	Reso. 2018-47
[I]	Falko Regional Aircraft Opportunities Fund II L.P.	\$100M 03/08/19	Reso. 2019-11

210. Indeed, according to Versus, AKAZ Offshore Fund Ltd had a **30% performance fee (i.e. carried interest)** (above the management fee).

211. These (and perhaps other) investments recommended by Aksia have cost PSERS higher fees than the remainder of its portfolio. This contributed to the PSERS Fund's overall underperformance. Aksia should have recommended that these investments be liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, well prior to June 30, 2021. To the extent that these investments could not have been

liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

212. To the extent that Aksia did not recommend jettisoning these (and upon information and belief, other) expensive investments, or otherwise recommend investments with less expensive fees in the first place, Aksia concealed the fact that these (and, upon information and belief other, additional) investments were costing the Plan participants excessive fees.

213. Aksia did not consider the potential impact of Pennsylvania's shared risk statute on the PSERS Plan participants in performing its obligations.

214. As a fiduciary to the Plan participants, Aksia was required to disclose excessive fees, costs, and expenses. It failed to do so, thereby concealing the fact that the Fund paid excessive fees, costs, and expenses under Aksia's watch.

215. Finally, under the totality of the circumstances, including but not limited to the risk adjusted/fee adjusted expected returns, the shared risk statutes, and the underfunded status of the Funs, Aksia should have concluded that PSERS's portfolio was overextended in the alternative/non-traditional space (based on, *inter alia*, peer review and professional standards), and should have told the Board that its investment allocations were overweighted with alternative/non-traditional investments; should have recommended the sale of a portion of these investments; and/or should have otherwise renegotiated (or recommended the renegotiation) of the terms of these investment partnership agreements to reduce the fees, costs and expenses.

9. Defendant Aon Investments USA, Inc.

216. Effective November 15, 2013 through November 14, 2018, PSERS entered into a \$3,450,285.00 contract with Hewitt EnnisKnupp, Inc. for Hewitt EnnisKnupp, Inc. to provide investment consulting, performance evaluation and related services for all PSERS's asset classes.

[EXHIBIT 9, Aon 2013-2018 Contract].

217. PSERS therefore paid Hewitt EnnisKnupp (with PSERS funds) at least \$650,000 for its services for the period November 15, 2013-November 14, 2014; \$669,000 for the period November 15, 2014-November 14, 2015; \$689,585.00 for the period November 15, 2015-November 14, 2016; \$710,200 for the period November 15, 2016-November 14, 2017, and \$731,500 for the period November 15, 2017-November 14, 2018. [**EXHIBIT 9**, Aon 2013-2018 Contract, pp. 1-2.

218. Hewitt EnnisKnupp, Inc. later changed its name to Aon Hewitt Investment Consulting, Inc., and Aon Hewitt Investment Consulting, Inc. later changed its name to Aon Investments USA, Inc. Aon Investments USA is thus the successor in interest to Hewitt EnnisKnupp, Inc.

219. This 2013-2018 contract squarely obligated Hewitt EnnisKnupp/Aon to perform measurement services for PSERS's Fund:

B. Performance Measurement Services for PSERS's Fund, including all asset classes and individual portfolios:

1. [Hewitt EnnisKnupp/Aon] will prepare a monthly report containing **calculated total return (before and after fees) for asset class**, portfolio management styles, and individual portfolios, and **compare** PSERS's calculated data with benchmarks and data for a **similar population of funds** by asset class and portfolio management styles for all of the public market portfolios and composites. Returns should be calculated for the following time periods: one-month, three-months, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, and since inception. [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered p. 8, Par B.(1)].

2. [Hewitt EnnisKnupp/Aon] will **prepare** a quarterly **written report containing performance measurement** attribution and analysis for each asset class and individual portfolios. The report should **include a historical return analysis**, dollar oriented analysis, return oriented (wealth relative) analysis, excess return analysis and risk/return analysis. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 10-year, and since inception. [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered p. 8, Par B.(2)].

5. [Hewitt EnnisKnupp/Aon] will provide quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, and 10-year quartile ranking reports of **composite returns** by Fund (i.e. **Total Fund**, I.S. Equity Composite, etc.) as well as manager composite returns (for all asset classes). [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered p. 8, Par B.(5)].

6. [Hewitt EnnisKnupp/Aon] will provide consecutive year quartile ranking reports of **composite returns** by Fund (i.e. **Total Fund**, U.S. Equity Composite, etc.) as well as manager composite returns (for all asset classes) for the past five years. [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered p. 8, Par B.(6)].

220. This 2013-2018 contract also required Hewitt EnnisKnupp, Inc. (or its parent) to maintain a substantial policy of errors and omissions coverage “for the protection of the PSERS’s Fund.” [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered p. 10, Par C.(5)].

221. Finally, Hewitt EnnisKnupp/Aon acknowledged in the 2013-2018 contract that “**it is a ‘fiduciary’ with respect to PSERS and the Fund**” as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to the Purchase Order.” [**EXHIBIT 9**, Aon 2013-2018 Contract, Rider 1, unnumbered pp. 14-15, Par C.(23)].

222. Effective March 5, 2019 through September 30, 2019, PSERS entered into a short-term Consulting Contract with Aon Hewitt Investment Consulting Inc. by which this entity agreed to provide investment consulting and performance evaluation services for all PSERS’s asset classes pursuant to a contract that would last for no longer than six months. [**EXHIBIT 10**, Aon 2019 short Contract].

223. PSERS therefore paid Aon at least \$365,000.00 out of PSERS funds for services for the period March 5, 2019 through September 30, 2019. [**EXHIBIT 10**, Aon 2019 short Contract, pp. 1-2].

224. As set forth above, Defendant Aon is the successor in interest to Aon Hewitt Investment Consulting, Inc.

225. The provisions of the six-month 2019 contract were substantially similar to the provisions in the 2013-2018 contract. [**EXHIBIT 10**, Aon 2019 short Contract].

226. On or about September 27, 2019, PSERS entered into a \$3,401,600.00 Consulting Agreement contract with Aon Hewitt Investment Consulting, Inc., by which Aon agreed to provide investment and performance evaluation services for all PSERS's asset classes for a period of five years. [**EXHIBIT 11**, Aon 2019-2024 Contract].

227. PSERS therefore has paid Aon from PSERS funds, at least \$643,174.00 for the period October 1, 2019 through September 30, 2020; at least \$558,610.00 for the period October 1, 2019 through September 30, 2020; at least \$680,340.00 for the period October 1, 2020 through September 30, 2021, and PSERS is obligated to pay Aon from PSERS funds at least \$696,527 for the period October 1, 2021 through September 30, 2022, and at least \$712,949.00 for the period October 1, 2022 through September 30, 2023. [**EXHIBIT 11**, Aon 2019-2024 Contract, pp 1-2].

228. Among many other things, the 2019-2024 contract obligated Aon to perform the following “consulting services, for the Fund, including **all asset classes and investments**[:]”

- A. “[Aon] will conduct a **comprehensive review** and analysis of investment objectives, policies, **asset allocation**, and portfolio structure, inclusive of defining an investable risk beta portfolio, **and recommend changes**, if appropriate.” [**EXHIBIT 11**, Aon 2019-2024 Contract, Rider 1, p. 1, Par A(1)].
- B. “[Aon] will recommend appropriate performance and risk benchmarks for individual portfolios, each asset class, and for the total fund.” [**EXHIBIT 11**, Aon 2019-2024 Contract, Rider 1, p. 1, Par. A(4)].
- C. “[Aon] will **recommend suitable investment opportunities** and practical implementation methods; research supporting such recommendations must have been completed within the prior 12

months.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 1, Par. A(6)].

D. “[Aon] will provide research reports on asset allocation, investment issues, and description and evaluation of alternative approaches.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 2, Par. A(8)].

E. “[Aon] will report the performance results to the Board quarterly, including relative results versus pre-established benchmarks, results versus other public defined benefit pension plans, and the returns relative to the risks taken.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 3, Par. A(17)].

229. The agreement further obligates Aon to perform “Performance Measurement, Risk, and Attribution Services for the Fund, including all asset classes and individual portfolios:”

A. “[Aon] will prepare a monthly report containing calculated total return (before and after fees) for asset class, portfolio management styles, and individual portfolios, and compare PSERS’s calculated data with benchmarks and with data for a similar population of funds by asset class and portfolio management styles for all of the public market portfolios and composites. Returns should be calculated for the following time periods: one-month, three-months, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, 15-year, 20-year, 25-year, 30-year, and since inception, based on data availability.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 6, Par. B(1)].

B. “[Aon] will prepare a quarterly written report containing performance measurement attribution and analysis for each asset class and individual portfolios. The report should include a historical return analysis, dollar oriented analysis, return oriented (wealth relative) analysis, excess return analysis and risk/return analysis. Returns should be calculated for the following time periods: quarter, fiscal and calendar year-to-date, 1-year, 3-year, 5-year, 10-year, 15-year, 20-year, 25-year, 30-year, and since inception.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 5, Par. B(2)].

C. “[Aon] will provide a performance attribution analysis to determine the value added by investment policy, asset allocation, and security selection.” [EXHIBIT 11], Aon 2019-2024 Contract, Rider 1, p. 5, Par. B(7)].

D. “[Aon] will prepare ex-post risk statistics and analytics for the same time periods, to the degree of depth, including benchmark comparatives, and use the same performance data from the above. Ex-post risk statistics and analytics should be robust and inclusive of industry best practices risk

information.” [**EXHIBIT 11**, Aon 2019-2024 Contract, Rider 1, p. 5, Par. B(9)].

230. The 2019-2024 contract provides that Aon is an independent contractor and not an employee of PSERS. [**EXHIBIT 11**, Aon 2019-2024 Contract, Rider 1, p. 11, Par. D(12)].

231. The 2019-2024 contract also addresses Aon’s standard of care in performance of its obligations:

...shall perform services under the Purchase Order subject to the exercise of that degree of judgment and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters, exercise in the management of like matters, not in regard to speculation but in regard to the permanent disposition of the Fund, considering the probable income to be derived therefrom as well as the probable safety of the invested capital. **[Aon] acknowledges that it is a “fiduciary” with respect to PSERS and the Fund as that term is defined in the Employee Retirement Income Security Act of 1974 (ERISA), regardless of the applicability of ERISA to the Purchase Order. [EXHIBIT 11, Aon 2019-2024 Contract, Rider 1, p. 15, Par. D(28)].**

232. The federal ERISA statute addressing “fiduciary duties” requires, among other things, that:

. . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
(A) for the exclusive purpose of:
 (i) providing benefits to participants and their beneficiaries; and
 (ii) defraying reasonable expenses of administering the plan;
(B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. [29 U.S.C. § 1104(a)].

233. In addition to liability for Aon’s own fiduciary breaches, the ERISA statutes also ground liability against a fiduciary for breach committed by a co-fiduciary in the following situations:

§ 1105. Liability for breach of co-fiduciary

(a) Circumstances giving rise to liability

In addition to any liability which he may have under any other provisions of this part, **a fiduciary with respect to a plan shall be liable for a breach**

of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

(1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;

(2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, **he has enabled such other fiduciary to commit a breach**; or

(3) if he has **knowledge of a breach by such other fiduciary**, unless he makes reasonable efforts under the circumstances to remedy the breach.

[29 U.S.C. § 1105(a)].

234. In addition to its contractual obligation to act as a fiduciary, Aon is also statutorily obligated to operate as fiduciary to the participants in the Plan by virtue of its status as an agent of the PSERS's Board. In relevant part, 24 Pa. C.S. § 8521(e) provides:

(e) Fiduciary status of board.--The members of the board, employees of the board, and agents thereof shall stand in a fiduciary relationship to the members of the system regarding the investments and disbursements of any of the moneys of the fund and shall not profit either directly or indirectly with respect thereto.

235. Similarly, Aon, as an agent of the Board, is required to act for the "exclusive benefit of the members of the system." [24 Pa. C.S. § 8521(e)].

236. The fact that the contracts between PSERS and Aon denominated Aon as an independent contractor is not inconsistent with its status as an agent of PSERS.

237. Under the facts and circumstances here, including the fact that PSERS and Aon shared highly confidential investment information, shared Aon's proprietary software for evaluating investment performance, and that Aon conducted extensive fiduciary and governance training as well as Board member training, Aon was an agent of PSERS within the meaning of 24 Pa. C.S. § 8521(e).

238. Aon's duties to Plan participants are further evidenced by additional terms in its 2019-2024 agreement with PSERS. For example, that contract contains an indemnification clause that squarely imposes an obligation on Aon toward the beneficiaries of the Plan. That clause states in relevant part:

Indemnification. [Aon] shall hold the Commonwealth of Pennsylvania, the Board, PSERS, **the Fund and the Trust, their beneficiaries**, directors, officers, agents, and employees, harmless from and **indemnify** the Commonwealth of Pennsylvania, the Board, PSERS, **the Fund and the Trust, their beneficiaries**, directors, officers, agents and employees against any and all claims, demands, actions, or liability of any nature, including attorneys' fees and court costs, **based upon or arising out of** (a) any breach of this Agreement, (b) negligence, (c) **fiduciary breach** or (d) failure to comply with any applicable law, in each case by or of [Aon], its directors, officers, employees, and agents, under the Purchase Order. **[EXHIBIT 11]**, Aon 2019-2024 Contract, Rider 1, p. 8, Par. D(2)].

239. Aon's 2019-2024 contract requires that Aon "maintain during the term of the Purchase Order a policy of errors and omissions insurance" in order to protect the Fund. **[EXHIBIT 11]**, Aon 2019-2024 Contract, Rider 1, p. 10, Par. D(5)]. This obligation further demonstrates the fiduciary duty that Aon owed to the actual Plan participants.

240. In the alternative, Aon owed fiduciary duties to Plaintiffs and the Plan participants by virtue of 20 Pa. C.S. § 7206, as well as Pennsylvania common law, trust law, and public policy.

241. In light of the fact that Aon's obligations were undertaken with regard to funds held for the benefit of the Plan participants, Aon owed the Plan participants a fiduciary duty, including a duty of good faith and fair dealing. Aon breached this obligation in numerous ways, as set forth herein.

242. Despite the fact that Aon claims it was not obligated to recommend any investments to PSERS, Aon in fact recommended that PSERS invest very substantial amounts of Plan

participants' funds into the following alternative investments (and on information and belief, others), in the following amounts, which the Board approved in the following resolutions:

[A]	Bridgewater Optimal Portfolio Ltd.	\$600M	04/30/15	Reso. 2015-17
[B]	Market Advantage II, Ltd. (a/k/a Blackrock Market Advantage II, Ltd.	\$500M	10/07/14	Reso. 2014-45
[C]	Penn Mutual Asset Management, LLC	\$100M	12/07/16	Reso. 2016-45

243. There is remarkably little information available on these investments, which appear to be outside the scope of Aon's contractual obligations with PSERS. These investments were still held in PSERS's portfolio as of December 2021.

244. To the extent that these investments originally recommended by Aon could have been liquidated and removed from the portfolio as too costly in terms of current fees and opportunities to earn better returns, Aon should have recommended that they be liquidated well prior to June 30, 2021. To the extent that these investments could not have been liquidated, they were inappropriate for a public pension fund to invest in, thereby locking PSERS plan participants into excessive fee obligations.

245. In Aon's computations of PSERS's investment returns, Aon had a practice of making adjustments to the financial reports showing investment returns after the returns had already been published. Thus, when new data was received, instead of treating the computations for the already published returns as closed (and making any necessary adjustments to current data), Aon went back into its records and altered the data that had already been publicly published. This practice was something that Aon's predecessor, Wilshire, did not do.

246. Grossman and Grell (on behalf of PSERS) contracted with Aon to perform investment performance calculations and investment consulting services, including the services detailed above. When they entered into contracts on behalf of PSERS with Aon they knew about,

or reasonably should have known about, Aon's computing and reporting methodology, and knew or should have known that it deviated from generally acceptable performance metrics and indices.

247. In PSERS's Comprehensive Annual Financial Reports, PSERS stated that Aon was ultimately responsible for calculating PSERS's total returns. See, e.g. PSERS's CAFR for the year ending June 30 2018 and 2017 ("Aon Hewitt calculates the total investment return of the System as well as the performance of each external investment management firm and each internal investment manager retained by the Board to invest the System's assets."), CAFR for the year ending June 30 2019 and 2018 (same); CAFR for the year ending June 30 2020 and 2019 (same); CAFR for the year ending June 30 2021 and 2020 (same except for Aon's name change).

248. From 2013 through the present, Aon was obligated to measure and report the Fund's performance on at least a quarterly basis. Despite this obligation, Aon has admitted that it made "errors" in computing the Fund's 2015 returns (and for various dates thereafter); those errors caused a negative impact on the current Plan participants.

249. Aon has admitted that it relied on other financial advisors to compute PSERS's returns for some or all of the alternative investments.

250. Aon did not confirm or check the performance returns relayed to it by other financial advisors, for alternative investments.

251. As a fiduciary to the Plan participants, Aon was at least arguably required to report and disclose excessive fees, costs, and expenses. It failed to do so, thereby concealing the fact that the Fund paid excessive fees, costs, and expenses under Aon's watch.

252. Aon also had a duty to familiarize itself with relevant Pennsylvania law that affected or should have affected its investment recommendations, including specifically the shared risk provisions of Pennsylvania statutes that subjected Plan participants to the risk of mandatory

increased contributions to PSERS in the event that the Fund failed to meet its targeted returns over certain periods.

253. Aon has admitted that, in performing its obligations, it did not consider the potential impact of Pennsylvania's shared risk statute on the PSERS Plan participants in performing its obligations. Aon thus paid no attention to the potential surcharge which the Plan participants faced, and this act, among others, breached its fiduciary obligations.

254. The benchmarks for private market/alternative investment performance that Aon recommended to PSERS were lower than they reasonably should have been. This conclusion is based on a variety of factors, including the conclusions of the 2018 PPMAIRC Report.

255. Finally, under the totality of the circumstances, including but not limited to the risk adjusted/fee adjusted expected returns, the shared risk statutes, and the underfunded status of the Funds, Aon should have concluded that PSERS's portfolio was overextended in the alternative/non-traditional space (based on, *inter alia*, peer review and professional standards), and should have told the Board that its investment allocations were overweighted with alternative/non-traditional investments; should have recommended the sale of a portion of these investments; and/or should have otherwise renegotiated (or recommended the renegotiation) of the terms of these investment partnership agreements to reduce the fees, costs and expenses.

10. The Legislature Authorizes a Study of PSERS to Determine How It Should "Maximize Future Rates of Return Net of Fees"

256. As stated, PSERS is actuarially underfunded, and the Commonwealth of Pennsylvania has certain obligations to fund, in part, PSERS retirement funds. The Commonwealth therefore has an interest in making sure that the retirement funds under PSERS's management are prudently invested.

257. In 2017, the Legislature enacted 24 Pa. C.S. § 8538, which established a bipartisan commission called the Public Pension Management and Asset Investment Review Commission (PPMAIRC). The Legislature expressly vested in that entity the obligations to do the following with regard to PSERS's investments:

- (1) **Study the performance of current investment strategies** and procedures of the Public School Employees' Retirement System, comparing realized rates of return to established benchmarks and **considering associated fees paid for active and passive management.**
- (2) Study the costs and benefits of both active and passive investment strategies in relation to future investment activities of the Public School Employees' Retirement System.
- (3) **Study alternative future investment strategies** with available assets of the Public School Employees' Retirement System that **will maximize future rates of return net of fees.**
 - (3.1) The commission shall evaluate and make recommendations on:
 - (i) **Improving investment fee transparency on alternative investments** as specified in the Standardized Reporting Guidelines of the Institutional Limited Partners Association.
 - (ii) Implementing the recommendations of the Society of Actuaries Blue Ribbon Panel on stress testing, to test the ability of the plan to withstand a period of investment returns above or below the level of assumed return.
- (4) Publish extensive and detailed findings online, including findings about:
 - (i) Assets.
 - (ii) Returns.
 - (iii) Financial managers.
 - (iv) Consultants.
 - (v) Requests for proposals.
 - (vi) Investment performance measured against benchmarks.
- (5) **Recommend the lowest amount of investment fees to be paid by the board for the board to achieve the board's anticipated annual rate** of return and to develop recommendations to reduce

expenditures to generate actuarial savings of \$1,500,000,000 over 30 years from the effective date of this section.

- (6) Report its findings and recommendations to the Governor and the General Assembly within six months of its first organizational meeting.

258. In response to this statutory directive, in December 2018 the PPMAIRC Commission issued its Final Report and Recommendations, which made numerous criticisms and recommendations of the way the Fund was investing members' retirement monies. Among other things, that Report found that:

- A. **"PSERS is among the highest-cost public pension funds."** [EXHIBIT 1, PPMAIRC Report, p. 18].
- B. "Concerns about the increasing expenses for managing public pension plan investments were elevated to Pennsylvania's elected leaders in an April 2017 report that showed **PSERS had the 6th highest investment expenses in the nation** ... out of the 73 largest plans (based on 2015 data). A year later, PSERS was reported at the 8th highest ... (based on 2016 data). * * * PSERS [has] **higher investment expense levels than most comparable funds....**" [EXHIBIT 1, PPMAIRC Report, p. 105].
- C. "Unfortunately, the Commission confronted the persistent belief that when making investment decisions, "you get what you pay for." The fact is, **there is no established correlation between high fees and high performance** in modern investment management. Such a claim is premised on the concept that excess returns – so-called "alpha" – can be bought. They cannot. The Commission was presented with an abundance of evidence from academics that when strategies are properly adjusted for risk – leverage, illiquidity, and specific exposures – most managers underperform low cost alternatives. The assumption that high fees are a predictor of outperformance is not only wrong, but dangerously misleading when included in any serious investment management discussion. [EXHIBIT 1, PPMAIRC Report, p. 19].
- D. **"In 2016, PSERS had the highest allocation to alternatives in the nation at 56% ... above the national average of 26%."** [EXHIBIT 1, PPMAIRC Report, p. 111].
- E. **"PSERS's asset allocation strategies significantly deviated from the peer group over the ten-year time period (2007-2017),** specifically with regards to its low public equity allocation in favor of [alternative

investments like] fixed income, hedge funds, private equity, commodities, and its use of leverage in the portfolio.” **[EXHIBIT 1, PPMAIRC Report, p. 227].**

- F. We note the troubling finding that PSERS level of illiquid investments overall at 43% (not including unfunded commitments to investments) is a “significant outlier” and far more than ... peer funds. We therefore **urge that PSERS carefully** reconsider the risks of its current allocation targets for **illiquid private investments**, and **reduce them to more appropriate levels.**” **[EXHIBIT 1, PPMAIRC Report, p. 45].**
- G. “We also recommend that PSERS, as a matter of priority, revisit and reexamined its use of leverage. **The use of leverage – borrowing – by U.S. pension funds is extremely rare**, and the extent to which **PSERS uses leverage (effectively borrowing against over 17% of its portfolio) is an anomaly**, the potential risks of which are not widely understood by stakeholders. As the report notes, leverage can be “treacherous” and has sometimes led to catastrophic outcomes. We recommend that a PSERS review of leverage clearly examine and communicate risks, and ensure that robust board-level guidelines are in place and understood by all stakeholders.” **[EXHIBIT 1, PPMAIRC Report, pp. 45-46].**
- H. “We recommend that [PSERS] establish a better process for considering specific alternatives to each proposed investment under consideration, which the Consultant report findings suggest need improvement. Any **proposed investment should be evaluated not in a vacuum, but against a specific low-fee equivalent-risk alternative**, as a way of strengthening a commitment to cost discipline and better evaluation of expected and realized performance.” **[EXHIBIT 1, PPMAIRC Report, p. 47].**
- I. “We recommend that [PSERS] publish returns, costs and fees of individual investments relative to a similar risk public markets alternative, on a levered and unlevered basis.” **[EXHIBIT 1, PPMAIRC Report, p. 42].**
- J. “We recommend that [PSERS] utilize and report information from the ILPA template for each manager for the public reporting of fees, costs, and expenses of its alternative investments, including carried interest.” **[EXHIBIT 1, PPMAIRC Report, p. 43].**
- K. “We recommend that the level of illiquidity in combination with leverage at PSERS be reviewed and addressed immediately.” **[EXHIBIT 1, PPMAIRC Report, p. 43].**
- L. “We recommend that [PSERS] adopt the practices detailed in the Consultant report to negotiate harder on private markets investments ... including but not limited to: seeking to pay fees based only on the invested

rather than committed capital; seeking fee reductions during the investment phase; capping monitoring, oversight, and legal fees; negotiating carry terms more carefully and modeling different scenarios; seeking full transparency on waterfall terms, and whether other waterfall terms have been offered to other investors; recalculating GP-determined carry payments; having a process to ensure that all terms contained in marketing materials or arrived at in negotiations are legally documented and monitored; and monitoring and auditing all fees and costs charged by general partners in limited partnership structures.” **[EXHIBIT 1]**, PPMAIRC Report, p. 47].

- M. “We recommend that ... PSERS, with the assistance of an outside expert, renegotiate all new (or renewed) private equity investment agreements to achieve at least \$15.48 million savings on an annual basis....” **[EXHIBIT 1]**, PPMAIRC Report, p. 48].
- N. “PSERS ... had **lower returns than the peer group average across all years**” **for Private Equity investments**” and PSERS “significantly underperformed across a few years (e.g. PSERS 3.1% vs. peer group 8.8%).” **[EXHIBIT 1]**, PPMAIRC Report, p. 208].
- O. “PSERS did not see strong performance in **[hedge funds]**. Looking at returns, PSERS exceeded the peer group average in the short-term (1-year and 3-year) but **underperformed in the long-term (5-year and 10-year)**. In terms of [hedge fund] benchmarks, PSERS’s benchmark returns underperformed the peer group across all years.” **[EXHIBIT 1]**, PPMAIRC Report, p. 209].

11. Aon, Hamilton Lane, and Aksia Respond to the December 2018 PPMAIRC Directives

259. As fiduciaries, Aon, Portfolio Advisors, Hamilton Lane, Aksia, Grell, Grossman, Stalter and Spiller were each responsible for recommending investments that would produce the greatest return for PSERS members, at the least cost and expense. This meant, among other things, that they should not recommend investments that had high investment fees, costs, and expenses, but produced low returns.

260. Once the PPMAIRC report was publicly issued, Aon, Hamilton Lane, and Aksia each had a fiduciary duty to study the report and to make recommendations consistent with the report for lowering investment fees, costs, and expenses, decreasing leverage and alternative

investments, and conforming more closely to the performance of peer funds for the benefit of PSERS and its beneficiaries. Aon had a fiduciary duty to conform its asset allocation recommendations to the PPMAIRC's recommendations, or affirmatively explain why it was not doing so.

261. Hamilton Lane did not alter its recommendations in any significant manner after the December 2018 PPMAIRC report was issued. Hamilton Lane continued full steam ahead, recommending that PSERS put millions more dollars of class member's retirement monies into the same nontraditional investment vehicles that PPMAIRC had found problematic, with seeming disregard for the total amount of costs, fees, and expenses many of these investments continued to consume while providing lackluster performance. Furthermore, the alternative investments as a group were largely illiquid and they did not have transparent costs, expenses, and fees (so accurate returns on these investments were difficult to compute, and these investments could not be compared with other investments).

262. Upon information and belief, Aksia likewise did not alter its recommendations in any significant manner after the December 2018 PPMAIRC report was issued. Rather, Aksia continued to recommend that PSERS put millions more dollars of class member's retirement monies into hedge fund and private credit investments, with seeming disregard for the total amount of costs, fees, and expenses many of these investments continued to consume while providing lackluster performance. These investment vehicles had the same defects that PPMAIRC had found problematic: they were largely illiquid; they did not have transparent costs, fees, and expenses (so accurate returns on these investments were difficult to compute, and these investments could not be compared with other investments); and the total amount of fees and expenses continued to cause the fund to underperform.

263. Although Aon made minimal changes to its allocation recommendations after the December 2018 PPMAIRC report was issued, Aon did not act to fully implement the PPMAIRC recommendations.

264. Hamilton Lane and Aksia both continued to present investment recommendations to the PSERS Board that contained only a **single option for investment**. That is, instead of presenting a selection of similar investment options so that the Board could compare different possible investments (as recommended by the PPMAIRC report), Hamilton Lane and Aksia continued to prepare and recommend only single-option opportunities.

265. From and after 2018, Grell, Grossman, Spiller, and Stalter, aided and abetted by Hamilton Lane, Aon, and Aksia, violated their fiduciary duties by guiding and directing the fund and the Board to skip over more conservative and less expensive investments (such as index funds) ignoring the recommendations in the PPMAIRC report, and failing to decrease the volume or percentage of funds invested in non-traditional, illiquid, and nontransparent or blind investments. More specifically, Grell, Grossman, Spiller, Stalter, and other PSERS staff strenuously advocated “diversification” of PSERS fund’s investments (by which they meant an increased number of nontraditional, non-Wall Street investments). This approach meant that they continued to recommend plowing hundreds of millions more dollars into illiquid and expensive investments, with expensive costs, fees, and expenses, knowing that it was difficult or impossible to ferret out the true cost to the Plan participants of these overpriced investment vehicles.

266. From and after 2018, Hamilton Lane, Aksia, and Aon made (and continued to make) recommendations that led to significant losses in the Plan’s assets. Because those losses impacted active participants in the defined benefit plan who are now required to contribute additional portions of their paychecks when the Plan failed to meet its shared risk performance

retrospective nine-year benchmark as of June 30, 2020, Plaintiffs and those similarly situated have been injured as a result.

267. A cursory review of the Plan's overall actual performance provides no rational justification for the excess management fees and expenses paid by the Plan. These excessive fees and expenses led to further diminution of the Plan's investment returns that has also harmed Plaintiffs and the other Class members.

268. In addition to the foregoing, and upon information and belief, none of Hamilton Lane, Aon, or Aksia advised against the Fund's continued holding of several parcels of property near the PSERS building in Harrisburg, without development or sale.

269. Due to the nature of many private equity investment vehicles, PSERS did not know what specific investments the investment vehicle would invest in when the Board approved recommendations by Portfolio Advisors, Hamilton Lane, or Aksia to commit money to a specific investment. In other words, the advisors' recommendations were typically that PSERS invest between \$100 million and \$300 million of retirees' money into a specific limited partnership without knowing what the limited partnership was going to do with the money, or what the money would be invested in.

270. PSERS's website is replete with examples of these blind recommendations. For example, on December 19, 2018, Hamilton Lane recommended that PSERS invest \$150,000,000.00 in Sante Health Ventures III, L.P. and Sante Health Ventures IV, LP. Hamilton Lane's recommendation in support of that investment simply states in part as follows:

Consistent with the general partner's prior funds, the Fund will target investments in life sciences businesses with novel solutions to unmet medical needs. Sante primarily seeks to invest in seed- and early-stage businesses that are generally headquartered in Texas and California.... Sante expects to allocate a meaningful portion of the Fund to seed-stage,

de-novo healthcare ventures, which are built around acquired intellectual property.

271. PSERS followed Hamilton Lane's recommendation and invested \$150 million in these two Sante Health Ventures limited partnerships.

272. This December 19, 2018 recommendation only examined investing in the Sante Health Ventures limited partnerships – Hamilton Lane's recommendation made no reference to any other possible investment choices. Thus, the Board had no other competing opportunity to compare the Sante Health Ventures partnership investments to when it voted to invest in those alternatives.

273. On November 3, 2020, Aksia recommended that PERS invest \$125,000,000.00 in Sixth Street Specialty Lending Europe II, L.P. Aksia's recommendation simply states in part as follows:

The Fund will provide debt capital to European middle-market companies, providing financing to sponsor-backed companies with an enterprise value between €50.0 million and €1.5 billion. SLE II has the ability to invest alongside other Sixth Street funds in larger transactions, and this cross-platform collaboration gives SLE II the flexibility to speak for a target company's entire debt capital structure.

274. PSERS followed Aksia's recommendation and invested \$125 million in Sixth Street Specialty Lending Europe II limited partnership.

275. This November 3, 2020 recommendation likewise only examined the single proposed limited partnership – Aksia's recommendation made no reference to any other possible investment choices. The Board thus had no other investment opportunities in front of it when it voted to approve this investment.

276. On January 25, 2019, Hamilton Lane recommended that PERS invest \$150,000,000.00 in Searchlight Capital III, L.P. Hamilton Lane's recommendation states simply in part as follows:

Consistent with the general partner's prior funds, the Fund will primarily target middle-market companies located in North America and Western Europe in the consumer discretionary, communication services, information technology, industrials, consumer staples and, opportunistically, education sections. Searchlight focuses on under-managed businesses held at attractive valuations relative to intrinsic values with multiple levers for value creation and attractive cash flow characteristics. The general partner uses its in-depth sector knowledge to develop targeted subsectors of focus and adjusts its themes based on the current economic environment.

277. PSERS followed Hamilton Lane's recommendation and invested \$150 million in Searchlight Capital III limited partnership.

278. Once again, Hamilton Lane's recommendation contained no reference to any other competing investment opportunities, and the Board had no other choices before it when it voted to approve this investment.

279. On April 1, 2019, Hamilton Lane recommended that PSERS invest \$300,000,000.00 in Platinum Equity Capital Partners V, L.P. [**EXHIBIT 12**, PSERS Board Resolution 2019-36, Hamilton Lane recommendations, pp. 8-9]. Hamilton Lane's recommendation simply states in part as follows:

Consistent with the general partner's prior funds, the Fund will maintain an opportunistic approach and target businesses across sectors, primarily located in North America. Platinum seeks to construct a diversified portfolio to reduce macroeconomic risk while utilizing its flexible mandate to increase portfolio exposure to sectors that are well-positioned to benefit from broader economic trends. Consistent with Platinum's prior fund, the Fund will invest in larger, healthier businesses while continuing to pursue complex transactions, where the general partner has significant experience driving successful outcomes.

280. PSERS followed Hamilton Lane’s recommendation and invested \$300 million in the Platinum Equity Capital Partners, V limited partnership on this recommendation. [**EXHIBIT 12**, PSERS Board Resolution 2019-36]. Hamilton Lane presented no other possible choices for investment for consideration and the Board had no other potential opportunities in front of it when it voted to approve this investment.

281. Between 2007 and 2019, Defendant Hamilton Lane recommended commitments to various Platinum Equity Capital Partners investment limited partnerships totaling \$1.3 billion dollars, which PSERS followed.

282. At some point, Platinum Equity acquired Securus Technologies Inc.—a provider of phone, email, money transfer, and electronic monitoring services to prisons. Recently, Securus came under fire for price gouging prisoners and their families;⁴ and Securus’ value plummeted, causing losses to the Fund.

283. Upon information and belief, Hamilton Lane also recommended that PSERS invest Plan funds in vehicles promoting facially implausible schemes such as using private investments to finance Kurdish independence, and pistachio farms in California.

284. Due to the illiquid nature of alternative (and many hedge fund) investments, there is no ready market for the Plan to sell unsuccessful investments or mitigate its losses.

285. The illiquid nature of many of these investments, the risky debt structuring, the high fees, the lack of transparency about fee and expense structure, and the potential for significant Plan losses made these and similar private market investments recommended by Hamilton Lane,

⁴ Private Equity Stakeholder Project, *Platinum Equity’s Not So Securus Investment*, (May 21, 2019), <https://pestakeholder.org/report/platinum-equitys-not-so-securus-investment/> (last visited June 9, 2021).

Portfolio Advisors, and Aksia unsuitable for a public school employees' retirement plan, particularly one where the employees are at risk for increasing contribution requirements.

12. The Harrisburg Property Purchases

286. Beginning in 2017, on the recommendation of Charles Spiller, the PSERS Board used Fund monies to make direct purchases of real estate in Harrisburg. Among other direct real estate purchases with Fund monies, the Board purchased various parcels of real estate that are physically located adjacent to the Harrisburg PSERS office building, including:

- A. a \$1.6 million purchase of several parcels and the building formerly housing the Patriot-News printing plant and newsroom in December 2017;
- B. a \$450,000 purchase of three parking lots located near 10th and Market Streets in 2018;
- C. a \$200,000 purchase of a property on Market Street in 2019; and
- D. a \$785,000 purchase of two parking lots on Market Street in 2020.

287. Despite PSERS's oft-repeated commitment to transparency, the Board made the decision to purchase the last two parcels in closed session.

288. The PSERS purchase in December 2017 (for \$1.6 million) involved property that the seller had just acquired in June 2017 as part of a multi-parcel purchase, for only \$644,000.

289. These Harrisburg properties are all now assets of PSERS's "Private Real Estate asset class" (a portion of the Fund's alternative investment portfolio).

290. Upon information and belief, in addition to purchasing the properties identified, the Board thereafter invested an additional \$7 million of PSERS's money in these properties and sought approval to invest \$5 million above that (a total of \$13 million), to conduct hazardous waste cleanup, abatement and demolition activities on one or more of these properties.

291. The Board has also used Fund monies to hire a property management company, PMI Property Management Inc., to manage these properties. Upon information and belief, PSERS has continued to pay property managers to take care of this property, which has to date generated no income for the Fund.

292. To date, no development of these properties has occurred. For the past six years, the Board has curiously held the properties undeveloped and is not selling them or otherwise causing them to generate a return for the Plan, or for the Plan participants.

293. On April 18, 2021, it was reported that PSERS was under federal investigation in connection with its authorization of pension funds to purchase this real property and demolish buildings on it.

294. According to published reports, PSERS has created about a half-dozen nonprofit entities to hold titles to its 15 or so real estate investments across the country, including a shopping mall property in San Antonio, Texas.

295. PSERS's strange and unorthodox actions have been so lacking in transparency that State Senator Katie J. Muth (a member of the PSERS Board) filed suit against PSERS Board and its leadership seeking to obtain basic documents and information about PSERS investment operations and contracts. *See Muth v. Public School Employees' Retirement Board, et al.*, Case No. 182 M.D. 2021 (Pa. Cmwlth. 2021). PSERS stonewalled Senator Muth (spending tens, if not hundreds, of thousands of dollars of PSERS retiree funds on outside attorneys to thwart her) until March 15, 2022, when a three-judge panel of the Commonwealth Court of Pennsylvania unanimously overruled PSERS's baseless preliminary objections to Senator Muth's complaint.

13. Defendants Hamilton Lane, Aon, and Aksia Promote PSERS Staff Travel

296. Hamilton Lane, Aon, and Aksia each made travel arrangements for certain members of PSERS staff during this same time period, for the travelers to attend conferences, training seminars, or meetings sponsored by alternative investment vehicles. Some of the staff travelled to exotic locations and the publicly available documents show that the cost for some trips were extravagant.

297. A substantial portion of the cost of many of these trips were paid by Aon, Hamilton Lane, and/or Aksia, by way of reimbursement.

298. Upon information and belief, however, the fees for the majority of the trips were ultimately borne by the nontraditional investments. That is, the cost of the travel was treated as an expense of the underlying investment vehicle itself and paid for by the investment. Such treatment reduced the value of the investment and thereby lowered the return that the investment generated for the benefit of the class members. This reduced return was a factor in the class member contribution increase requirement being triggered.

14. The Attempt to Re-Write History

299. As alleged, PSERS's Board was statutorily obligated to conduct a shared-risk assessment every three years. This assessment was retrospective: it was an examination of the Fund's trailing performance to determine whether the Fund's actual performance (i.e., its rate of return net of fees) met the target performance rate previously set by the Board. [See 24 Pa. S. C. § 8321(b)].

300. For the mandatory shared risk assessment of the Fund's performance conducted in each of 2014 and 2017, the PSERS Fund's performance was sufficiently close to the Board's target rate for performance that no obligation was triggered to increase the amount any Plan participant was required to contribute.

301. The Board was required to conduct the 2020 shared risk assessment of the Fund's retrospective performance over the nine-year period from July 1, 2011 to June 30, 2020.

302. In preparation for this event, PSERS contacted its actuary, Buck Consultants Inc., in June 2020 asking Buck to compute the shared-risk rate that the nine-year assessment would have to satisfy to avoid triggering the mandatory increase in participant contributions. Buck computed this amount to be 6.36% (the so-called "hurdle rate.")

303. At the August 7, 2020 PSERS general Board meeting, it became apparent that there were "material differences between the annual investment returns listed by PSERS's actuary Buck Consultants Inc. ("Buck") and the quarterly investment returns provided by the general investment consultant, Aon Investments USA Inc. ("Aon"). **[EXHIBIT 13]**, August 12, 2020 letter from Pennsylvania State Treasurer Joseph Torsella to PSERS's Executive Director, Glen Grell, p. 1].

304. As a result of what was apparently discussed at this Board meeting, Mr. Torsella sent a letter on August 12, 2020 posing several questions to Mr. Grell about why this discrepancy existed between the returns reported by Aon and the returns reported in PSERS's Comprehensive Annual Financial Reports. Mr. Torsella specifically inquired about how and why previously reported returns amounts were amended after the fact, and why there was a substantial change to Aon's version of PSERS's fiscal 2014/2015 reported returns. **[EXHIBIT 13]**.

305. On September 1, 2020, Mr. Grell responded to Treasurer Torsella's letter. **[EXHIBIT 14]**, September 1, 2020 letter from PSERS's Executive Director, Glen Grell, to Pennsylvania State Treasurer Joseph Torsella]. Mr. Grell's response explained that returns for some private market investments can be delayed, and that when this occurs, Aon uses various types of substitutes for its figures, with the expectation that the amount will be updated at a later time.

[**EXHIBIT 14**, p. 2]. He further explained that, when the quarterly reports are finalized before the updates occur, revisions are made after-the-fact to published return reports. [**EXHIBIT 14**, p. 3].

306. In addition, Mr. Grell's September 1, 2020 letter also addressed Mr. Torsella's question about a significant retroactive change made to Aon's 2015 report of PSERS's investment returns:

Aon has re-reviewed the returns for Fiscal Year 2015 and has verified that the revised returns as reported in the March 31, 2020 report are correct based on the new revised NAVs received for some private market funds after the fiscal year close. A combination of (1) revisions to the market values and cash flows for some Private Credit funds and (2) the opening up of the performance books during the third quarter 2019 report to restructure the composites to reflect the new Investment Policy Statement division of public and private markets resulted in the re-calculation of prior fiscal years. It was **the combination of these two changes that led to changes in the performance reported by Aon.** [**EXHIBIT 14**, p. 3].

...

The use of "errors" is incorrect. As shown above, these are adjustments that are made as more data is report to PSERS. The adjustments are not errors in reporting. [**EXHIBIT 14**, p 5].

307. Importantly, Mr. Grell's letter also made something else clear:

As defined in PSERS Retirement Code, **Aon's return for the 9 years ended June 30, 2020 will be used in the Member's risk share calculation** which Buck will include in their June 30, 2020 actuarial valuation report. The 9-year return to be used in Buck's June 30, 2020 actuarial report will be the same as and agree to Aon's June 30, 2020 investment performance report. [**EXHIBIT 14**, p. 4].

308. At the Board meeting on December 3, 2020, PSERS staff informed the Board that **Aon** had calculated the nine-year shared risk analysis at 6.38%. On this basis, the Board certified this number and stated that the shared risk hurdle rate had been cleared. (The 6.38% figure was sufficiently above the 6.36% hurdle rate that no obligation was triggered to increase the contribution amount any Fund participant was required to pay.)

309. At the time the 6.38% figure was presented to the Board on December 3, 2020, Aon, PSERS Executive Director Grell, Chief Investment Officer Grossman, and Chief Financial Officer Carl were each aware that, notwithstanding what the Board was told, if the rates of **return previously published in PSERS's own Comprehensive Annual Financial Reports** were used (instead of Aon's 6.38% figure which was based on Aon's "amended" rates) the nine-year analysis would be 6.34% -- an insufficient rate to clear the risk share hurdle.

310. Aon, Grossman, Grell, and Carl knew, or reasonably should have known, that the investment performance numbers on which Aon based its computations were false and were not a true representation of the actual Fund performance over the nine-year period.

311. On information and belief, Aon, Grossman, and Grell believed they would be able to covertly forestall mandatory increases in contribution rates for PSERS participants. Their use of Aon's 6.38% figure had, and was intended to have, the effect of preventing heightened scrutiny of the investment decisions and performance of the PSERS, because they had the net effect of making investment decisions and financial performance appear better than they actually were—to the benefit, and protection, of each of them.

312. This intent is evident by, among other things, Aon's use of its unorthodox method of adjusting returns after returns had been publicly published (a practice that had not been used by Wilshire), the company that computed the Fund's returns prior to Aon's engagement and by false statements that the numbers used were based on new and better data.

313. These actions breached the fiduciary duties that each of Aon, Grossman, and Grell owed to PSERS and its participants.

314. If Aon, Grossman, and Grell had encouraged public scrutiny of what was transpiring, PSERS and its participants would have learned that Defendants Aon, Hamilton Lane,

and Aksia, as well as various members of PSERS staff, ignored the PPMAIRC report recommendations, and continued to plough PSERS funds into high-expense/high-cost, illiquid, risky investments, rather than moving to index-type funds (and following other PPMAIRC recommendations), all in violation of their fiduciary duties.

315. On March 5, 2021, Aon sent a letter to PSERS's Jim Grossman, admitting that Aon had indeed made critical errors in calculating PSERS's returns:

In the process of reconciling some prior year asset class composites with PSERS investment staff in mid-December 2020, Aon has become aware of **data corruption** in some sub-composite market clause, cashflows and returns **for the month of April 2015**. This data corruption was due to an error by an analyst in uploading NAV and cashflow data from the BNY system into the PARis performance system Aon uses.

This data corruption impacted a few asset class composites in the public markets. After exhaustive forensics and comparisons of the data, we did uncover a cashflow discrepancy which when recalculated does result in a change in the Total Plan composite returns for April and May. Unfortunately, **due to this error, the FY and CY 2015 returns** for several of the asset class composites and Total Plan **were inaccurately reported in the June 30, 2020 report**. [EXHIBIT 15, Aon March 5, 2021 letter, p. 1].

316. On March 26, 2021, the PSERS Board of Trustees issued the following statement:

In December 2020, the PSERS Board certified the employee contribution rates for fiscal year 2021-22. **The consultant who performed a calculation** used to support this certification has now notified the Board that its **calculation contained an error**. The Board is investigating the circumstances regarding the consultant's calculation as well as the actions taken by PSERS's staff and the consultant after the consultant's disclosure. At this time, the Board has taken no personnel action.

317. On April 16, 2021, Aon sent another letter to PSERS's Jim Grossman, **disclosing additional errors**, and formally admitting that, **when Aon's errors are corrected, the nine-year performance rate was 6.34%. not 6.38%** as Aon previously had claimed:

I write further to Aon’s letter of March 5, 2021, in which we endeavored to report and detail, based upon our review as of that time, the data errors discovered in April, May and September 2015 returns. * * *

Our review and analysis of nearly 24,000 cash-flow items in the above mentioned months identified **3 additional missing cash-flow data points in February 2020 and May 2020.** * * *

As a result of the recalculated quarterly returns, we believe that **the nine-year return ended June 30, 2020 is 6.34%, a 4-basis point decline from the originally reported nine-year trailing return.** [EXHIBIT 16, Aon April 16, 2021 letter, pp. 1-2].

318. The “new” 6.34% rate was insufficient to clear the 6.36% hurdle rate.

319. On April 19, 2021, the Board passed PSERB Resolution 2021-16, amending PSERB Resolution 2020-52 (passed in December of 2020) “certifying the actual nine-year performance figure of 6.34%.”

320. Because the new certified figure was less than the 6.36% hurdle rate, the statutorily-mandated increase in deductions from the certain PSERS members’ paychecks was triggered.

321. As of July 1, 2021, the affected employees’ contributions increased by an average of \$250-\$350 annually. These individuals will be paying this increased amount for the next three years at a minimum.

322. All currently working and enrolled PSERS employees in classes “T-E,” “T-F,” “T-G,” and “T-H” have had their contribution rates increased:

Class	Base DB Contribution Rate	Shared Risk Increase	Total DB Contribution Rate Starting July 1, 2021
Class T-E	7.50%	+0.50%	8.00%
Class T-F	10.30%	+0.50%	10.80%
Class T-G*	5.50%	+0.75%	6.25%
Class T-H**	4.50%	+0.75%	5.25%

323. Employees who were hired after July 1, 2021 have also been, and will also be required to pay these increased percentages.

324. Employees who were hired most recently, in 2019 and thereafter (those in Class T-G and T-H) experienced the highest increase at 0.75%. These individuals earn the least but will bear the burden of the highest percentage of the increased contributions. Although these individuals entered the Plan only recently, they are bearing the burden of poor investment decisions made with the funds of long-term employees. (These poor investment decisions include those made prior to their Plan entry in 2019 and thereafter.)

325. Plaintiffs Kevin Steinke, Louis and Emily Fantini, and Daniel Reyes, and all other Plan participants who are subject to the mandatory contributions at issue in this case have lost (and will continue to lose) the value of the monies that they are required to contribute from their salaries (i.e. both the contributions themselves and the time value of the contributions), as a result of the wrongful actions and inactions of the Defendants. Those same actions and inactions of the Defendants also prevented each Plaintiff and Plan participant from realizing a reduction in their shared risk contribution.

326. In addition, when a PSERS Plan participant makes a contribution to the system, 24 Pa. C.S. § 8502(m) requires the PSERS Board to credit that contribution to the member's "account," which represents the member's "accumulated" deductions. However, the total value of a participant's § 8502(m) account has no effect on the value of the defined benefit the member will receive. That benefit is instead determined by a particular formula set forth in 24 Pa. C.S. § 8342, which makes no reference to § 8502(m) accounts or any other reference to the value of a member's contributions.

327. In other words, although the mandatory increased shared risk contributions charged each of the Plan participants increase the value of each participant's § 8502(m) account, the mandatory increased shared risk contributions do not increase the value of the benefit that PSERS is required to pay any of them. Instead, the increased shared risk contributions result in each Class Member paying *more* to receive *the same* benefit.

328. Though a PSERS Plan participant is entitled to a refund of the value of the participant's PSERS account under certain conditions, under 24 Pa. C.S.A. §§ 8310 and 8341, such a refund is only available on termination of employment and requires the participant **to forfeit all benefits** the participant would otherwise receive from PSERS (i.e. the actual defined benefit payments determined under § 8342).

329. Accordingly, Plaintiffs and all others similarly situated have received (and will receive) no benefit from the increased contributions they are currently paying as a result of Defendants' misfeasance and nonfeasance.

330. Contrary to allegations that some Defendants have made, Plaintiffs and other Plan participants who must pay this shared risk increase will not receive their contributions back plus interest in the future (unless the separate from their public school employment early).

15. The Unreasonably Risky, Illiquid, and Expensive Alternative Investment Portfolio

331. Defendants Aon, Aksia, Portfolio Advisors, and Hamilton Lane were each responsible for researching, conducting due diligence on, and understanding the suitability of various investments, among other contractual, statutory, and common law duties before making recommendations about investments for the Plan. They were each also charged with establishing, computing, monitoring, measuring, and reporting investment performance.

332. Despite these responsibilities, each Defendant breached its fiduciary, common law, public policy, and contractual duties to Plaintiffs and the Class members to prudently manage the investments and the responsibilities assigned to it for the benefit of the Class members.

333. The automatic contributions increase required of Plaintiffs and the Plaintiff Class stems from the actions and inactions of Aon, Aksia, Portfolio Advisors, and Hamilton Lane.

334. With only one or two exceptions, Aksia, Portfolio Advisors, and Hamilton Lane made no attempt to negotiate with the general partners whose investments each of them recommended, no attempt to seek to obtain a reduction of the percentage of management fees, the costs assessed to the partnership, or the percent of carried interest charged by the general partner, and no attempt to obtain transparency as to the returns on investments **before** fees, costs, expenses, and carried interest.

335. Aksia, Portfolio Advisors, and Hamilton Lane recommended investments to PSERS that required the Plan participants to pay management fees **computed on** the full amount of **committed capital**, even though PSERS had not yet actually invested the full amount. Thus, PSERS was obligated to make an annual management fee payment which was computed on funds that PSERS had agreed to pay in the future, but which it had not yet paid.

336. Aksia, Portfolio Advisors, and Hamilton Lane each recommended relevant benchmarks for measuring investment performance that did not permit an accurate and consistent way to evaluate PSERS returns against recognized industry benchmarks (particularly for alternative and non-traditional investments).

337. At all relevant times Aksia, Portfolio Advisors, and Hamilton Lane presented only single-option recommendations to the Board, precluding the Board from comparing any particular investment recommendation with other similar choices, thereby causing significant additional

losses to the Fund. This was directly inconsistent with the PPMAIRC report's recommendations (made in 2018), and with the express contractual obligations imposed on Portfolio Advisors.

338. It is unclear which of the Defendants bore the ultimate responsibility to accurately value the alternative investments and compute their returns at any relevant time.

339. It appears that Aon deferred to Portfolio Advisors (and later to Hamilton Lane and Aksia) on this issue, and that Portfolio Advisors (and later Hamilton Lane and Aksia) merely looked to the statements of the general partners of the underlying limited partnerships for this information.

340. Upon information and belief, no Defendant believed it was responsible to accurately value the alternative investments or their returns.

341. No Defendant made any effort to value the gross returns of the alternative investments.

342. Even after the 2018 PPMAIRC Report was issued, Aon, Aksia and Hamilton Lane continued to recommend inappropriate investments that caused significant additional plan losses to the Fund, and they failed to recommend that PSERS jettison the overly expensive funds in the portfolio lineup.

343. A report prepared in 2021 by CEM Benchmarking [EXHIBIT 17, CEM Benchmarking report] examined the cost effectiveness of PSERS's investments for the 5-year period ending December 31, 2020. In relevant part, that report concluded that:

- [A] "[PSERS'] 5-year net total return was 9.0%. This is **below** the U.S. Public median of 9.5% and the peer median of 9.5%." [EXHIBIT 17, CEM Benchmarking report p 1]
- [B] "[PSERS'] investment cost of 102.7 bps was above your benchmark cost of 82.1 bps. **This suggests that your fund was high cost compared to your peers.**" [EXHIBIT 17, CEM Benchmarking report, p 1]

- [C] “[PSERS’] fund was high cost because it paid more than peers for some services and it had a higher cost implementation style.” [EXHIBIT 17, CEM Benchmarking report, p 1]
- [D] “[PSERS’] asset-liability risk of 14.4% was above the U.S. Public median of 13.4%.” [EXHIBIT 17, CEM Benchmarking report, p 1]
- [E] “[PSERS’] costs changed very little between 2016 and 2020.” [EXHIBIT 17, CEM Benchmarking report, p 10].
- [F] Between 2016 and 2020, PSERS’s costs for hedge fund performance fees increased from 68.4 basis points to 104.8 basis points. [EXHIBIT 17, CEM Benchmarking report, p 10].
- [G] Between 2016 and 2020, PSERS’s costs for private equity base fees increased from 145.0 basis points to 180.9 basis points. [EXHIBIT 17, CEM Benchmarking report, p 10].
- [H] “[PSERS’] total investment cost of 182.7 bps was above the peer median of 57.0 bps.” [EXHIBIT 17, CEM Benchmarking report, p 11].
- [I] “Benchmark cost analysis suggests that, after adjusting for fund size and asset mix, your fund was high cost by 20.6 basis points in 2020. Your benchmark cost is an estimate of what your cost would be given your actual asset mix and the median costs that your peers pay for similar services. It represents the cost your peers would incur if they had your actual asset mix.” [EXHIBIT 17, CEM Benchmarking report, p 12].
- [J] The excess cost represents approximately \$117,525,000.00 for 2020. [EXHIBIT 17, CEM Benchmarking report, p 12].

344. Given the fiduciary obligations that each of Aon, Aksia, Hamilton Lane, and Portfolio Advisors each owed to PSERS, the Fund, and the Plan participants themselves, each of these Defendants should have affirmatively recommended to the PSERS Board that PSERS reduce their high percentage of alternative, non-traditional investments, notwithstanding the PSERS’s staff desire to continue pouring participants’ money into these investments.

345. Despite these responsibilities, and even after the 2018 Report was issued criticizing PSERS’s practice of leveraging its investments, Aon, Aksia and Hamilton Lane continued to recommend leveraged investments, thereby causing significant additional losses to the Fund.

346. Despite these responsibilities, and even after the 2018 Report was issued criticizing PSERS's attempts to pay for actively-managed funds, Aksia and Hamilton Lane continued to avoid recommending indexed-type investments, recommending instead that PSERS invest in costly investment vehicles in a futile attempt to beat the market.

347. When the results obtained by PSERS are compared to the results obtained by other public pension funds similar in size to PSERS, it is evident that the Defendants' recommendations caused significant Plan losses and damage and injury to Plaintiffs and the Class.

348. In March 2021, the Board reported that it was retaining outside counsel to assist with a corruption investigation by the U.S. Department of Justice and the Federal Bureau of Investigation into the Plan's investments.

349. Soon thereafter, PSERS confirmed that a federal grand jury had been convened and was investigating the Plan's investments and Fund mismanagement by its hired fiduciaries and investment advisors.

350. Recently, a variety of investment activities over the last few years have come to light, including:

- A. Numerous investments recommended by one or more of the Defendants which charged PSERS excessive fees and expenses;
- B. Exorbitant travel expenses, planned by one or more of Aon, Hamilton Lane, and Aksia to transport PSERS personnel to luxury locations, where the cost was ultimately borne by the PSERS fund itself;
- C. Recommendations by one or more of the Defendants that PSERS invest in absurd and facially implausible schemes such as financing Kurdish independence, investing in pistachio farming in California, etc.

D. Recommending (or turning a blind eye toward) direct purchases of multiple parcels of real estate that have remained in a non-saleable and unimproved state for years, all at the expense of the PSERS and its participants.

351. Each of the Defendants failed to reveal/disclose and fraudulently concealed the details of their work and lack of diligence and material information about the investments, including the fees, costs, and expenses of (and thus the total performance of) the investments, thus tolling the relevant statutes of limitations.

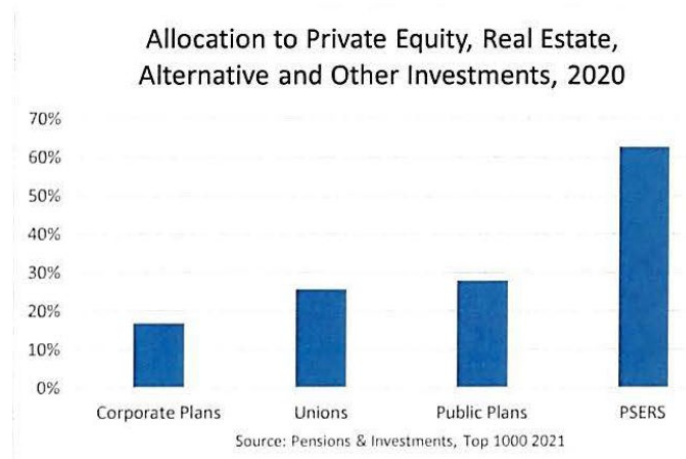
352. Each of the Defendants failed to use reasonable care, skill, and caution in undertaking their obligations.

353. To the degree that any Defendant claims that its actions or inaction (or the terms or provisions of investment funds they recommended) complied with alternative or non-traditional industry standards, this is no defense for a fiduciary. (Moreover, the industry standard itself may be deficient.)

354. PSERS financial statements and reports do not clearly identify which investments are traditional (market-based) investments, and which are nontraditional, alternative investments. Therefore, what percentage of the PSERS Fund was and is invested in alternative investments at each relevant time over the nine-year shared risk look-back period remains veiled from public scrutiny. Despite their fiduciary duties to Plan participants, each Defendant violated its duties to identify and disclose excessive fees, costs, and expenses.

355. A June 10, 2021 letter from certain Board members claims that, in 2020 PSERS allocated 62.6% of its assets to alternative investments. That same letter stated that 62.6% of a Fund's total assets invested in alternatives would be more than double the percentage that other

plans invest in alternatives: Public plans (27.9%), Union plans (25.6%) and Corporate plans (16.8%).



16. Defendants' Recent Activities Continue to Conceal their Actions and Obstruct Transparency

356. Each of the Defendants has delayed and obstructed the ability of Plaintiffs and the Class to ferret out Defendants' additional wrongdoing and have engaged in prolonged concealment of the relevant facts.

357. Plaintiff Steinke issued discrete document requests in early 2022 to Aon and Hamilton Lane, seeking production of documents that deal with the fees, costs, and charges billed to PSERS's retirement funds for which the affected PSERS employees are being surcharged.

358. Although Aon and Hamilton Lane represented that they would produce responsive documents, they have articulated ever-changing reasons for not actually doing so.

359. Aon and Hamilton Lane refused to produce documents: (1) until a Protective Order was agreed to; and then (2) until PSERS completed its independent review of the responsive documents to identify any documents as to which PSERS intends to assert a deliberative process privilege; and then (3) until the new Defendants (Portfolio Advisors and Aksia) agree to the terms of the Protective Order.

360. Plaintiffs' counsel responded by promptly agreeing to the terms of a Protective Order and agreeing to allow Aon and Hamilton Lane to submit their proposed document production to PSERS for privilege review.

361. Since the new Defendants (Aksia and Portfolio Advisors) were added to this case, Plaintiff has repeatedly reached out to them about the Protective Order; Portfolio Advisors continues to avoid agreement on the terms of a Protective Order.

362. On May 9, 2022, this Court ordered both Hamilton Lane and Aon to produce documents responsive to Plaintiff's requests. In response, Hamilton Lane produced only a spreadsheet and an insurance declaration page; it has not yet produced additional responsive documents to Plaintiff (or a privilege log).

363. Hamilton Lane continues to claim that virtually all the documents requested by Plaintiff (including more than 40,000 documents) must be reviewed by PSERS prior to production by Hamilton Lane, so that PSERS can identify those documents as to which it intends to assert a deliberative process privilege.

364. For its part, Aon has produced a one-page, one-item privilege log, and 11 pages of documents. Aon claims that it too has tendered thousands of documents to PSERS for privilege review, but it has provided no information to Plaintiffs about the status of this review, and no other actual documents to Plaintiffs.

365. No documents (or privilege logs) have yet been produced as a result of PSERS's supposed deliberative process review, which has been ongoing for months.

366. As stated above, once Plaintiff, Aon, and Hamilton Lane agreed on the terms of the Protective Order, Aon and Hamilton Lane insisted that the new Defendants be included in the Protective Order and raised new issues with the terms.

367. Portfolio Advisors continues to refuse to agree to the language of a protective order, even though every single change their counsel proposed has been agreed to.

368. Defendants are thus continuing to refuse to make disclosures to the Plan participants who are directly affected by Defendants' actions and inactions.

CLASS ACTION ALLEGATIONS

369. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

370. Plaintiffs bring this action, on behalf of themselves and all other similarly situated persons whose pension contributions or pension benefits have been or will be affected by Defendants' actions and inactions, including their investment recommendations, decisions, and other wrongful conduct.

371. PSERS current retirees who are not working are **not** included in the Class.

372. The Class includes those participants in PSERS who are contributing to their retirement at this time, and who were injured by the Defendants' actions and inactions. Upon information and belief, this would include participants who are currently employed and who are members of PSERS class T-E, class T-F, class T-G, and class T-H, including those participants who were hired after July 1, 2021.

373. According to recent discovery provided by PSERS, there are approximately 120,000 people who are current members of PSERS class T-E, class T-F, class T-G, and class T-H. Thus, if discovery confirms that these are the correct individuals to constitute the Class in this case, the Class will include approximately 120,000 people.

374. As such, the class is so numerous as to make joinder impracticable, and Plaintiffs' claims are typical of the claims of the class members, and all claims are based on the same legal and remedial theories.

375. The questions of law and fact are common to the thousands of members of the Class, and these questions predominate over any question affecting only individual class members.

376. The principal common issues include but are not limited to whether Defendants violated their fiduciary duties, how they breached their duties, whether they aided and abetted others in violating their fiduciary duties, and/or breached their contractual obligations set forth in contracts that the Plaintiffs and the Class are third-party beneficiaries of, and how their actions affected the Class.

377. The claims of the named Plaintiffs are typical of the claims of the entire class.

378. Plaintiffs will fairly and adequately protect the interest of all class members under the criteria set forth in Pennsylvania Rule of Civil Procedure 1709, inasmuch as:

- a. Counsel for the Class are experienced in the prosecution of class actions, including pension fund class actions, and will adequately represent the interests of the Class;
- b. The Plaintiffs do not have a conflict of interest with any other members of the Class; and
- c. The representative party and class counsel have adequate financial resources to assure that the interests of the Class will be adequately protected and will not be harmed.

379. A class action provides a fair and efficient method for adjudicating the controversy under the criteria set forth in Pennsylvania Rule of Civil Procedure 1708, inasmuch as:

- a. Common questions of law and fact predominate over any questions affecting only individual members of the Class;
- b. The size of the Class will not present management difficulties, and on the contrary the size of the Class makes a class action a far more efficient method of resolving this dispute than individual actions;

- c. The prosecution of individual actions would risk presenting the Defendants with inconsistent or varying results, thereby raising the prospect that Defendants would be governed by incompatible standards of conduct;
- d. In view of the complexity and expense of litigation, the separate claims of individual members of the Class would not be of sufficient amount to justify effective prosecution of the action; and
- e. Defendants have acted on grounds and in ways generally applicable to the Class, thereby making final equitable or declaratory relief appropriate with respect to the Class.

380. Maintaining this action as a class action is superior to other available methods of adjudication since it will promote the convenient administration of justice and will achieve a fair and efficient adjudication of the controversy in this matter because there are many thousands of potential Class members.

381. Final, equitable, and declaratory relief are appropriate because Defendants should be required, in addition to the payment of damages, to begin exercising their duty of due care.

382. Defendants, and each of them, are jointly and severally liable for the financial injuries and damages referred to herein.

383. To the extent that any allegation pleaded herein is inconsistent with any other allegations pleaded, they are pleaded in the alternative.

384. Plaintiffs demand trial by jury.

COUNT I
BREACH OF FIDUCIARY DUTY
AGAINST AON INVESTMENTS USA, INC.
(HEWITT ENNISKNUPP, INC. and
AON HEWITT INVESTMENT CONSULTING, INC.)

385. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

386. Aon (as defined above to include each of Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon Investments USA, Inc.) served and continues to serve as a fiduciary of the PSERS retirement Plan and its participants and beneficiaries in a variety of respects under trust law, statutory law, common law, public policy, and contract.

387. At all relevant times, Aon was a fiduciary and was duty-bound to discharge its fiduciary duties with respect to the Plan solely in the interest of the Plan's participants and beneficiaries and with utmost, undivided loyalty to their interests, in good faith, and with the care of a reasonably prudent person.

388. Indeed, by trust law, statutory law, common law, public policy, as well as contractual obligation, Aon owed and owes a fiduciary duty to Plan participants to exercise that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the management of their own affairs not in regard to speculation, but in regard to *the permanent disposition of the fund*, considering the probable income to be derived therefrom as well as the probable safety of their capital.

389. Aon breached its fiduciary duties by way of the conduct described throughout this Third Amended Complaint, and by causing or contributing to hundreds of millions of dollars of damages to the Plan and the Plan's participants.

390. Aon's actions and inactions caused direct harm to the Plaintiff Class by, *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

391. After the wrongful actions and inactions of Aon were uncovered (including its erroneous computations) and the true results from the nine-year shared risk assessment for the period ended June 30, 2020 were revealed, the nature and type of investments held by the Plan and the excessive fees and expenses charged by the alternative, non-traditional investment funds were discovered.

392. Many of these investments, including some investments purchased on the recommendation of Aon, were unsuitably expensive, and the fees and expenses incurred are much higher than both traditional investment options (and other non-traditional investment options). In addition, the nature of the fee and expense structure for these investments makes it almost impossible to compute the true rate of return on investment and compare these investments with other more traditional investments.

393. As alleged, Aon had a duty to familiarize itself with relevant Pennsylvania law that affected or should affect its asset allocation recommendations, including specifically the shared risk provisions of Pennsylvania statutes that subjected Plan participants to the risk of mandatory increased contributions to PSERS in the event that the Fund failed to meet its targeted returns over

certain periods. Upon information and belief, Aon either failed to consider the shared risk statutes, or ignored the content of the shared risk obligations, and thereby breached its fiduciary obligations by making asset allocation recommendations that unreasonably increased the risk that the Plan participants would be surcharged under this statutory scheme.

394. Aon's actions and inactions as alleged in this Third Amended Complaint are the proximate cause of Plaintiffs' injuries and damages and the injuries and damages of the Class.

395. The mere existence of a contract that was breached does not subsume or excuse Aon's misfeasance in performing in a manner that violated the fiduciary duties Aon owed to the Plan and its participants under Pennsylvania law and public policy, the contract being merely the vehicle establishing the relationship of the parties during which a breach of fiduciary was committed. *See Bruno v. Erie Insurance Co.*, 630 Pa. 79, 111-14 (2014).

396. Accordingly, Plaintiffs and the Class members are entitled to such equitable and remedial relief as this Court deems appropriate, including equitable relief to make the Plan whole, and to make the Plaintiffs and the Class members whole, as well as damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aon (defined to include Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon Investments USA, Inc.) in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT II
BREACH OF FIDUCIARY DUTY
AGAINST PORTFOLIO ADVISORS LLC

397. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

398. Portfolio Advisors served as a fiduciary of the PSERS retirement Plan and its participants and beneficiaries, in a variety of respects under trust law, statutory law, common law, public policy and contract.

399. At all relevant times, Portfolio Advisors was a fiduciary and was duty-bound to discharge its fiduciary duties with respect to the Plan solely in the interest of the Plan's participants and beneficiaries and with utmost, undivided loyalty to their interests, in good faith, and with the care of a reasonably prudent person.

400. Indeed, by trust law, statutory law, common law, public policy, as well as contractual obligation, Portfolio Advisors owed a fiduciary duty to Plan participants to exercise that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the management of their own affairs not in regard to speculation, but in regard to *the permanent disposition of the fund*, considering the probable income to be derived therefrom as well as the probable safety of their capital.

401. Portfolio Advisors breached its fiduciary duties by way of the conduct described throughout this Third Amended Complaint, and by causing or contributing to hundreds of millions of dollars of damages to the Plan and the Plan's participants.

402. Portfolio Advisors' actions and inactions caused direct harm to the Plan and to the Plaintiff Class by, *inter alia*, requiring increased mandatory financial contributions from Class

members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

403. After the true results from the nine-year shared risk assessment for the period ended June 30, 2020 were uncovered, the nature and type of investments held by the Plan and the excessive fees and expenses charged by the alternative, non-traditional investments were discovered.

404. Many of these investments, including many of the investments purchased on the recommendation of Portfolio Advisors, were unsuitably expensive, and the fees and expenses incurred are much higher than traditional investment options (and other non-traditional options). In addition, the nature of the fee and expense structure for these investments makes it almost impossible to compute the true rate of return on investment and compare these investments with other more traditional investments.

405. Portfolio Advisors' actions and inactions alleged in this Third Amended Complaint are the proximate cause of Plaintiffs' injuries and damages, and the injuries and damages of the Class.

406. The mere existence of a contract that was breached does not subsume or excuse Portfolio Advisors' misfeasance in performing in a manner that violated the fiduciary duties Portfolio Advisors owed to the Plan and its participants under Pennsylvania law and public policy, the contract being merely the vehicle establishing the relationship of the parties during which a breach of fiduciary duty was committed. *See Bruno v. Erie Insurance Co.*, 630 Pa. 79, 111-14 (2014).

407. Accordingly, Plaintiffs and the Class members are entitled to such equitable and remedial relief as this Court deems appropriate, including equitable relief to make the Plan whole, and to make the Plaintiffs and the Class members whole, as well as damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Portfolio Advisors in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT III
BREACH OF FIDUCIARY DUTY
AGAINST HAMILTON LANE ADVISORS L.L.C.

408. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

409. Hamilton Lane served and continues to serve as a fiduciary of the PSERS retirement Plan and its participants and beneficiaries, in a variety of respects under trust law, statutory law, common law, public policy, and contract.

410. At all relevant times, Hamilton Lane was a fiduciary and was duty-bound to discharge its fiduciary duties with respect to the Plan solely in the interest of the Plan's participants and beneficiaries and with utmost, undivided loyalty to their interests, in good faith, and with the care of a reasonably prudent person.

411. Indeed, by trust law, statutory law, common law, public policy, as well as contractual obligation, Hamilton Lane owed and owes a fiduciary duty to Plan participants to exercise that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the

management of their own affairs not in regard to speculation, but in regard to *the permanent disposition of the fund*, considering the probable income to be derived therefrom as well as the probable safety of their capital.

412. Hamilton Lane breached its fiduciary duties by way of the conduct described throughout this Third Amended Complaint, and by causing or contributing to hundreds of millions of dollars of damages to the Plan and the Plan's participants.

413. Hamilton Lane's actions and inactions caused direct harm to the Plan and to the Plaintiff Class by, *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

414. After the wrongful actions and inactions of Hamilton Lane were uncovered, and the true results from the nine-year shared risk assessment for the period ended June 30, 2020 were revealed, the nature and type of investments held by the Plan and the excessive fees and expenses charged by the alternative, non-traditional investments were discovered.

415. Many of these investments, including many of the investments purchased on the recommendation of Hamilton Lane, were unsuitably expensive, and the fees and expenses incurred are much higher than traditional investment options (and other non-traditional options). In addition, the nature of the fee and expense structure for these investments makes it almost impossible to compute the true rate of return on investment and compare these investments with other more traditional investments.

416. Hamilton Lane's actions and inactions as alleged in this Third Amended Complaint are the proximate cause of Plaintiffs' injuries and damages, and the injuries and damages of the Class.

417. The mere existence of a contract that was breached does not subsume or excuse Hamilton Lane's misfeasance in performing in a manner that violated the fiduciary duties Hamilton Lane owed to the Plan and its participants under Pennsylvania law and public policy, the contract being merely the vehicle establishing the relationship of the parties during which a breach of fiduciary duty was committed. *See Bruno v. Erie Insurance Co.*, 630 Pa. 79, 111-14 (2014).

418. Accordingly, Plaintiffs and the Class members are entitled to such equitable and remedial relief as this Court deems appropriate, including equitable relief to make the Plan whole, and to make the Plaintiffs and the Class members whole, as well as damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Hamilton Lane in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT IV
BREACH OF FIDUCIARY DUTY
AGAINST AKSIA LLC

419. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

420. Aksia served and continues to serve as a fiduciary of the PSERS retirement Plan and its participants and beneficiaries, in a variety of respects under trust law, statutory law, common law, public policy, and contract.

421. At all relevant times, Aksia was a fiduciary and was duty-bound to discharge its fiduciary duties with respect to the Plan solely in the interest of the Plan's participants and beneficiaries and with utmost, undivided loyalty to their interests, in good faith, and with the care of a reasonably prudent person.

422. Indeed, by trust law, statutory law, common law, public policy, as well as contractual obligation, Aksia owed and owes a fiduciary duty to Plan participants to exercise that degree of judgment, skill and care under the circumstances then prevailing which persons of prudence, discretion, and intelligence who are experts in such matters exercise in the management of their own affairs not in regard to speculation, but in regard to *the permanent disposition of the fund*, considering the probable income to be derived therefrom as well as the probable safety of their capital.

423. Aksia breached its fiduciary duties by way of the conduct described throughout this Third Amended Complaint, and by causing or contributing to hundreds of millions of dollars of damages to the Plan and the Plan's participants.

424. Aksia's actions and inactions caused harm to the Plan and to the Plaintiff Class by, *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

425. After the wrongful actions and inactions of Aksia were uncovered, and the true results from the nine-year shared risk assessment for the period ended June 30, 2020 were revealed, the nature and type of investments held by the Plan and the excessive fees and expenses charged by the alternative funds were discovered.

426. Many of these investments, including many of the investments purchased on the recommendation of Aksia, were unsuitably expensive, and the fees and expenses incurred are much higher than traditional investment options (and other non-traditional options). In addition, the nature of the fee and expense structure for these investments makes it almost impossible to compute the rate of return on investment and compare these investments with other more traditional investments.

427. Aksia's actions and inactions as alleged in this Third Amended Complaint are proximate cause of Plaintiffs' injuries and damages and the injuries and damages of the Class.

428. The mere existence of a contract that was breached does not subsume or excuse Aksia's misfeasance in performing in a manner that violated the fiduciary duties Aksia owed to the Plan and its participants under Pennsylvania law and public policy, the contract being merely the vehicle establishing the relationship of the parties during which a breach of fiduciary duty was committed. *See Bruno v. Erie Insurance Co.*, 630 Pa. 79, 111-14 (2014).

429. Accordingly, Plaintiffs and the Class members are entitled to such equitable and remedial relief as this Court deems appropriate, including equitable relief to make the Plan whole, and to make the Plaintiffs and the Class members whole, as well as damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aksia in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT V
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
AGAINST AON INVESTMENTS USA, INC.
(HEWITT ENNISKNUPP, INC. and
AON HEWITT INVESTMENT CONSULTING, INC.)

430. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

431. As used in this Count, the term “Aon” is used as defined above to include each of Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon Investments USA, Inc.

432. Aon, Aksia, Hamilton Lane, and Portfolio Advisors served as investment consultants and advisors who evaluated and recommended investments for the benefit of PSERS retirement Plan, Plan participants, and the Plan’s Trustees.

433. Aon knew that the PSERS Trustees and Grell, Grossman, Spiller, and Stalter were also all fiduciaries operating under trust law, statutory law, common law, public policy and contract, and that all of them owed fiduciary duties to the retirement system’s participants, including Plaintiffs and the Plaintiff Class.

434. Aon knew that Aksia, Portfolio Advisors, and Hamilton Lane were also fiduciaries and that each of them owed fiduciary duties to the retirement system’s participants, including Plaintiffs and the Plaintiff Class.

435. Aon aided and abetted Grell, Grossman, Spiller, Stalter, Aksia, Portfolio Advisors, and Hamilton Lane in breaching their respective fiduciary duties, in all the ways alleged throughout this Third Amended Complaint.

436. At all relevant times, Aon knew or should have known that recommending investment vehicles that did not provide the targeted rates of return and/or had those rates

diminished by excessive costs and fees would trigger mandatory contributions from the Plaintiff Class.

437. Aon knew that Grossman, Grell, Spiller, and Stalter breached their fiduciary duties by all the ways alleged in this Third Amended Complaint, including but not limited to: recommending and approving investments with excessive fees and expenses; approving a very high percentage of investments in highly illiquid vehicles; permitting Aon to alter investment performance figures months and years after the fact; and refusing to heed the recommendations contained in the PPMAIRC report.

438. Upon information and belief, Grell and Grossman sought and received Aon's assistance in furthering their breaches, by, among other things, having Aon certify the Plan's returns to avoid triggering mandatory contribution requirements.

439. In light of the harsh criticisms of the Fund's investments in the 2018 PPMAIRC report, Aon knew or should have known that continued allocation of investments of the same type and percentage would likely constitute breach of fiduciary duties owed to Plaintiffs and the Class, both by the investment consultants themselves and by Grell, Grossman, Spiller, Stalter, and other PSERS staff.

440. Aon's aiding and abetting the breaches of fiduciary duties by Grossman, Grell, Spiller, Stalter, Portfolio Advisors, Aksia and Hamilton Lane injured the Plaintiffs and the Plaintiff Class by *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

441. Upon information and belief, Aon knew of breaches of fiduciary obligations by Grell, Grossman, Spiller, Stalter, Hamilton Lane, Portfolio Advisors, and Aksia, and failed to intervene to stop them.

442. Plaintiffs and each member of the Class have suffered severe and consequential damages in an amount to be determined as a result.

443. Even if, *arguendo*, Aon did not owe the Plaintiffs and the Class a fiduciary duty in its own right, or did not breach its own fiduciary duty, the fact that Aon aided and abetted a breach of fiduciary duty by other entities and individuals who did owe a fiduciary duty to Plaintiffs and the Class is sufficient to ground liability for aiding and abetting a breach of fiduciary duty.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aon (defined to include Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon Investments USA, Inc.) in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, lost investment returns, consequential damages, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT VI
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
AGAINST HAMILTON LANE ADVISORS L.L.C.

444. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

445. Aon, Aksia, Hamilton Lane, and Portfolio Advisors served as investment consultants and advisors who evaluated and recommended investments for the benefit of PSERS retirement Plan, Plan participants, and the Plan's Trustees.

446. Hamilton Lane knew that the PSERS Trustees and Grell, Grossman, Spiller, and Stalter were all fiduciaries under trust law, statutory law, common law, public policy and contract, and that all of them owed fiduciary duties to the retirement system's participants, including Plaintiffs and the Plaintiff Class.

447. Hamilton Lane knew that Aksia and Aon were also fiduciaries and that each of them owed fiduciary duties to the retirement system's participants, including Plaintiffs and the Plaintiff Class.

448. Hamilton Lane aided and abetted Grell, Grossman, Spiller, Stalter, Aksia, and Aon in breaching their respective fiduciary duties, in all the ways alleged throughout this Third Amended Complaint.

449. At all relevant times, Hamilton Lane knew that recommending investment vehicles that did not provide the targeted rates of return and/or had those rates diminished by excessive costs and fees would trigger mandatory contributions from the Plaintiff Class.

450. Hamilton Lane knew that Grossman, Grell, Spiller, and Stalter breached their fiduciary obligations by all the ways alleged in this Third Amended Complaint, including but not limited to: recommending and approving investments with excessive fees and expenses; approving a very high percentage of investments in highly illiquid vehicles; permitting Aon to alter investment performance figures months and years after the fact; and refusing to heed the recommendations contained in the PPMAIRC report.

451. Through its relationships with Grell, Grossman, Spiller, and Stalter, Hamilton Lane knew that its evaluations and recommendations of illiquid, high cost/high fee and/or poor performing alternative investments were likely to imperil the financial health and soundness of the

Plan, and result in breaches of fiduciary duties by PSERS Trustees and other investment professionals.

452. Upon information and belief, Grell, Grossman, Spiller, and Stalter engaged in a scheme to purchase multiple parcels of real estate located adjacent to (and close to) the PSERS building, and the payment of Plan funds in amounts exceeding the market value of those properties. Grell, Grossman, Spiller, Stalter, and Hamilton Lane were at all relevant times all aware that the Board has not sold these properties, developed them, or otherwise generated a profit from them for the benefit of the Fund.

453. Hamilton Lane knew of these breaches of fiduciary obligations and failed to intervene to stop them.

454. In light of the harsh criticisms of the Fund's investments in the 2018 PPMAIRC report, Hamilton Lane knew or should have known that continued investments of the same type and allocation percentages would likely constitute breach of fiduciary duties owed to Plaintiffs and the Class, both by the investment consultants themselves and by Grell, Grossman, Spiller, and other PSERS staff.

455. Hamilton Lane's aiding and abetting the breaches of fiduciary duties owed by Grossman, Grell, Spiller, Stalter, Aksia, and Aon injured the Plaintiffs and the Plaintiff Class by *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

456. Plaintiffs and each member of the Class has suffered severe, consequential damages in an amount to be determined as a result.

457. Even if, *arguendo*, Hamilton Lane did not owe Plaintiffs a fiduciary duty in its own right, or breach its own fiduciary duty, the fact that Hamilton Lane aided and abetted a breach of fiduciary duty by others who did owe a fiduciary duty to Plaintiffs and the Class is sufficient to ground liability for aiding and abetting a breach of fiduciary duty.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Hamilton Lane in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

**COUNT VII
AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
AGAINST AKSIA LLC**

458. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

459. Aon, Aksia, Portfolio Advisors, and Hamilton Lane served as investment consultants and advisors who evaluated and recommended investments for the benefit of PSERS retirement Plan, Plan participants, and the Plan's Trustees.

460. Aksia knew that the PSERS Trustees and Grell, Grossman, Spiller, and Stalter were all fiduciaries under trust law, statutory law, common law, public policy and contract, and that all of them owed fiduciary duties to the retirement system's participants, including Plaintiffs and the Plaintiff Class.

461. Aksia knew that Portfolio Advisors, Hamilton Lane, and Aon were also fiduciaries and that each of them owed fiduciary duties to the retirement system's participants, including Plaintiffs and the Plaintiff Class.

462. On information and belief, Aksia aided and abetted Grell, Grossman, Spiller, Stalter, Portfolio Advisors, Hamilton Lane, and Aon in breaching their respective fiduciary duties in all the ways alleged throughout this Third Amended Complaint.

463. At all relevant times, Aksia knew that recommending investment vehicles that did not provide the targeted rates of return and/or had those rates diminished by excessive costs and fees would trigger mandatory contributions from the Plaintiff Class.

464. Aksia knew that Grossman, Grell, Spiller, and Stalter breached their fiduciary obligations by all the ways alleged in this Third Amended Complaint, including but not limited to: recommending and approving investments with excessive fees and expenses; approving a very high percentage of investments in highly illiquid vehicles; permitting Aon to alter investment performance figures months and years after the fact; and refusing to heed the recommendations contained in the PPMAIRC report.

465. Through its relationships with Grell, Grossman, Spiller, and Stalter, Aksia knew that its evaluations and recommendations of illiquid, high cost/high fee and/or poor performing investments were likely to imperil the financial health and soundness of the Plan, and result in breaches of fiduciary duties by PSERS Trustees and other investment professionals.

466. In light of the harsh criticisms of the Fund's investments in the 2018 PPMAIRC report, Aksia knew or should have known that continued investments of the same type and allocation percentages would likely constitute breach of fiduciary duties owed to Plaintiffs and the Class, both by the investment consultants themselves and by Grell, Grossman, and other PSERS staff.

467. Aksia's aiding and abetting the breaches of fiduciary duties by Grossman, Grell, Stalter, Spiller, Aon, Portfolio Advisors, and Hamilton Lane injured the Plaintiffs and the Plaintiff

Class by, *inter alia*, requiring increased mandatory financial contributions from Class members, thereby damaging the Plaintiff Class by causing each member to lose the use of those funds, to receive no additional benefit for the increased contributions, to reduce the likely level of benefits available at retirement, and to suffer additional financial losses.

468. Upon information and belief, Aksia knew of breaches of fiduciary obligations by Hamilton Lane, Portfolio Advisors, and Aon, and failed to intervene to stop them.

469. Plaintiffs and each member of the Class has suffered severe, consequential damages in an amount to be determined as a result.

470. Even if, *arguendo*, Aksia did not owe Plaintiffs a fiduciary duty in its own right, or breach its own fiduciary duty, the fact that Aksia aided and abetted a breach of fiduciary duty by others who did owe a fiduciary duty to Plaintiffs and the Class is sufficient to ground liability for aiding and abetting a breach of fiduciary duty.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aksia in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT VIII
BREACH OF THIRD-PARTY BENEFICIARY CONTRACT
AGAINST AON INVESTMENTS USA, INC.
(HEWITT ENNISKNUPP, INC. and
AON HEWITT INVESTMENT CONSULTING, INC.)

471. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

472. As addressed above in detail, Aon (as defined above to include each of Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon Investments USA, Inc.) is and was an investment advisor and consultant that entered into one or more contracts to provide expert professional services to the PSERS Plan. [**EXHIBIT 9**, Aon 2013-2018 Contract; **EXHIBIT 10**, Aon 2019 short Contract; **EXHIBIT 11**, Aon 2019-2024 Contract].

473. In providing its services to the Plan, Aon was obligated to act at all times for the benefit of the Plan participants, including Plaintiffs and the putative Plaintiff Class.

474. As made plain in the relevant contracts, the Plan participants, including Plaintiffs and the putative Plaintiff Class were the intended beneficiaries of all services to be rendered by Aon to the PSERS's Plan.

475. Plaintiffs and the putative Plaintiff Class are third-party beneficiaries of the 2019-2024 contract between PSERS and Aon, as well as third-party beneficiaries of each of the prior contracts between PSERS and Aon addressed herein.

476. As detailed throughout this Third Amended Complaint, Aon breached its contractual and statutory obligations to the Plan participants, including Plaintiffs and the putative Plaintiff Class, by among other things, recommending unsuitable investments, and by improperly analyzing and reporting on the Plan's investment returns.

477. Aon willingly entered into its contractual agreements with PSERS, and the consideration for these agreements paid to Aon was paid from the Plan's assets.

478. Aon's breaches proximately caused harm to the Plaintiffs and the putative Plaintiff Class, and to the Plan; therefor Plaintiffs and the Class are entitled to damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aon (defined to include Hewitt EnnisKnupp, Inc., Aon Hewitt Investment Consulting, Inc. and Aon

Investments USA, Inc.) in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT IX
BREACH OF THIRD-PARTY BENEFICIARY CONTRACT
AGAINST PORTFOLIO ADVISORS LLC

479. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

480. As addressed above in detail, Portfolio Advisors is an investment advisor and consultant who entered into a contract and Amendment thereto to provide expert professional services to the PSERS Plan. [**EXHIBIT 3**, Portfolio Advisors 2012-2017 Contract. **EXHIBIT 4**, Portfolio Advisors 2015 First Amendment].

481. In providing its services to the Plan, Portfolio Advisors was obligated to act at all times for the benefit of the Plan participants, including Plaintiffs and the putative Plaintiff Class.

482. As made plain in the actual contract, the Plan participants, including Plaintiffs and the putative Plaintiff Class, were the intended beneficiaries of all services rendered by Portfolio Advisors to the PSERS Plan.

483. Plaintiffs and the putative Plaintiff Class are third-party beneficiaries of the 2012-2017 contract between PSERS and Portfolio Advisors.

484. As detailed throughout this Third Amended Complaint, Portfolio Advisors breached its contractual and statutory obligations to the Plan participants, including Plaintiffs and the Plaintiff Class, by among other things, recommending unsuitable investments, and by improperly analyzing and reporting on the Plan's investment returns.

485. Portfolio Advisors willingly entered into this agreement, and the consideration for this agreement paid to Portfolio Advisors was paid from the Plan's assets.

486. Portfolio Advisors' breaches proximately caused harm to the Plaintiffs, the Plaintiff Class, and to the Plan; therefore, Plaintiffs and the Class are entitled to damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Portfolio Advisors in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT X
BREACH OF THIRD-PARTY BENEFICIARY CONTRACT
AGAINST HAMILTON LANE ADVISORS L.L.C.

487. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

488. As addressed above in detail, Hamilton Lane is an investment advisor and consultant who entered into a contract to provide expert professional services to the PSERS Plan. [**EXHIBIT 6**, Hamilton Lane 2017-2022 Contract].

489. In providing its services to the Plan, Hamilton Lane was obligated at all times for the benefit of the Plan participants, including Plaintiffs and the putative Plaintiff Class.

490. As made plain in the actual contract, the Plan participants, including Plaintiffs and the putative Plaintiff Class, were the intended beneficiaries of all services rendered by Hamilton Lane to the PSERS Plan.

491. Plaintiffs and the putative Plaintiff Class are third-party beneficiaries of the 2017-2022 contract between PSERS and Hamilton Lane.

492. As detailed throughout this Third Amended Complaint, Hamilton Lane breached its contractual and statutory obligations to the Plan participants, including Plaintiffs and the putative Plaintiff Class, by among other things, recommending unsuitable investments, and by improperly analyzing and reporting on the Plan's investment returns.

493. Hamilton Lane willingly entered into this agreement, and the consideration for this agreement paid to Hamilton Lane was paid from the Plan's assets.

494. Hamilton Lane's breaches proximately caused harm to the Plaintiffs and the putative Plaintiff Class, and to the Plan; therefore, Plaintiffs and the Class are entitled to damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Hamilton Lane in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

COUNT XI
BREACH OF THIRD-PARTY BENEFICIARY CONTRACT
AGAINST AKSIA, LLC

495. Plaintiffs incorporate by reference all preceding and subsequent allegations as if set forth herein.

496. As addressed above in detail, Aksia is an investment advisor and consultant that entered into one or more contracts to provide expert professional services to the PSERS Plan. [**EXHIBIT 7**, Aksia 2015-2020 Contract; **EXHIBIT 8**, Aksia 2021-2026 Contract].

497. In providing its services to the Plan, Aksia was obligated to act at all times for the benefit of the Plan participants, including Plaintiffs and the putative Plaintiff Class.

498. As made plain in the relevant contracts, the Plan participants, including Plaintiffs and the putative Plaintiff Class, were the intended beneficiaries of all services to be rendered by Aksia to the PSERS Plan.

499. Plaintiffs and the putative Plaintiff Class are third-party beneficiaries of the attached contracts between PSERS and Aksia.

500. As detailed throughout this Third Amended Complaint, Aksia breached its contractual and statutory obligations to the Plan participants, including Plaintiffs and the putative Plaintiff Class, by among other things, recommending unsuitable investments, and by improperly analyzing and reporting on the Plan's investment returns.

501. Aksia willingly entered into its contractual agreements with PSERS, and the consideration for these agreements paid to Aksia was paid from the Plan's assets.

502. Aksia's breaches proximately caused harm to Plaintiffs and the putative Plaintiff Class, and to the Plan; therefore, Plaintiffs and the Class are entitled to damages.

WHEREFORE, Plaintiffs and the Class demand judgment in their favor and against Aksia in an amount in excess of \$50,000, together with damages, restitution, an accounting, disgorgement, consequential damages, lost investment returns, exemplary damages, equitable relief, injunctive relief, surcharge, lawful interest, attorneys' fees, costs of suit, and such other relief as the Court deems just and proper.

Respectfully submitted,

MANTESE HONIGMAN, P.C.

By: /s/ Gerard Mantese
Gerard Mantese (pro hac vice)

J. J. CONWAY LAW

By: /s/ John J. Conway
John J. Conway (pro hac vice)

MCLAUGHLIN & LAURICELLA, P.C.

By: /s/ Gregory B. Heller
Gregory B. Heller

Date: September 6, 2022

JURY DEMAND

Plaintiffs and the Plaintiff Class hereby demand trial by jury.

Respectfully submitted,

MANTESE HONIGMAN, P.C.

By: /s/ Gerard Mantese
Gerard Mantese (pro hac vice)

J. J. CONWAY LAW

By: /s/ John J. Conway
John J. Conway (pro hac vice)

MCLAUGHLIN & LAURICELLA, P.C.

By: /s/ Gregory B. Heller
Gregory B. Heller

Attorneys for Plaintiff

Date: September 6, 2022

VERIFICATION

I hereby state that I am one of the Plaintiffs in the foregoing action, and that the attached Third Amended Class Action Complaint is based upon information I have furnished to my counsel and information that has been gathered by my counsel in the preparation of the lawsuit. The language of the Third Amended Class Action Complaint is that of counsel and not mine. I have read the attached Third Amended Class Action Complaint and to the extent the facts set forth therein are based upon information I have given to counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent that the content of the Third Amended Class Action Complaint is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

Kevin Steinke

Kevin Steinke (Sep 1, 2022 14:00 EDT)

Kevin Steinke

Date: 09/01/2022

VERIFICATION

I hereby state that I am one of the Plaintiffs in the foregoing action, and that the attached Third Amended Class Action Complaint is based upon information I have furnished to my counsel and information that has been gathered by my counsel in the preparation of the lawsuit. The language of the Third Amended Class Action Complaint is that of counsel and not mine. I have read the attached Third Amended Class Action Complaint and to the extent the facts set forth therein are based upon information I have given to counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent that the content of the Third Amended Class Action Complaint is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.



Louis Fantini (Sep 5, 2022 16:44 EDT)

Louis Fantini

Date: 09/052022

VERIFICATION

I hereby state that I am one of the Plaintiffs in the foregoing action, and that the attached Third Amended Class Action Complaint is based upon information I have furnished to my counsel and information that has been gathered by my counsel in the preparation of the lawsuit. The language of the Third Amended Class Action Complaint is that of counsel and not mine. I have read the attached Third Amended Class Action Complaint and to the extent the facts set forth therein are based upon information I have given to counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent that the content of the Third Amended Class Action Complaint is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.


Emily Fantini (Sep 5, 2022 16:51 EDT)

Emily Fantini

Date: 09/05/2022

VERIFICATION

I hereby state that I am one of the Plaintiffs in the foregoing action, and that the attached Third Amended Class Action Complaint is based upon information I have furnished to my counsel and information that has been gathered by my counsel in the preparation of the lawsuit. The language of the Third Amended Class Action Complaint is that of counsel and not mine. I have read the attached Third Amended Class Action Complaint and to the extent the facts set forth therein are based upon information I have given to counsel, they are true and correct to the best of my knowledge, information, and belief. To the extent that the content of the Third Amended Class Action Complaint is that of counsel, I have relied upon counsel in making this Verification. I understand that false statements made herein are made subject to the penalties of 18 Pa. C.S.A. §4904 relating to unsworn falsifications to authorities.

Daniel Reyes

Daniel Reyes (Sep 5, 2022 17:10 EDT)

Daniel Reyes

Date: 09/05/2022

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing Third Amended Class Action Complaint upon all counsel of record via electronic mail and the Court's electronic service system.

MCLAUGHLIN & LAURICELLA, P.C.

Date: September 6, 2022

/s/ Gregory B. Heller
Gregory B. Heller, Esquire
Attorney for Plaintiff