

IN THE COURT OF CHANCERY FOR THE STATE OF DELAWARE

KENZO KURODA,

Plaintiff,

v.

SPJS HOLDINGS, L.L.C., LIBERTY
SQUARE ASSET MANAGEMENT, L.L.C.,
WGL CAPITAL CORP.,
WARREN G. LICHTENSTEIN,
THOMAS J. NIEDERMEYER, JR., and
CLAIRE A. WALTON,

Defendants.

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)
)
) C.A. No. 4030-CC

) **REDACTED VERSION**

VERIFIED COMPLAINT

Plaintiff Kenzo Kuroda, by and through counsel, upon knowledge with respect to matters pertaining to himself, and upon information and belief as to all other matters, alleges as follows:

NATURE OF THE ACTION

1. This is an action seeking compensatory damages, as well as declaratory and equitable relief, to redress the substantial injuries that Plaintiff Kenzo Kuroda has suffered as a result of Defendants' retaliatory and bad-faith conduct. Mr. Kuroda is a highly skilled investment advisor, with extensive knowledge of Japanese culture, business practices, and investment opportunities. In recognition of his skills and experience, Defendants contacted Mr. Kuroda in late 2000 to explore the possibility of establishing an investment fund. Defendants formalized a partnership with Mr. Kuroda on January 1, 2002, pursuant to which he agreed to advise them in connection with their initial efforts to invest in publicly traded Japanese companies. While Mr. Kuroda was associated with Defendants, the parties built up a tremendously successful private investment fund – known as Steel Partners Japan Strategic Fund (Offshore), L.P. – that yielded double-digit returns on billions of dollars of invested capital.

Mr. Kuroda, however, elected to sever this relationship in early 2006, when Defendants increasingly disregarded his advice and chose to pursue an aggressively “activist” shareholder strategy that was philosophically different from the approach which Mr. Kuroda advocated and which, he predicted, would hurt the performance of the investment fund. After Mr. Kuroda’s decision to cease to advise them, Defendants elected to pursue their activist strategy in a manner that, as Mr. Kuroda had warned, offended Japanese business practices and culture, and resulted in huge losses to their investors.

2. Defendants sought to minimize the adverse impact to their fund resulting from Mr. Kuroda’s separation by publicly announcing, and leading Mr. Kuroda to believe, that Mr. Kuroda’s departure was amicable in all respects. In reliance on these statements, Mr. Kuroda agreed to delay his departure through June 30, 2006, in order to effectuate a smooth transition and to help Defendants minimize the concerns of their investors. Defendants, however, secretly conspired to retaliate against Mr. Kuroda for his departure, agreeing among themselves unlawfully to refuse to pay him millions of dollars that he was contractually owed, threatening him with groundless litigation, and attempting to damage his reputation and career.

3. Mr. Kuroda has suffered substantial damages as the direct and foreseeable result of Defendants’ willful and unlawful retaliatory conduct. Mr. Kuroda has a clear and unambiguous contractual right to the immediate payment of approximately REDACTED in incentive-based compensation that he earned in 2006 as a result of the fund’s performance, and he may be owed additional compensation for the year 2007. Mr. Kuroda also has a clear and unambiguous contractual right to the immediate return of more than REDACTED held in his investment capital account at Defendant SPJS Holdings, L.L.C. Defendants have refused to pay him the monies to which he is entitled by contract. In addition to these contractual damages, Mr.

Kuroda also is entitled to a declaration confirming his right to receive future profits on investments made by the investment fund during the time he provided investment advisory services to the Defendants. Mr. Kuroda is also entitled to substantial damages as compensation for the damage to his reputation and his ongoing business as a result of Defendants' bad-faith retaliatory conduct, as well as declaratory and injunctive relief to prevent Defendants from continuing their retaliatory conduct.

PARTIES

4. Plaintiff Kenzo Kuroda is a citizen of Japan. He resides in Honolulu, Hawaii.

5. Defendant SPJS Holdings, L.L.C. ("SPJS Holdings") is a Delaware limited liability company formed under the Delaware Limited Liability Company law, 6 Del. Code §§ 18-101, *et seq.* The principal place of business of SPJS Holdings is Boston, Massachusetts, at the offices of Defendant Liberty Square Asset Management, L.L.C. SPJS Holdings was formed to serve as a general partner of non-party Steel Partners Japan Strategic Fund (Offshore), L.P. and non-party Steel Partners Japan Strategic Fund, L.P.

6. Defendant Liberty Square Asset Management, L.L.C. ("Liberty Square") is a Delaware company. Liberty Square's principal place of business is 24 Federal Street, Boston, Massachusetts 02110.

7. Defendant WGL Capital Corp. ("WGL Capital") f/k/a Steel Partners Services Ltd. is a Colorado Corporation. On information and belief, WGL Capital's principal place of business is 590 Madison Avenue, 32nd Floor, New York, New York 10022.

8. Defendant Warren G. Lichtenstein is a citizen of the State of Colorado. Defendant Lichtenstein is the Chairman of WGL Capital.

9. Defendant Thomas J. Niedermeyer, Jr. is a citizen of the Commonwealth of Massachusetts. Defendant Niedermeyer, with three partners, founded Liberty Square in 1998.

10. Defendant Claire A. Walton is a citizen of the Commonwealth of Massachusetts. Defendant Walton, with three partners, founded Liberty Square in 1998.

11. Defendants are collectively referred to throughout as “Steel Partners Japan Entities.” When necessary for clarification, the Complaint specifies the individual or entity involved.

RELEVANT NON-PARTIES

12. Steel Partners Japan, K.K. (“SPJ-KK”), is a Japanese Corporation. The principal place of business of SPJ-KK is Tokyo, Japan. Plaintiff Kenzo Kuroda owns 50% of the outstanding stock of SPJ-KK.

13. Yusuke Nishi is a citizen of Japan and is a resident of Tokyo, Japan. During all relevant periods, Mr. Nishi owned 50% of the outstanding stock of SPJ-KK.

14. Steel Partners Japan Strategic Fund (Offshore), L.P. (“Master Fund”) is a partnership formed under the laws of the Cayman Islands. The Master Fund’s principal place of business is Boston, Massachusetts, at the offices of Defendant Liberty Square.

15. Steel Partners Japan Strategic Fund, L.P. (“Feeder Fund”) is a Delaware limited partnership. On information and belief, the principal place of business of the Feeder Fund is Boston, Massachusetts, at the offices of Defendant Liberty Square.

JURISDICTION

16. This Court has subject matter jurisdiction over this action under 6 Del. Code § 18-111 because this action seeks to interpret, apply or enforce the provisions of the SPJS Holdings limited liability company agreement, and an adjudication of the rights, obligations, duties, and

liabilities of SPJS Holdings (a Delaware limited liability company), and its members and managers. This Court additionally has subject matter jurisdiction under 10 Del. Code § 341 because Mr. Kuroda lacks an adequate remedy at law and has therefore invoked the equitable jurisdiction of this Court for relief.

17. This Court has personal jurisdiction over SPJS Holdings because it is a Delaware corporation, and this dispute relates to Mr. Kuroda's rights under SPJS Holdings' limited liability company agreement. This Court has personal jurisdiction over Liberty Square and WGL Capital under 6 Del. Code § 18-109 as each is a manager of SPJS Holdings under 6 Del. Code § 18-101(10). This Court has personal jurisdiction over Defendants Lichtenstein, Niedermeyer, and Walton under 6 Del. Code § 18-109 because each participates materially in the management of SPJS Holdings, a Delaware LLC. The partnership and subscription documents for the Master Fund explicitly state that Defendants Lichtenstein and Niedermeyer have primary responsibility for running the Master Fund, exercising full authority and dominion over SPJS Holdings. In the alternative, personal jurisdiction is proper over Defendants Lichtenstein, Niedermeyer, and Walton because, on information and belief, each is an alter ego of a manager of SPJS Holdings.

Investment Experience of Kenzo Kuroda

18. Plaintiff Kenzo Kuroda is a sophisticated investment adviser, with more than 20 years of experience working on highly specialized corporate finance and mergers and acquisition transactions involving publicly traded Japanese corporations. Mr. Kuroda has extensive experience evaluating potential investments in Japanese corporations, assessing Japanese domestic financial markets, conducting due diligence of Japanese companies, working with Japanese corporate officers and investors in structuring investment transactions, and guiding the successful operations of Japanese businesses.

19. Before entering into a partnership with Defendants, Mr. Kuroda had spent 11 years in the mergers and acquisitions department at Nikko Securities Co., Ltd. ("Nikko Securities"), one of the largest securities companies in Japan (and in the world). He had a leading role in Nikko's joint venture with The Blackstone Group, which jointly operated a mergers and acquisition advisory business in Japan. Mr. Kuroda additionally served as the Senior Director of Business Development for the listed Japanese subsidiary of Oracle Corporation and as a strategic advisor to the CEO of Sanwa Shutter Corporation, a leading Japanese building materials manufacturer. By the time he was contacted by Defendants, Mr. Kuroda had spent the majority of his career evaluating Japanese companies and developing acquisition strategies for senior Japanese executives.

20. In late 2000, Defendants Niedermeyer and Lichtenstein were introduced to Mr. Kuroda through a mutual acquaintance of Mr. Nishi, who worked on Mr. Kuroda's team at Nikko Securities. Throughout 2001, the parties explored the formation of a private investment fund that would invest in Japanese public corporations. The parties envisioned an equal partnership in which each of the individuals would contribute their particular expertise -- Defendant Niedermeyer (through Liberty Square) would bring his knowledge and experience investing in public Japanese equity securities; Defendant Lichtenstein (through WGL Capital) would bring his experience as an activist investor in the United States; while Messrs. Kuroda and Nishi would bring their Japanese mergers and acquisition and corporate advisory experience.

Formation of the Steel Partners Japan Entities

21. In 2001, Defendants Niedermeyer and Lichtenstein, acting through Liberty Square and WGL Capital, formed a private investment fund to invest in small to mid-size, publicly traded, Japanese corporations. Working with others, Niedermeyer and Lichtenstein

sought to establish a regulatory and tax efficient structure by forming a series of interrelated companies and partnerships. As described more fully below, the structure ultimately put in place by Defendants Niedermeyer and Lichtenstein involved the creation of two investment funds – the Master Fund and the Feeder Fund – as well as a series of affiliated entities created to manage and to provide investment advice to those funds.

22. On November 28, 2001, Defendants Niedermeyer and Lichtenstein formed the Master Fund, a Cayman Islands exempted limited partnership. The Master Fund was to serve as the principal investment vehicle for making investments in Japanese companies. According to the offering documents prepared by Liberty Square and WGL Capital, the purpose of the Master Fund was to raise investment capital in private placement transactions, and to invest those funds in undervalued Japanese publicly traded companies. *See Confidential Offering Memorandum, Steel Partners Japan Strategic Fund (Offshore), L.P., at 1 (June 2004) (“Offering Memorandum”)* (attached hereto as Exh. 1). As of approximately June 2006, the Master Fund had control over approximately REDACTED in capital contributions from investors (including investment gains).

23. On November 28, 2001, Defendants Niedermeyer and Lichtenstein – acting through SPJS Holdings – formed the Feeder Fund as a limited partnership under Delaware law. SPJS Holdings was named the General Partner of the Feeder Fund. The Feeder Fund was structured to serve as a vehicle for United States investors to invest in the Master Fund.

24. The partnership agreement for the Master Fund, which created and governed the Master Fund, also was dated November 28, 2001. It was amended on March 25, 2002, and again on July 1, 2004. *See July 1, 2004 Amended and Restated Limited Partnership Agreement of Steel Partners Japan Strategic Fund (Offshore), L.P. (“Master Fund Agreement”)* (attached hereto as Exh. 2). The Master Fund Agreement is governed by the laws of the Cayman Islands,

except for the interpretation of the term “gross negligence,” which is to be construed in accordance with the laws of the State of Delaware. Master Fund Agreement § 8.03.

25. At all relevant times, Defendant SPJS Holdings has been the General Partner of the Master Fund, and is vested with full managerial authority and control over all aspects of the Master Fund.¹ SPJS Holdings is a Delaware limited liability company. The partnership agreement for SPJS Holdings, which created and governs SPJS Holdings, was executed on December 10, 2001, and amended in 2002 and 2004. See Second Amended and Restated Limited Partnership Company Agreement of SPJS Holdings, L.L.C. (“LLC Agreement”) (attached hereto as Exh. 3). The LLC Agreement is governed by Delaware law. See LLC Agreement § 9.04

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26. The LLC Agreement specifically states that

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id. § 2.01(a), and requires the Managing Members to

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id. § 2.04. Pursuant to

the LLC Agreement, Liberty Square and WGL Capital (which were run and operated by Defendants Niedermeyer and Walton, and Defendant Lichtenstein, respectively) are the “Managing Member[s]” of SPJS Holdings. *Id.* § 2.01(a). All other members are “Non-

¹ As its General Partner, SPJS Holdings also exercises full managerial authority and control over all aspects of the Feeder Fund.

Managing Member[s].” Mr. Kuroda and Mr. Nishi are Non-Managing Class A Members of SPJS Holdings.² As the Managing Members of SPJS Holdings, Liberty Square and WGL are directly responsible for the operation and management of the Master Fund. *See id.* § 2.01. The LLC Agreement specifically provides that

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Id. § 2.01(a). Thus, the

Class A Non-Managing Members – *i.e.*, Messrs. Kuroda and Nishi – have no responsibility for the operations of and exercise no control over SPJS Holdings.

27. The Master Fund Agreement similarly requires that

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Id. § 2.04. However, both the Master Fund Agreement and the LLC Agreement made clear that the Class A Managing Members (as well as all other members and affiliates of SPJS Holdings) were not precluded from engaging in business ventures that mirror the investment activities of the Master Fund:

² The LLC Agreement creates two class of Members of SPJS Holdings. The original members – Liberty Square, WGL Capital, Mr. Kuroda, and Mr. Nishi – are all Class A Members, and have voting rights. *See id.* § 3.02. Class B Members have no voting rights, *see id.*, but are merely entitled
§ 2.09. REDACTED *id.*

³ The Master Fund Agreement defines the “Management Company” to be

Id. § 2.02(o).

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LLC Agreement § 2.04; *see also* Master Fund Agreement § 2.04. Likewise, the Offering Memorandum for participation in the Master Fund provides that that

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Offering

Memorandum at 33 (emphases added). Pursuant to these provisions, the Steel Partners Japan Entities each have pursued other investment activities and managed other private investment funds throughout the life of the LLC Agreement.

The Management Agreement and Steel Partners Japan Asset Management

28. Non-party Steel Partners Japan Asset Management, which is principally owned by Liberty Square and WGL Capital, was created to provide management services to the Master Fund. Under a Management Agreement signed in 2001 (“the Management Agreement”), Steel Partners Japan Asset Management assumed the “primary duty” of providing investment advice to SPJS Holdings as the General Partner of the Master Fund. Management Agreement § 2(a)(i). For these management services, Steel Partners Japan Asset Management was paid

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Master

Fund Agreement § 2.07; *see also* Management Agreement § 4(a).

29. To execute their strategy for investments made by the Master Fund, and to fulfill their obligations to SPJS Holdings and the Master Fund, Defendants Lichtenstein, Niedermeyer and Walton needed to retain the services of highly skilled advisers that understood the business

environment in Japan to advise them on investing the assets of the Master Fund. As envisioned by the parties when they agreed to form a three-way partnership to invest in Japan, Messrs. Kuroda and Nishi took on this role. In return for providing these invaluable services, without which the venture would not have been successful, Messrs. Kuroda and Nishi collectively received approximately REDACTED (after deducting out operating expenses) paid to Steel Partners Japan Asset Management under the Management Agreement and the Master Fund Agreement.

Mr. Kuroda's Advisory Services Contract with Defendants

30. In November 2001, Messrs. Kuroda and Nishi formed non-party SPJ-KK, a Japanese consulting company through which they would provide investment advisory services to the Steel Partners Japan Entities. During all relevant periods, Messrs. Kuroda and Nishi each owned REDACTED of the outstanding shares of SPJ-KK, and each served as a representative director of the corporation.

31. At the beginning of 2002, SPJ-KK entered into a Consulting Agreement with Steel Partners Japan Asset Management, which as described above, contracted to provide management services to the Master Fund. Under the Consulting Agreement, SPJ-KK agreed to REDACTED to Steel Partners Japan Asset Management. Consulting Agreement § 1. Specifically, the Consulting Agreement provided that SPJ-KK would serve as a consultant to Steel Partners Japan Asset Management of the Master Fund,

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and

Id. Consistent with the Consulting Agreement,

between approximately January 2002 and June 2006, Mr. Kuroda, working through SPJ-KK, undertook to identify potential investment opportunities, to perform due diligence, to recommend financial structures and terms of acquisition for proposed transaction, and to supervise investments, among other things. *See id.*

32. Defendants agreed to compensate Mr. Kuroda for his investment advisory services in two principal ways. First, and most importantly, Mr. Kuroda became a Class A Non-Managing Member of SPJS Holdings, with the right initially to receive personally REDACTED of any incentive allocations that SPJS Holdings received from the Master Fund. Defendants and Mr. Kuroda anticipated that the Master Fund could raise billions of dollars of investment capital, and that virtually all of those proceeds would be profitably invested in Japanese companies. Because, under the terms of the Master Agreement, SPJS Holdings had the right to:

REDACTED *see* Master Agreement § 3.05, and because REDACTED
Mr. Kuroda in turn had the right to receive REDACTED of this , *see* LLC Agreement §§ 3.04, 3.05, Defendants and Mr. Kuroda understood that this component of Mr. Kuroda's compensation could potentially be worth tens of millions of dollars. In addition, Mr. Kuroda had the right to the appreciation of other capital accounts that were established for his benefit as a Class A Non-Managing Member of SPJS Holdings. Second, as a REDACTED shareholder of SPJ-KK, Mr. Kuroda received his pro rata portion of the investment advisory fees paid by Steel Partners Japan Asset Management to SPJ-KK. Reflecting the three-way partnership that Messrs. Kuroda and Nishi forged with Defendants Niedermeyer and Lichtenstein, Steel Partners Japan Asset Management historically paid SPJ-KK an investment advisory fee equal to approximately REDACTED that it collected from the Master Fund after the deduction of operating expenses.

33. The LLC Agreement, as amended, which governed the operations of SPJS Holdings, created three types of capital accounts for the Class A and Class B Members:

- a. *Investment Capital Account:* each Member is given an The Investment Capital Account is credited with the REDACTED and the REDACTED contributed. LLC Agreement § 3.04(a)(i).
- b. *Operating Capital Account:* each Class A Member is assigned an *Id.* § 3.04(a)(ii). This account is used to hold a certain amount of each Member's capital contribution designated by Managing Members REDACTED *Id.* § 3.03(c).
- c. *Incentive Capital Account:* each Class A Member is assigned an REDACTED *Id.* § 3.04(a)(iii). This account receives distributions of the Incentive Allocation made from the Master Fund to the General Partner.

34. The amount of Mr. Kuroda's Incentive Capital Account varied from year-to-year, depending on the performance of investments made by the Master Fund. The specific amount credited to Mr. Kuroda's Incentive Capital Account was determined based on the amount SPJS Holdings received annually from the Master Fund. *See* Master Fund Agreement, Article III. The total amount of Incentive Allocation payable to SPJS Holdings, of which Mr. Kuroda was REDACTED entitled to receive is described at paragraphs 35-40 below.

Incentive Capital Allocations Received by SPJS Holdings

35. Pursuant to the Master Fund Agreement, every partner of the Master Fund made an REDACTED Master Fund Agreement § 3.02. This Initial Capital Contribution was included in each partner's capital account. *See id.* § 3.03. The Master Fund Agreement also provided that each partner's capital account would be adjusted at the end of each accounting period, based on the net capital appreciation or net capital depreciation of REDACTED investments made by the Master Fund. *Id.* § 3.05. The Master Fund Agreement further provided that SPJS Holdings, as the General Partner, would receive in its Capital Account at the end of

each fiscal year. REDACTED (subject to a mechanism to recover prior losses). *Id.* This allocation, known as an Incentive Allocation, is a common tool used by hedge funds and other investment vehicles to create incentives for the General Partner (and its affiliates) to generate significant returns for the investment fund. *Id.* § 3.05(b).

36. The procedures for the calculation and allocation of the Incentive Allocation are set forth in Section 3.05 of the Master Fund Agreement. Basic allocations are based upon respective partnership percentages, which are determined by

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Id. § 3.04.⁴

37. Under the plain language of the Master Fund Agreement, at the end of each Accounting Period, any net capital appreciation of the Master Fund is allocated to all of its partners, including the General Partner. Then, at the end of the each fiscal year, the General Partner has reallocated to its Capital Account an Incentive Allocation equal REDACTED of the Master Fund's net capital appreciation (subject to a mechanism to recover losses from prior years, if any). *See id.* § 3.05(b). Under the Master Fund Agreement, the General Partner may withdraw these Incentive Allocations at any time. *Id.* § 5.02(d). The Master Fund Agreement states:

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Id. § 3.05(b). Section 3.05(c), in turn, establishes a loss recovery mechanism for each limited partner, so that investors do not pay Incentive Allocations until they

⁴ The term "Accounting Period" is defined in § 3.01(a).

have regained any losses that may have occurred in a prior year.⁵ Accordingly, once a limited partner's Loss Recovery Account reaches zero, SPJS Holdings as the General Partner is entitled to receive as an Incentive Allocation REDACTED of the appreciation in the value of all limited partner capital accounts in the Master Fund.

Mr. Kuroda's Capital Accounts At SPJS Holdings

38. At all times relevant to this Complaint, Mr. Kuroda, as a Class A Non-Managing Member of SPJS Holdings, maintained an indirect interest in the Master Fund through his interest in the Investment Capital Account established for his benefit at SPJS Holdings. Mr. Kuroda also had the right to share in any Incentive Allocation credited by the Master Fund to SPJS Holdings. Mr. Kuroda's share of any such Incentive Allocation was determined according to the terms of the LLC Agreement.

39. The provisions of the LLC Agreement that governed the allocation among the various Members of SPJS Holdings of Incentive Allocations paid by the Master Fund to SPJS Holdings were straightforward. With respect to the Incentive Capital Accounts maintained at SPJS Holdings,

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LLC Agreement § 3.06(b).

Allocations to Class A Members are made

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Id. § 3.06(b)(ii). The Initial Incentive Percentage for Class A Non-Managing Members (e.g., Mr. Kuroda) was REDACTED *see id.* § 3.05(b), and that initial percentage was unchanged as of June 30, 2006. The Managing Members, in turn, had initial

⁵ Section 3.05(d) addresses the dissolution of the partnership or the withdrawal of a limited partner, and has no effect upon SPJS Holdings' entitlement to receive REDACTED of net capital appreciation or net profits earned by the Master Fund. REDACTED

REDACTED

Incentive Percentages of each. *Id.* is defined to

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Id. § 3.01(h). The effect of the foregoing was to give Mr. Kuroda, at the end of each fiscal year, the right to receive REDACTED of any Incentive Allocation credited to SPJS Holdings capital account at the Master Fund. The LLC Agreement provides that,

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Id. § 4.04(a)

(emphasis added).

40. The LLC Agreement provided for a similar allocation among the Members of SPJS Holdings with respect to the Investment Capital and Operating Accounts of SPJS Holdings. The LLC Agreements provides, with respect to the Investment Capital Accounts, that:

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Id. § 3.06(a).

is defined to

REDACTED

Id.

§ 3.01(g). With respect to Operating Capital Accounts,

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Id. § 3.06(c).

Mr. Kuroda's Relationship with the Steel Partners Japan Entities

41. From on or about January 1, 2002 to June 30, 2006, Mr. Kuroda provided consulting services and investment advice to the Steel Partners Japan Entities. During this time, Mr. Kuroda, acting through SPJ-KK, was a primary source of investment ideas for the Master Fund, and was responsible for the identification of potential investments in Japanese corporations, for conducting due diligence on potential investments, for providing advice on the terms and structuring of investment transactions, and for reviewing the operations of the companies in which the Master Fund had invested. Mr. Kuroda was also a principal spokesman on behalf of the Steel Partners Japan Entities during negotiations with Japanese corporations.

42. Mr. Kuroda's advice resulted in substantial direct and indirect financial benefits to the Master Fund. In each of the calendar years 2003, 2004, and 2005, based in significant part on Mr. Kuroda's judgment and expertise, the Limited Partners of the Master Fund realized profits (net of amounts paid to SPJS Holdings and Steel Partners Japan Asset Management LP in fees) of approximately REDACTED respectively. During this time, Mr. Kuroda's Incentive Capital Account was credited with the full amount of his indirect interest in the Incentive Allocations credited to the SPJS Holdings capital account in the Master Fund. Between January 2004 and January 2006, Mr. Kuroda requested and received distributions from REDACTED SPJS Holdings of approximately REDACTED that had been held indirectly at the Master Fund through his capital accounts.

43. At the end of 2005, however, Mr. Kuroda began to have significant and increasing differences of opinion with Defendants Lichtenstein and Niedermeyer as to the appropriate methods for pursuing shareholder activism in Japan. As a Japanese national with extensive experience in Japanese business practices, Mr. Kuroda argued and believed that the increasingly

confrontational approach being advocated and pursued by Defendants Lichtenstein and Niedermeyer would be counterproductive, and reflected a fundamental lack of sophistication about business practices in Japan. Defendant Lichtenstein, for example, who was widely known as an aggressive shareholder who had employed confrontational tactics to force rapid changes in operations and management in the United States, strongly rejected Mr. Kuroda's advice.

44. In addition, Mr. Kuroda grew increasingly uncomfortable with various actions taken by Defendants WGL Capital, Liberty Square, Lichtenstein, Niedermeyer, and Walton that Mr. Kuroda believed, improperly disadvantaged the Non-Managing Members of SPJS Holdings.

Among other things, Defendants permitted REDACTED to invest approximately REDACTED in the Master Fund without paying any of the management fees and incentive expenses imposed upon the other Limited Partners. In addition, Liberty Square demanded and, on information and belief received, as a Managing Member of SPJS Holdings, an extraordinary management fee of approximately REDACTED as payment for services provided to the Steel Partners Japan Entities. Mr. Kuroda complained that these and other actions by these Defendants constituted improper self-dealing.

45. By early 2006, as Mr. Kuroda and Defendants Lichtenstein, Niedermeyer, and Walton continued to disagree on these and other matters, Mr. Kuroda believed he could no longer continue his association with the Steel Partners Japan Entities. As a result, Mr. Kuroda informed Defendants that he would no longer serve as an adviser to the Steel Partners Japan Entities. Mr. Kuroda made clear to Defendants and to Mr. Nishi that he was willing to negotiate his withdrawal as a Class A Non-Managing Member of SPJS Holdings and as a shareholder of SPJ-KK, but that he intended to preserve and retain all of his rights as a Class A Non-Managing Member of SPJS Holdings and as a shareholder of SPJ-KK until such time as an agreement

could be reached. Mr. Kuroda further advised the Steel Partners Japan Entities that he intended to pursue his own business interests, which would include the establishment of his own fund to invest in Japanese corporations. Defendants Lichtenstein, Niedermeyer, and Walton represented to Mr. Kuroda that his separation was amicable, and would be handled amicably.

46. Defendants Lichtenstein, Niedermeyer, and Walton expressed significant concerns about the impact that Mr. Kuroda's departure would have on current and potential investors. As early as May 2006, Defendants Walton and Niedermeyer were working on how best to explain Mr. Kuroda's departure to their investors. On May 16, 2006, for example, Defendant Walton sent Mr. Kuroda an email in which she proposed language for a communication to investors intended to help allay concerns about Mr. Kuroda's departure.

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Defendants needed to alleviate investor concerns at least in part because of the way that the Master Fund had been marketed to current and prospective investors as a partnership in which each of the partners – WGL Capital, Liberty Square, and Messrs. Kuroda and Nishi – contributed their unique skills to the venture. While the loss of one of the initial partners had the potential to undermine this image, Defendants feared that a public or contentious dispute among the partners could cause investors to lose confidence in the Master Fund and to withdraw their investments.

47. In addition, Defendants Lichtenstein and Niedermeyer had forged a relationship with Yoshiaki Murakami, the founder of M&A Consulting, another prominent activist investment fund in Japan. In early June 2006, Mr. Murakami was arrested for insider trading,

and his fund was shut down thereafter. Because the investing public associated the Steel Partners Japan Entities with M&A Consulting – the Master Fund and M&A Consulting (prior to its dissolution) were the two largest activist funds in Japan at the time – the Steel Partners Japan Entities feared that investors would seek to withdraw their investments from the Master Fund if it were perceived that Defendants Lichtenstein and Niedermeyer were associated with Mr. Murakami. The confluence of Mr. Murakami's arrest and Mr. Kuroda's departure caused considerable consternation among the Steel Partners Japan Entities. Defendant Walton, among others, expressed the concern that Mr. Kuroda's departure would trigger a significant loss of investor capital. Defendants Lichtenstein, Niedermeyer, and Walton approached Mr. Kuroda and asked him to agree to take steps that would help to mitigate the expected adverse impact of his departure and help to reassure existing investors that his departure was an amicable one.

48. Among other things, Defendants Lichtenstein, Niedermeyer, and Walton agreed with Mr. Kuroda to publicly disclose that Mr. Kuroda's departure was mutually amicable. To reinforce this perception, and to afford the Steel Partners Japan Entities an opportunity to allay potential investor concerns about his departure, Mr. Kuroda agreed to continue to provide advice to the Steel Partners Japan Entities and to delay the date of his formal separation until June 30, 2006. Thus, by mutual agreement, June 30, 2006, was the date of Mr. Kuroda's terminating event under § 6.01(a) of the LLC Agreement.

49. Defendants Liberty Square and WGL Capital, as the Class A Managing Members of SPJS Holdings, as well as Defendants Niedermeyer, Walton, and Lichtenstein, were well aware of, and purported to support, Mr. Kuroda's plan to establish a new investment fund. Among other things, Defendants advised their investors that Mr. Kuroda was departing in order to set up a new fund, and wished Mr. Kuroda best of luck with his new endeavors.

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50. On May 22, 2006, Defendant Walton and Mr. Kuroda met to negotiate the terms of Mr. Kuroda's financial separation from Defendants. Between May 22, 2006 and June 26, 2006, in the course of Mr. Kuroda's communications with Defendant Walton, Ms. Walton reaffirmed Liberty Square's recognition that it (and SPJS Holdings) had outstanding obligations to Mr. Kuroda under the LLC Agreement. On June 26, 2006, Mr. Kuroda received a written proposal that Mr. Kuroda would "terminate as a member of SPJS Holdings," and would be entitled to a payment of REDACTED upon his withdrawal from the LLC. Because the proposal was subject to a number of contingencies, and did not reflect the fair market value of Mr. Kuroda's membership interest and the funds he would be legally entitled to receive under the LLC Agreement, Mr. Kuroda rejected that particular proposal.

51. During the negotiations with Defendant Walton over the terms of his departure, Mr. Kuroda formally requested an immediate payment of all amounts currently held, directly and indirectly, for his direct and indirect benefit in capital accounts at the Master Fund and SPJS Holdings. Within approximately 45 days from his request, in accordance with the terms of the REDACTED Master Fund Agreement, Mr. Kuroda received a payment reflecting REDACTED of the amount of the then-current balance of approximately REDACTED in his Investment Capital Account at SPJS

Holdings. However, the General Partners of the Master Fund were additionally required, under the plain language of Section 5.02(c) of the Master Fund Agreement, to pay the remaining of that account within 30 days of the completion of the annual audit of the Master Fund's books. Although the annual audit for the Master Fund was completed by no later than May 2007, the Steel Partners Japan Entities have refused to pay Mr. Kuroda the REDACTED that remained in his Investment Capital Account as of June 30, 2006, as required by the relevant agreements.

52. Moreover, although (on information and belief) the Master Fund reported net profits REDACTED in 2006, which resulted in substantial additional allocations to the SPJS Holdings Capital Account at the Master Fund, and should have resulted in a corresponding increase to Mr. Kuroda's Incentive Capital Account at SPJS Holdings, Defendants have refused to return to Mr. Kuroda his rightful share of the Incentive Allocation to the Master Fund in fiscal year 2006. In addition, to the extent SPJS Holdings received an Incentive Allocation from the Master Fund for fiscal year 2007, Mr. Kuroda is entitled to receive his REDACTED share of any amounts earned on investments that had been made by the Master Fund before June 30, 2006.

Mr. Kuroda's Efforts To Recoup the Monies in His Investment and Incentive Capital Accounts at SPJS Holdings

53. Defendants have no lawful basis for their ongoing refusal to pay Mr. Kuroda the monies to which he is entitled under the LLC Agreement. Mr. Kuroda effected a Terminating Event from the Steel Partners Japan Entities within the meaning of Section 6.01(a) of the LLC Agreement, but has not withdrawn as a Non-Managing Class A Member of SPJS Holdings. Accordingly, he is entitled to immediate payment of all amounts that should have been credited to his Incentive Capital Account for fiscal year 2006 and 2007. Article VI of the LLC Agreement draws a clear distinction between withdrawal and termination. Under that agreement,

REDACTED

LLC Agreement § 6.01(a). However, a Class A Member may cause a terminating event without consent:

REDACTED

Id. (emphasis added). Under the express terms of the LLC Agreement, even after a Member terminates his relationship with SPJS Holdings, but before the Member formally withdraws, the Member

REDACTED

Id. As a result, even after his termination, Mr. Kuroda continued to be a Class A Non-Managing Member of SPJS Holdings, with the right at the time of the filing of this complaint to receive his proportionate share of any Incentive Allocation paid to SPJS Holdings by the Master Fund for fiscal years 2006 and 2007 for investments held by the Master Fund as of June 30, 2006. He also retains the right to share in future Incentive Allocations with respect to those investments.

54. The LLC Agreement also establishes that Mr. Kuroda, as a Member of SPJS Holdings, has the right to withdraw funds from his capital accounts at SPJS Holdings.

REDACTED

Id.

§ 4.03(a). A request for capital withdrawal must comply also with the conditions set forth in the Master Fund Agreement. *See id.*⁶

55. During the second half of 2006 and throughout 2007, Mr. Kuroda requested in writing that he be paid the estimated, and later the actual, value of the Incentive Allocations that he was owed under the LLC Agreement. Mr. Kuroda requested that SPJS Holdings pay him the amount of his earned Incentive Allocations – REDACTED of which, under the terms of the Master Agreement, would be payable within 45 days, with the remaining REDACTED paid within 30 days of the completion of the Master Fund’s annual audit. Notwithstanding their clear contractual obligations, the Steel Partners Japan Entities have refused to pay Mr. Kuroda the amounts owed to him.

56. In violation of the plain language of the LLC Agreement, the Steel Partners Japan Entities have purported to treat Mr. Kuroda’s termination as a withdrawal. At the same time that the Steel Partners Japan Entities refused to pay Mr. Kuroda any of the Incentive Allocations to which he is entitled, they purported to assign the profits of SPJS Holdings to Mr. Kuroda for income tax purposes in an amount substantially above his pro rata share. In 2007, Defendants Liberty Square, Walton, and Niedermeyer caused SPJS Holdings to issue Mr. Kuroda an inaccurate Schedule K-1 that purported to assign Mr. Kuroda nearly REDACTED of “income” for the 2006 tax year despite the fact that SPJS Holdings refused to recognize Mr. Kuroda’s contractual right to share in the Incentive Allocations earned by SPJS Holdings during that tax year. On information and belief, the Steel Partners Japan Entities thereby sought to shift their

⁶ As relevant here, the Master Fund Agreement provides that the Master Fund will pay

REDACTED Master Fund Agreement § 5.02(c). The remaining balance

REDACTED

Id.

own tax liabilities onto Mr. Kuroda, further enriching themselves at Mr. Kuroda's expense. Mr. Kuroda's representatives requested that SPJS Holdings explain the basis for this assignment of income to Mr. Kuroda in the 2006 K-1 and provide supporting information, but Defendants Walton and Liberty Square, acting on behalf of SPJS Holdings, rejected these requests.

57. The LLC Agreement specifically prohibits these efforts by Defendants Liberty Square, Walton, and Niedermeyer to manipulate the tax liabilities of the Steel Partners Japan Entities. Section 3.09 of the LLC Agreement, which governs the allocation of net income for income tax purposes to the members of SPJS Holdings, provides that ‘

REDACTED

– provisions that address the allocation of SPJS Holdings' income. *Id.* While Section 3.09 allows SPJS Holdings to assign certain realized capital gains to a withdrawing member that has a REDACTED⁷ up to the amount of that Positive Basis, that exception is only applicable in the event that a member withdraws. Because Mr. Kuroda only terminated his relationship with SPJS Holdings and did not withdraw from the partnership, the LLC Agreement does not permit Defendants to try to transfer their own tax obligations onto Mr. Kuroda. The Schedule K-1 that Defendants Liberty Square, Walton, and Niedermeyer caused SPJS Holdings to issue to Mr. Kuroda is therefore improper and represents an independent violation of the LLC Agreement.

⁷ The LLC Agreement defines REDACTED to mean REDACTED

Id.

The Formation of Fugen

58. As Mr. Kuroda informed the Steel Partners Japan Entities at the time he decided to terminate his relationship with them, Mr. Kuroda intended to devote (and has now devoted) substantial resources toward establishing a new private investment fund to invest in Japanese corporations. Defendants were aware of Mr. Kuroda's formation of a new fund, and encouraged the principals of Fugen to make use of the Steel Partners Japan Entities' office infrastructure – e.g., fax machines, Internet access, telephone – to coordinate the establishment of the new fund. Specifically, in mid-2006, Mr. Kuroda and several partners founded Fugen Capital Management LLC (“Fugen”). Fugen is a fraction of the size of the REDACTED Master Fund. It has elected to pursue a fundamentally different business strategy than the Steel Partners Japan Entities. In contrast to their hostile and adversarial approach to Japanese management, Mr. Kuroda and Fugen have instead elected to pursue a long-term relational approach. Neither the Master Fund Agreement, nor the LLC Agreement, nor the Consulting Agreement imposed any restrictions on Mr. Kuroda's ability to pursue alternative business ventures *while* he was providing consulting services to the Steel Partners Japan Entities. Those agreements similarly do not impose any such restrictions on those activities after he effected a terminating event. Indeed, these agreements expressly contemplate that Mr. Kuroda (as well as any of the other Non-Managing or Managing Member of SPJS Holdings) could effectuate a terminating event at any time, and without restrictions.

Defendants' Efforts To Destroy Mr. Kuroda's Business and Reputation

59. Prior to August 2006, Mr. Kuroda relied in good faith on the repeated representations made by Defendants Niedermeyer, Lichtenstein, and Walton that they would treat his departure from the Steel Partners Japan Entities as amicable in all respects, and that they

would honor the contractual obligations entitling Mr. Kuroda to be paid the amounts due to him under the LLC Agreement. Notwithstanding these assurances, by no later than August 2006, Mr. Kuroda learned that Defendants had engaged, and were continuing to engage, in bad faith and unlawful steps to retaliate against him for terminating his relationship with the Steel Partners Japan Entities, including by seeking to destroy Mr. Kuroda's stellar reputation and to undermine his new business venture. By mid June 2006, news articles discussing Mr. Kuroda's separation from the Steel Partners Japan Entities reported that his departure was based on philosophical "differences . . . of how to run the fund."⁸ Defendants were concerned that if Mr. Kuroda spoke publicly about the reasons for his departure from the Steel Partners Japan Entities, or if he was otherwise critical of the Defendants' actions, investors could lose confidence about their investment in the Master Fund, thereby placing at risk the lucrative management and other fees the Steel Partners Japan Entities expected to receive.

60. In June 2006, Mr. Kuroda and Defendants were engaged in negotiations over an agreement to repurchase the entirety of Mr. Kuroda's Non-Managing Interest in SPJS Holdings. On June 26, 2006, the Steel Partners Japan Entities proposed terms of a final settlement, which Mr. Kuroda rejected as inadequate, as it was inconsistent with the Steel Partners Japan Entities' contractual obligations under the LLC Agreement. In July 2006, while knowing that Mr. Kuroda was also preparing the offering documents for his new investment fund, the Steel Partners Japan Entities suggested that they defer negotiations until later in the year. Then, without any prior notice or other indication that the Steel Partners Japan Entities' commitment to an amicable separation had changed, counsel for the Steel Partners Japan Entities wrote a letter to Mr. Kuroda

⁸ Mariko Sanchanta, *Steel Partners Resignations Could Worry Foreign Investors in Japan*, Financial Times (June 21, 2006).

on August 14, 2006, threatening to initiate litigation against him. The letter charged, with no explanation or factual support, that Mr. Kuroda was acting “unlawfully” by making use of unspecified “confidential trade secret information” that purportedly belonged to the Steel Partners Japan Entities. The letter further alleged that Defendants had claims against Mr. Kuroda for “misappropriation of confidential information, conversion, breach of fiduciary duty, unfair competition and intentional interference with prospective economic advantage.” The letter also claimed, without citing to any provision of a contract, that Mr. Kuroda may be in “breach” of his “Consulting Agreement.” In causing this letter to be sent, Defendants Lichtenstein, Niedermeyer, and Walton intended to intimidate Mr. Kuroda and unlawfully to coerce him into relinquishing valuable contract rights.

61. Mr. Kuroda, through counsel, promptly responded to the Steel Partners Japan Entities’ letter on August 21, 2006, and denied these unsubstantiated allegations. Mr. Kuroda’s letter stressed that “[p]rior to the receipt of [the] letter [of August 16], Mr. Kuroda had understood his separation from [the Steel Partners Japan Entities] to be amicable in all respects.” The letter also pointed out that the Steel Partners Japan Entities had “fail[ed] to identify the provisions of any consulting, employment, partnership or other agreement, or [to provide] citations to applicable statute or case law, in support of . . . allegations that Mr. Kuroda has acted improperly with respect to any issues arising from his decision to disassociate himself from [the Steel Partners Japan Entities.]” With respect to the charges that Mr. Kuroda had improperly communicated with investors, Mr. Kuroda’s letter observed that at least some of those investors had initiated conversations with him and, in fact, that “representatives of [the Steel Partners Japan Entities]” may have “facilitated those communications.” Mr. Kuroda also reiterated that he was entitled to substantial payments from the Steel Partners Japan Entities under Article VI of

the LLC Agreement, and that he expected the Steel Partners Japan Entities to honor their contractual obligations.

62. Defendants, acting through counsel, responded to Mr. Kuroda on September 12, 2006. The Steel Partners Japan Entities did not address any of the substantive points made in Mr. Kuroda's letter. Instead, Defendants merely reiterated their previous proposal to acquire Mr. Kuroda's membership interest in SPJS Holdings at a price far less than Mr. Kuroda would be due under the terms of the LLC Agreement, demonstrating that Defendants had no good faith basis for their legal threats and that their baseless assertions of legal claims were merely intended to pressure Mr. Kuroda to give up his contractual rights. On information and belief, Defendants never had any intention of paying Mr. Kuroda the amounts to which he was entitled under the LLC Agreement. Instead, Defendants made threats and conducted negotiations in bad faith as part of their scheme to intimidate Mr. Kuroda and to deprive him of the full value of his rights under the LLC Agreement.

63. Between approximately September 2006 and February 2008, Mr. Kuroda negotiated in good faith with Defendants, seeking to receive the amounts to which he was entitled under the LLC Agreement and to obtain contractual protections that would enable him to pursue his new business ventures without further interference or intimidation from Defendants. Throughout these negotiations, Defendants continued in bad faith to threaten to sue Mr. Kuroda for his decision to conduct business through Fugen and for seeking potential investors in his new fund. In light of these threats and the uncertainty caused by Defendants' unlawful conduct, Fugen was forced to circumscribe its business ventures including by, among other protective actions, avoiding discussions about investments in Fugen with any individuals or entities known to be investors in the Master Fund.

64. During this time, Defendants engaged in efforts to undermine Mr. Kuroda's business ventures, in order to deceptively bolster the reputation of the Master Fund and of the individual Defendants. On February 20, 2007, for example, Bloomberg Japan posted a story online regarding the Steel Partners Japan Entities that inaccurately stated that Mr. Kuroda had left SPJS Holdings as a result of fund performance issues. In fact, the Master Fund had an extraordinary record during the period when it was advised by Mr. Kuroda, and its performance deteriorated only after he left.

65. Later that same day, Bloomberg Japan published a correction to the story at the request of Steel Partners Japan Entities. The corrected article stated that the "4th paragraph is revised *based on a request from Steel Partners*, regarding expressions related to Steel Partners' human resources." (emphasis added). Although the Steel Partners Japan Entities made corrections to the article, they did not correct false and defamatory statements that "Kuroda resigned in June 06, as the return did not meet the expectations of the US HQ" or that "Kuroda was forced to leave." Defendants knew that these statements were false, misleading, and defamatory, but they took no steps to correct them.

66. The Steel Partners Japan Entities' selective correction of the article left the unmistakable impression that the Steel Partners Japan Entities had ratified the (incorrect) factual statements in the article regarding Mr. Kuroda's reasons for leaving the Steel Japan Partners Entities. It was as if the Steel Partners Japan Entities had ratified the entirety of the corrected story, thereby falsely announcing to the investment community that Mr. Kuroda's separation from the Steel Partners Japan Entities was involuntary and the result of performance issues. On information and belief, the Bloomberg article was read by investors around the world.

67. Mr. Kuroda subsequently contacted Bloomberg Japan and persuaded Bloomberg to publish a revised article that omitted the reference to Mr. Kuroda's departure from the Steel Partners Japan Entities. However, the Steel Partners Japan Entities had failed to correct known and obvious inaccuracies in the article. On information and belief, this conduct was done intentionally and in bad faith, in order to damage Mr. Kuroda's reputation and to undermine the success of Fugen.

The Steel Partners Japan Entities' Setbacks

68. News of the Steel Partners Japan Entities' substantial setbacks has been widespread. Forbes reported in June 2007, for example, that the "aggressive" Master Fund "run by Warren Lichtenstein has mounted a series of unsolicited and ultimately unsuccessful offers for Japanese companies, building up a public perception as a greenmailer seeking short-term gains in share prices." Shu-Ching Jean Chen, *Steel Partners Drags Bull-Dog to Court*, Forbes.com (June 14, 2007). Indeed, Japan's high court has, since Mr. Kuroda's departure, referred to the Steel Partners Japan Entities as "abusive acquirer[s]."

69. Similarly, the International Herald Tribune reported in July 2007 that "Warren Lichtenstein's Japanese investments are losing value after a Tokyo court called his fund 'abusive' and shareholders rejected the fund's latest takeover bid." Takahiko Hyuga & Shungo Kawamoto, *Steel Partners Flailing After Court Battles in Japan*, International Herald Tribune (July 10, 2007). That report quoted an equity strategist as saying that "'Steel Partners will find it difficult to stay in Japan'; '[a]t least, the fund will have to overhaul its strategy in Japan, and its investors may encourage an exit.'" *Id.* The aggressive actions of the Steel Partners Japan Entities have created significant risks to the performance and reputation of the Master Fund. Defendants' overly confrontational and aggressive activist tactics have alienated many Japanese

companies and investors, and Defendants have been subjected to intense criticism in the Japanese business community. The reversal of the fortunes of the Master Fund in the wake of Mr. Kuroda's departure appears to have contributed to Defendants' bad faith in negotiating Mr. Kuroda's withdrawal from SPJS Holdings and to Defendants' improper efforts to undermine the success of Mr. Kuroda's new business venture.

COUNT I
(Breach of LLC Agreement – Incentive Allocations)

70. The allegations made in paragraphs 1-69 are incorporated by reference as if set forth fully herein.

71. The LLC Agreement is a binding contract, and is governed by Delaware law.

72. As the General Partner of the Master Fund, SPJS Holdings is entitled to an "Incentive Allocation" REDACTED

See LLC Agreement § 3.01(h). That Incentive Allocation is made to SPJS Holdings at least once each year. See Master Fund Agreement § 3.05(b).

73. At all relevant times, Mr. Kuroda was and is a Class A Non-Managing Member of SPJS Holdings.

74. A Class A Non-Managing Member is entitled to receive REDACTED of any Incentive Allocation made to SPJS Holdings. See LLC Agreement § 3.05(b).

75. Mr. Kuroda effected a terminating event from SPJS Holdings on June 30, 2006.

76. A Class A Non-Managing Member who effects a terminating event is entitled to receive his share of Incentive Allocations with respect to REDACTED

LLC Agreement § 6.01(a). Accordingly, Mr. Kuroda is entitled to receive of Incentive Allocations derived from any investment made by the Master Fund prior to

Mr. Kuroda's June 30, 2006 terminating event in any year in which any such investment remains unliquidated, in whole or in part.

77. The Master Fund achieved significant realized and unrealized capital appreciation during the year 2006, as did the investments made by the Master Fund prior to the terminating event. To the extent that the Master Fund achieved net capital appreciation in 2007, Mr. Kuroda also is contractually entitled to his Incentive Percentage for that year with respect to any investments made by the Master Fund prior to June 30, 2006.

78. Mr. Kuroda has requested that SPJS Holdings, WGL Capital, and Liberty Square pay him his REDACTED interest in Incentive Allocations earned during the year 2006 on numerous occasions.

79. SPJS Holdings, WGL Capital, and/or Liberty Square have breached the terms of the LLC Agreement by failing to provide Mr. Kuroda his REDACTED interest in such Incentive Allocations.

80. Mr. Kuroda is entitled to compensatory damages suffered as a result of Defendants SPJS Holdings', WGL Capital's, and Liberty Square's breach of the LLC Agreement in an amount to be determined at trial, plus pre- and post-judgment interest.

81. Furthermore, Mr. Kuroda is entitled to an accounting of all relevant books and records relating to the performance of the Master Fund in order to equitably adjust accounts. The Court should thus order Defendants SPJS Holdings, WGL Capital, and Liberty Square to permit Mr. Kuroda and his chosen agents to inspect and copy all relevant materials, or alternatively, order Defendants SPJS Holdings, WGL Capital, and Liberty Square immediately to furnish Mr. Kuroda with copies of all relevant materials. The Court additionally should order

Defendants SPJS Holdings, WGL Capital, and Liberty Square to provide Mr. Kuroda with updated materials as they become available.

COUNT II
(Declaratory Relief – Future Incentive Allocations)

82. The allegations made in paragraphs 1-81 are incorporated by reference as if set forth fully herein.

83. The LLC Agreement is a binding contract, and is governed by Delaware law.

84. As the General Partner of the Master Fund, SPJS Holdings is entitled to an “Incentive Allocation” equal to REDACTED

See LLC Agreement § 3.01(h). That Incentive Allocation is made to SPJS Holdings at least once each year. *See* Master Fund Agreement § 3.05(b).

85. At all relevant times, Mr. Kuroda was and is a Class A Non-Managing Member of SPJS Holdings.

86. A Class A Non-Managing Member is entitled to receive REDACTED of any Incentive Allocation made to SPJS Holdings. *See* LLC Agreement § 3.05(b).

87. Mr. Kuroda effected a terminating event from SPJS Holdings on June 30, 2006.

88. A Class A Non-Managing Member who effects a terminating event is entitled to receive his share of Incentive Allocations with respect to REDACTED

LLC Agreement § 6.01(a). Accordingly, Mr. Kuroda is entitled to receive of Incentive Allocations derived from any investment made by the Master Fund prior to Mr. Kuroda’s June 30, 2006 terminating event in any year in which any such investment remains unliquidated, in whole or in part.

89. Despite requests by Mr. Kuroda, Defendants SPJS Holdings, WGL Capital, and/or Liberty Square have refused to pay Mr. Kuroda his share of past Incentive Allocations for

investments made prior to June 30, 2006. Defendants have instead asserted, contrary to fact, that Mr. Kuroda has withdrawn from SPJS Holdings and is not entitled to his contractual share of Incentive Allocations received by the SPJS Holdings with respect to investments made prior to his June 30, 2006 terminating event. In light of the foregoing, it is clear that the parties disagree about Mr. Kuroda's right to receive future Incentive Allocations, and that this issue presents a concrete and live controversy among the parties that is fit for judicial resolution.

90. In addition to damages for the failure to pay Mr. Kuroda his share of Incentive Allocations to date (the subject of Count I), Mr. Kuroda is entitled to a declaration that, under the terms of the LLC Agreement, he has a right to receive his contractually assigned share of any future Incentive Allocations paid from the Master Fund to SPJS Holdings based upon investments made by the Master Fund prior to June 30, 2006.

COUNT III
(Breach of LLC Agreement – Investment in the Master Fund)

91. The allegations made in paragraphs 1-90 are incorporated by reference as if set forth fully herein.

92. The LLC Agreement is a binding contract, and is governed by Delaware law.

93. Mr. Kuroda has an Investment Capital Account at SPJS Holdings that is funded with the balance of the incentive allocations that he has not previously withdrawn. On June 30, 2006, Mr. Kuroda had approximately REDACTED in his investment capital account.

94. The LLC Agreement establishes withdrawal rights with respect to invested capital. Specifically, '

REDACTED

LLC Agreement § 4.03(a).

95. Upon his termination with the Steel Partners Japan Entities, and in compliance with all applicable terms of both the LLC Agreement and the Master Fund Agreement, Mr. Kuroda requested redemption of his capital investment. Thereafter, in accordance with the terms of the Master Fund Agreement, REDACTED of his interest was redeemed. The Master Fund Agreement provides that the remaining balance of any such withdrawal request

REDACTED

Id. (emphasis

added).

96. The remaining capital investment amount owed to Mr. Kuroda, calculated on a pro rata basis, thus automatically redeemed after the 2006 year-end audit.

97. Although the Steel Partners Japan Entities have acknowledged that the 2006 year end audit is complete, and that Mr. Kuroda is owed the remaining REDACTED of his capital investment, Defendants SPJS Holdings, WGL Capital, and Liberty Square have refused to pay Mr. Kuroda the remaining amounts owed to him.

98. SPJS Holdings', WGL Capital's, and/or Liberty Square's failure to pay Mr. Kuroda the remaining REDACTED of his capital investment is a breach of the terms of the LLC Agreement.

99. On information and belief, SPJS Holdings', WGL Capital's, and Liberty Square's failure to pay Mr. Kuroda the remaining REDACTED of his capital investment is part of the Steel Partners Japan Entities' effort to coerce Mr. Kuroda into giving up valuable contractual rights and/or to retaliate against Mr. Kuroda for separating from the Steel Partners Japan Entities.

100. Mr. Kuroda is entitled to compensatory damages suffered as a result of SPJS Holdings', WGL Capital's, and/or Liberty Square's breach of the LLC Agreement, plus pre- and post-judgment interest.

COUNT IV
(Breach of LLC Agreement – Tax Allocations)

101. The allegations made in paragraphs 1-100 are incorporated by reference as if set forth fully herein.

102. The LLC Agreement is a binding contract, and is governed by Delaware law.

103. At all relevant times, Mr. Kuroda was and is a Class A Non-Managing Member of SPJS Holdings.

104. Under the terms of the LLC Agreement, income gains are to be allocated for federal tax purposes to all non-withdrawn Members consistent with the standard allocation provisions contained in Sections 3.06 and 3.07.

105. The LLC Agreement permits different allocations of income gains for tax purposes for Members that have “withdrawn” from SPJS Holdings. LLC Agreement § 3.09.

106. Mr. Kuroda effected a terminating event from SPJS Holdings on June 30, 2006. Mr. Kuroda has not withdrawn from SPJS Holdings.

107. Under the terms of the LLC Agreement, Defendants SPJS Holdings, WGL Capital, and Liberty Square were required to continue to allocate Mr. Kuroda’s ordinary income and losses, capital gains and losses and other items as determined for income tax purposes in the same proportions as the corresponding book items that are allocated pursuant to Section 3.06 and 3.07. *See* LLC Agreement § 3.09.

108. The LLC Agreement also requires SPJS Holdings to provide sufficient information for tax purposes. *See* LLC Agreement § 8.02.

109. Defendants SPJS Holdings, WGL Capital, and Liberty Square breached the LLC Agreement by issuing a federal Schedule K-1 for 2006 for Mr. Kuroda that failed to allocate income, gains, and losses in accordance with the book allocations for 2006. Defendants Liberty

Square, Walton, and Niedermeyer caused SPJS Holdings to issue a Schedule K-1 that purported to assign gains to Mr. Kuroda as though he had withdrawn from SPJS Holdings, which he has not done. Defendants SPJS Holdings, WGL Capital, and Liberty square further breached the LLC Agreement by refusing Mr. Kuroda's request for information concerning the basis for the assignment of income to Mr. Kuroda in his 2006 K-1.

110. Mr. Kuroda is entitled to a declaration that Defendants SPJS Holdings, WGL Capital, and Liberty Square breached the LLC Agreement by issuing a Schedule K-1 for the 2006 tax year that failed to allocate gains in the manner required under Section 3.09 of the LLC Agreement.

111. Mr. Kuroda is also entitled to equitable relief ordering Defendants to reissue a Schedule K-1 for the 2006 tax year that reflects the requirements of Section 3.09 of the LLC Agreement and the payment of the Incentive Allocations to which Mr. Kuroda is entitled for the year 2006. In the alternative, Mr. Kuroda is entitled to compensatory damages suffered as a result of SPJS Holdings', WGL Capital's, and/or Liberty Square's breach of the LLC Agreement in an amount to be determined at trial, plus pre- and post-judgment interest.

COUNT V
(Declaratory Relief – Alternative Business Ventures)

112. The allegations made in paragraphs 1-111 are incorporated by reference as if set forth fully herein.

113. The Steel Partners Japan Entities have repeatedly charged that Mr. Kuroda is or would be in violation of various contracts between the parties if he accepted and/or solicited Steel Partners Japan Entities' investors for Fugen. Based on those threats and the ensuing legal uncertainty, Mr. Kuroda has refrained from accepting investors in Fugen that he believes are or were investors in the Steel Partners Japan Entities.

114. The Steel Partners Japan Entities have also asserted that, in setting up Fugen, Mr. Kuroda violated unspecified contractual or other legal obligations. For example, on November 13, 2006, the Steel Partners Japan Entities, through their counsel, stated that “common law principles of fiduciary duty and trade secrets prohibited Mr. Kuroda from using SPJS confidential information to set up a competing fund.”

115. These issues regarding the scope of Mr. Kuroda’s contractual and common-law obligations present a concrete and live controversy among the parties that is fit for judicial resolution. Mr. Kuroda is currently engaged in conduct (the operation of Fugen) that the Steel Partners Japan Entities claim violates Mr. Kuroda’s legal duties, and Mr. Kuroda has refrained from other conduct (soliciting and/or accepting Steel Partners Japan Entities’ investors) based on the Steel Partners Japan Entities’ assertions of the illegality of such conduct. These legal controversies are directly harming Mr. Kuroda’s ability to operate Fugen in a manner that would maximize economic return.

116. Mr. Kuroda seeks and is entitled to a declaration that the establishment of Fugen did not violate any legal obligations to the Steel Partners Japan Entities. The LLC Agreement is clear that Class A Members – including Managing or Non-Managing Members – may terminate their relationship with SPJS Holdings at any time, for any reason, without seeking the consent of other Class A Members. *See* LLC Agreement § 6.01(a).

117. Mr. Kuroda also seeks and is entitled to a declaration that his decision to pursue other opportunities in the investment field, as the Steel Partners Japan Entities themselves have described Mr. Kuroda’s departure in communications with investors, constitutes a decision to “cease[] to devote such time as is reasonably necessary to the business of . . . Steel Partners

Japan K.K.” Under Section 6.01(a) of the LLC Agreement, therefore, Mr. Kuroda was not required to seek the Steel Partners Japan Entities’ consent before making this decision.

118. Mr. Kuroda additionally seeks and is entitled to a declaration that his decision to set up a new fund does not breach any obligations to the Steel Partners Japan Entities. Under Section 2.01(a) of the LLC Agreement, Non-Managing Class A Members such as Mr. Kuroda have no responsibilities for the day-to-day operations of SPJS Holdings and are precluded from having involvement in the ordinary management of SPJS Holdings. *See* LLC Agreement § 2.01(a). Section 2.04 of the Master Fund Agreement, which was drafted under the direction of Defendants Niedermeyer and Lichtenstein, further establishes that the members of SPJS Holdings affiliates can engage directly or indirectly in any other business, without regard to its actual or potential overlap with the Master Fund. *See* Master Fund Agreement § 2.04. Likewise, the Offering Memorandum prepared by Defendants Lichtenstein, Niedermeyer, WGL Capital, and Liberty Square provides that

REDACTED

Offering Memorandum at 33 (emphases added).

119. Mr. Kuroda also seeks, and is entitled to, a declaration that any common-law duties that Mr. Kuroda may have owed to Steel Partners Japan Entities did not include a duty to refrain from engaging in conduct that the LLC Agreement and the Master Fund Agreement expressly permit, including the right to terminate his association with the Steel Partners Japan

Entities, as well as the right to engage in alternative business activities, including those that arguably compete with the Steel Partners Japan Entities.

120. Finally, Mr. Kuroda seeks and is entitled to a declaration that nothing in any of the relevant contracts limits Mr. Kuroda's ability to solicit and/or accept investors that have also invested with the Steel Partners Japan Entities.

121. For these reasons, Mr. Kuroda is entitled to a declaration that:

- a. setting up Fugen was not a violation of any contractual obligation or common-law duties owed to the Steel Partners Japan Entities;
- b. Mr. Kuroda was entitled to effect a terminating event under Section 6.01 of the LLC Agreement without the consent of the other Members of SPJS Holdings;
- c. Mr. Kuroda can engage directly or indirectly in any other business, including the establishment and operation of an investment fund, under the terms of the LLC Agreement and the Master Fund Agreement; and
- d. soliciting and/or accepting Steel Partners Japan Entities investors for Fugen does not violate any contractual obligation or common-law duties that Mr. Kuroda owed to the Steel Partners Japan Entities.

COUNT VI
(Tortious Interference with Contract)

122. The allegations made in paragraphs 1-121 are incorporated by reference as if set forth fully herein.

123. At all relevant times, Mr. Kuroda had a valid and binding contract with SPJS Holdings, WGL Capital, and Liberty Square in the form of the LLC Agreement.

124. Defendants Lichtenstein, Niedermeyer, and Walton had knowledge of Mr. Kuroda's contract with SPJS Holdings, WGL Capital, and Liberty Square.

125. Defendants Lichtenstein, Niedermeyer, and Walton have intentionally interfered with Mr. Kuroda's contractual interests in the LLC Agreement by exercising their domination

and control over SPJS Holdings, WGL Capital, and Liberty Square to cause those entities to breach their contractual obligations under the LLC Agreement. Defendants Lichtenstein's, Niedermeyer's, and Walton's conduct was a significant factor in causing a breach of the LLC Agreement.

126. Defendants Lichtenstein's, Niedermeyer's, and Walton's intentional interference with Mr. Kuroda's contractual interests under the LLC Agreement is without justification. Their tortious conduct was motivated by a desire to undermine Mr. Kuroda and Fugen (to protect the image of the Master Fund and its investment philosophy), to deter Mr. Kuroda from exercising his rights under the LLC Agreement, to protect the personal reputations and interests of Defendants Lichtenstein, Niedermeyer, and Walton, and/or to retaliate against him for separating from the Steel Partners Japan Entities and pursuing alternative business ventures. In causing SPSJ Holdings, WGL Capital, and Liberty Square to breach their contractual obligations to Mr. Kuroda, Defendants Lichtenstein, Niedermeyer, and Walton additionally sought to enrich themselves at Mr. Kuroda's expense, as the funds that were owed but not paid to Mr. Kuroda could be redistributed among themselves, and by assigning tax gains to Mr. Kuroda, Defendants could avoid income taxes that they would otherwise owe.

127. Mr. Kuroda is entitled to recover damages suffered as a result of Defendants Lichtenstein's, Niedermeyer's, and Walton's tortious interference with the LLC Agreement in an amount to be determined at trial, plus pre- and post-judgment interest.

COUNT VII

(Tortious Interference with Prospective Economic Advantage)

128. The allegations made in paragraphs 1-127 are incorporated by reference as if set forth fully herein.

129. At all relevant times, Mr. Kuroda had a reasonable probability and concrete expectation of economic advantage through his participation in Fugen.

130. The Steel Partners Japan Entities – including Defendants Lichtenstein, Niedermeyer, and Walton – had knowledge of Mr. Kuroda’s economic expectancies via Fugen. The Steel Partners Japan Entities were aware of Mr. Kuroda’s new business ventures when he ended his relationship with the Steel Partners Japan Entities, and have acknowledged that Mr. Kuroda would be pursuing alternative business ventures.

131. The Steel Partners Japan Entities have intentionally interfered with Mr. Kuroda’s economic expectancies arising from Fugen by, among other things:

- a. disparaging Mr. Kuroda’s business acumen by failing to correct inaccuracies in the February 20, 2007 Bloomberg story and thereby conveying the clear impression that Mr. Kuroda was forced out for fund performance reasons; and
- b. in bad faith, repeatedly threatening Mr. Kuroda with objectively baseless legal claims alleging that, by entering into other business ventures and/or accepting Steel Partners Japan Entities’ investors, was acting unlawfully.

132. The tortious interference engaged in by the Steel Partners Japan Entities was not privileged. On information and belief, the tortious conduct was motivated by a desire to undermine the interests of Mr. Kuroda, in an apparent effort to undermine Mr. Kuroda and Fugen (to protect the image of the Master Fund and its investment philosophy), to deter Mr. Kuroda from exercising his rights under the LLC Agreement, and/or to retaliate against him for separating from the Steel Partners Japan Entities and pursuing alternative business ventures.

133. The Steel Partners Japan Entities' tortious interference is the proximate cause of damages to Mr. Kuroda. Mr. Kuroda has had concrete economic opportunities foreclosed to him as a result of the Steel Partners Japan Entities' tortious acts. For example, Mr. Kuroda has turned away potential investors in Fugen and some prospective investors have held off further discussion with Fugen because of the Steel Partners Japan Entities' bad-faith threats of baseless legal claims against Mr. Kuroda.

134. Mr. Kuroda is entitled to recover damages suffered as a result of the Steel Partners Japan Entities' tortious interference in an amount to be determined at trial.

COUNT VIII

(Breach of Implied Covenant of Good Faith and Fair Dealing)

135. The allegations made in paragraphs 1-134 are incorporated by reference as if set forth fully herein.

136. An implied covenant of good faith and faith dealing attaches to the LLC Agreement. *See* 6 Del. C. § 18-1101

REDACTED

137. SPJS Holdings, WGL Capital, and Liberty Square have breached this covenant through the following arbitrary, unreasonable, and/or deceitful conduct:

- a. failing to pay to Mr. Kuroda without reasonable justification his capital investment in the Master Fund (despite acknowledging such amounts are due);
- b. failing to pay Mr. Kuroda substantial monies due under Article VI of the LLC Agreement without reasonable justification (despite Mr. Kuroda's living up to his obligations under the LLC Agreement);
- c. allocating income to Mr. Kuroda for federal income tax purposes in violation of the LLC Agreement and then failing to provide any explanation or justification for the assignment of gains and losses to Mr. Kuroda;

- d. agreeing amicably to Mr. Kuroda's separation from the Steel Partners Japan Entities and then asserting that Mr. Kuroda unlawfully ended his relationship with the Steel Partners Japan Entities;
- e. using threats of objectively baseless legal claims in an effort to coerce Mr. Kuroda into giving his substantial rights under the LLC Agreement and/or to retaliate against Mr. Kuroda for separating from the Steel Partners Japan Entities and pursuing alternative business ventures;
- f. agreeing in principle to various financial terms in order to resolve issues relating to Mr. Kuroda's separation from Steel Partners Japan Entities only to fail to implement those terms in order to drag on or to sabotage negotiations;
- g. disparaging Mr. Kuroda's business acumen by failing to correct inaccuracies in the Bloomberg story and thereby conveying the clear (and false) impression that Mr. Kuroda was forced out for fund performance reasons; and
- h. delaying negotiations in an apparent effort to reduce the amount of monies due to Mr. Kuroda because of the Master Fund's poor performance.

138. Through the above course of conduct, Defendants SPJS Holdings, WGL Capital, and Liberty Square have not acted fairly toward Mr. Kuroda in his efforts to exercise his rights under the LLC Agreement.

139. SPJS Holdings', WGL Capital's, and Liberty Square's wrongful conduct has prevented Mr. Kuroda from realizing the full benefits of his contractual relationships with the Steel Partners Japan Entities.

140. SPJS Holdings', WGL Capital's, and Liberty Square's arbitrary and unreasonable acts since Mr. Kuroda's separation from the Steel Partners Japan Entities have proximately caused Mr. Kuroda damages, including, but not limited, lost business opportunities and profits and harm to his business reputation. Mr. Kuroda is entitled to damages in an amount to be determined at trial.

COUNT IX
(Conversion)

141. The allegations made in paragraphs 1-140 are incorporated by reference as if set forth fully herein.

REDACTED

142. Mr. Kuroda held approximately million in his Investment Capital Account at SPJS Holdings on June 30, 2006. In accordance with the terms of the LLC Agreement, he requested the withdrawal of these specific funds, and of his interest was redeemed.

REDACTED

143. SPJS Holdings, WGL Capital, and Liberty Square have exercised wrongful dominion and control over the remaining property in the Investment Capital Account by refusing to return his full capital investment.

144. Mr. Kuroda has repeatedly asked for the return of his property. SPJS Holdings, WGL Capital, and Liberty Square have refused without justification to relinquish control of Mr. Kuroda's property.

145. SPJS Holdings', WGL Capital's, and Liberty Square's exercise of dominion and control over Mr. Kuroda's property, independent of any obligation or duty arising under contract, breaches the common-law duty against the conversion of property.

146. SPJS Holdings, WGL Capital, and Liberty Square have no legitimate justification for the continued exercise of dominion and control over Mr. Kuroda's property.

147. Mr. Kuroda is entitled to damages in the form of the return of the specific amounts remaining in his Investment Capital Account.

COUNT X
(Unjust Enrichment – In the Alternative)

148. The allegations made in paragraphs 1-147, with the exception of those allegations directed solely at Mr. Kuroda's breach of contract claims, are incorporated by reference as if set forth fully herein.⁹

149. The Steel Partners Japan Entities have been enriched by the substantial property and services provided by Mr. Kuroda to the Steel Partners Japan Entities.

150. Mr. Kuroda's services to the Master Fund – through the consulting services that he provided pursuant to the Consulting Agreement from 2002 until 2006 – were an important part of performance of the Master Fund during all relevant periods. Without Mr. Kuroda's unique expertise, the Master Fund would not have achieved the performance that it did.

151. Mr. Kuroda has not been adequately compensated for the unique value he bestowed upon the Master Fund through his provision of expert consulting services and the risks he assumed by his capital investment.

152. On information and belief, the Steel Partners Japan Entities Defendants have been compensated for the value of their contributions to the Master Fund.

153. There is no reasonable justification or equitable basis for the Steel Partners Japan Entities' enrichment at the expense of Mr. Kuroda.

154. Mr. Kuroda has no adequate remedy at law in the event that subject matter of Mr. Kuroda's claims is not governed by enforceable contracts.

⁹ Mr. Kuroda pleads this claim wholly in the alternative of his contract claims, and does not incorporate here those allegations pertaining to such contracts. *See* Del. R. Civ. P. 8(a) (authorizing claims for "[r]elief in the alternative").

155. Mr. Kuroda is entitled to damages in an amount to be determined at trial reflecting the value of the services provided by Mr. Kuroda and the investment risks that he assumed.

COUNT XI
(Civil Conspiracy)

156. The allegations made in paragraphs 1-155 are incorporated by reference as if set forth fully herein.

157. All Defendants knowingly entered into a confederation or combination to pursue unlawful ends vis-à-vis Mr. Kuroda, including violations of implied covenants of good faith and fair dealing and tortious interference with Mr. Kuroda's contractual interests and economic expectancies.

158. For the purposes of this count, each of the Steel Partners Japan Entities is a separate legal person who conspired in order to pursue unlawful ends. The individual Defendants were, on information and belief, acting for their own personal financial gain in participating in the civil conspiracy. The individual Defendants also acted for the purpose of protecting their personal business reputations.

159. All Defendants committed unlawful acts in furtherance of the civil conspiracy. On information and belief, Defendant Lichtenstein masterminded the Steel Partners Japan Entities' bad-faith negotiating tactics, the result of which were to withhold substantial sums of money owed to Mr. Kuroda. On information and belief, Defendant Lichtenstein was the source of Defendants' repeated threats that Mr. Kuroda would receive nothing unless he accepted the unreasonable terms that they sought to impose and unless he permitted them to re-trade the agreement in principle that the parties had reached.

160. Defendants Walton and Niedermeyer were also deeply involved in the bad-faith negotiations. Defendant Walton and individuals working under her direction made numerous threats against Mr. Kuroda, and repeatedly attempted to re-trade commitments that she had previously made on behalf of the Steel Partners Japan Entities. Likewise, Defendant Niedermeyer attempted to coerce Mr. Kuroda to give up valuable contractual rights.

161. Mr. Kuroda has suffered damages as a proximate cause of the civil conspiracy, including, but not limited to, lost business opportunities and profits and harm to his business reputation. Mr. Kuroda is entitled to damages to be determined at trial.

REQUEST FOR RELIEF

WHEREFORE, for all of the foregoing reasons, Mr. Kuroda respectfully requests that the Court award him:

- A. damages, in an amount to be ascertained at trial;
- B. an accounting of the performance of the Master Fund and Incentive Allocations earned by SPJS Holdings on investments made prior to June 30, 2006;
- C. a declaration that, under the LLC Agreement, Mr. Kuroda has a right to receive his contractually assigned share of any future Incentive Allocations paid from the Master Fund to SPJS Holdings based upon investments made by the Master Fund prior to June 30, 2006;
- D. a declaration that: (i) Mr. Kuroda did not violate any contractual obligation or common-law duties owed to the Steel Partners Japan Entities in establishing Fugen; (ii) Mr. Kuroda was entitled to effect a terminating event under the LLC Agreement without the consent of the other Members of SPJS Holdings; (iii) Mr. Kuroda can engage directly or indirectly in any other business, including the establishment and operation of an investment fund, under the terms of the LLC Agreement and the Master Fund Agreement; and (iv) soliciting and/or accepting Steel Partners Japan Entities investors for Fugen does not violate any contractual obligation or common-law duties that Mr. Kuroda owes to the Steel Partners Japan Entities.
- E. equitable relief ordering Defendants to reissue a Schedule K-1 for the 2006 tax year that reflects the requirements of Section 3.09 of the LLC Agreement and the payment of the Incentive Allocations;

- F. pre-judgment and post-judgment interest;
- G. costs of suit, including, without limitation, attorneys' fees actually incurred and costs; and
- H. such other and further relief, at law or in equity, as the Court deems just and proper.

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