CIVIL ACTION NO. _______________

JEFFERSON CIRCUIT COURT
DIVISION NO. _______
JUDGE ____________________
Filed Electronically

THE UNIVERSITY OF LOUISVILLE &
THE UNIVERSITY OF LOUISVILLE FOUNDATION, INC. PLAINTIFFS

v.

JAMES R. RAMSEY, KATHLEEN SMITH, BURT DEUTSCH,
MICHAEL CURTIN, JASON TOMLINSON, AND
STITES & HARBISON, PLLC, DEFENDANTS

Serve:

James R. Ramsey
8902 Adrienne Ct.
Louisville, KY 40245

Kathleen Smith
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Louisville, KY 40220

Burt Deutsch
2017 Lowell Ave.
Louisville, KY 40205

Michael Curtin
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Jason Tomlinson
908 Willow Pointe Dr.
Louisville, KY 40208

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c/o S&H Louisville, LLC
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Louisville, KY 40202-3352

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COMPLAINT WITH JURY TRIAL DEMAND

Plaintiffs the University of Louisville (the "University") and the University of Louisville Foundation, Inc. (the "Foundation," and collectively, "Plaintiffs") respectfully bring the following Complaint against Defendants James R. Ramsey ("Ramsey"), Kathleen Smith ("Smith"), Burt Deutsch ("Deutsch"), Michael Curtin ("Curtin"), Jason Tomlinson ("Tomlinson"), and Stites & Harbison, PLLC ("Stites"). In support of this Complaint, Plaintiffs state as follows:

THE PARTIES

1. Plaintiff the University is a public university in Jefferson County, Kentucky. It is a member of the Kentucky state university system.

2. Plaintiff the Foundation is a non-profit corporation organized under the laws of Kentucky with its principal place of business in Jefferson County, Kentucky. The Foundation works exclusively for the charitable and educational purposes of the University. The Foundation, holds, invests, and designates the University's endowment (the "Endowment").

3. Upon information and belief, Defendant Ramsey is an adult resident of Jefferson County, Kentucky. During times relevant to this Complaint, Ramsey was, among other things, the president of both the University and the Foundation.

4. Upon information and belief, Defendant Smith is an adult resident of Jefferson County, Kentucky. During times relevant to this Complaint, Smith was, among other things, Ramsey's chief of staff and the assistant secretary for both the University and the Foundation.

5. Upon information and belief, Defendant Deutsch is an adult resident of Jefferson County, Kentucky. During times relevant to this Complaint, Deutsch was, among other things, a

member of the Foundation's board of directors and executive committee. Deutsch was also a consultant paid by the Foundation.

6. Upon information and belief, Defendant Curtin is an adult individual and Missouri citizen. During times relevant to this Complaint, Curtin was, among other things, the Foundation's assistant treasurer.

7. Upon information and belief, Defendant Tomlinson is an adult resident of Jefferson County, Kentucky. During times relevant to this Complaint, Tomlinson was, among other things, the Foundation's assistant treasurer (he succeeded Curtin in that position).

8. Defendant Stites is a limited liability company organized under the laws of Kentucky with its principal place of business in Jefferson County, Kentucky. Stites served as the University and Foundation's law firm regarding many of the transactions complained of herein.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to KRS § 23A.010(1).

10. Venue is proper as to all Defendants because many of the acts and omissions complained of herein occurred in Jefferson County, Kentucky.

FACTUAL ALLEGATIONS

Background

11. The Defendants knowingly caused the Foundation to spend Endowment funds at an excessive and unsustainable rate.

12. The Defendants took Endowment money that should have been invested and diverted it to speculative ventures, loans, and gifts that had little realistic chance of repayment.

13. The Defendants depleted the Endowment through intentionally complicated—and often unauthorized—transactions.

14. While engaged in this disloyal conduct, Ramsey and Smith paid themselves (and others) excessive compensation out of the Foundation.

15. The Defendants disguised these transactions to avoid scrutiny and circumvent the Foundation's approved spending limit and annual budget.

16. The Defendants' bad faith actions and other wrongful conduct caused the Endowment to lose millions of dollars.

17. The Defendants worked individually and collectively to commit the bad acts described herein. Plaintiffs reserve the right to amend this complaint if additional co-conspirators are later discovered.

The Spending Limit

18. Per the University of Louisville Endowment Fund Statement of Investment Objectives and Guidelines (the "Investment Policy"), the Foundation must not spend more than it makes. As the Foundation's investment advisor Cambridge Associates, LLC ("Cambridge") put it, "you [the Foundation] have to 'earn what you spend' whether it be from investment returns, from gifts, or a combination thereof."

19. This rule enables the Endowment corpus to grow each year so that it may fund the University's mission in perpetuity. While the Foundation serves the University and should spend money to aid and promote the University, it must do so while saving and investing enough to sustain the Endowment.

20. In the Foundation's case, the spending policy allocation was calculated as a percentage of certain assets comprising the "Endowment Pool." This percentage was assessed

against the Endowment Pool's rolling market value. Originally, the Foundation calculated this rolling value by averaging the Pool's value for each of the three preceding years. In or around 2011, in an attempt to increase spending, the Foundation modified this formula by averaging the two highest of the last three years' values.

21. In 2008, the Foundation increased its total spending policy to 7.48% of the Endowment Pool, apportioned as follows: (1) 5.5% to University departments; and (2) 1.98% to business operations and administrative overhead.

22. In 2012, Cambridge provided Deutsch (who was then the Vice Chair of the Foundation's Board and the Chair of its Finance Committee) an analysis and recommendation (the "Cambridge Memo") regarding the Foundation's 7.48% spending policy, which was "among the highest" in the nation. To put this in context, the average university spending rate at the time was around 4.3%.

23. Cambridge's conclusion was clear and strongly-worded:

> [W]e believe it is incumbent on us as your investment advisors to lay bare in the plainest terms **<u>that the current level of net draws (i.e., spending minus endowment gifts) is likely unsustainable</u>** . . . **<u>we strongly advise adjusting the spending policy</u>**.

24. Accordingly, Cambridge recommended that the Foundation (1) reduce its spending rate from 7.48% to 5.5% (which Cambridge noted "was still at the high end of what endowments generally spend"); (2) that the Foundation "no longer adjust the three year rolling average by dropping the lowest year"; and (3) that the Foundation "no longer include the unspent portion of spending policy from years past in the current spending policy calculation."

25. According to the minutes, the Finance Committee did not reevaluate the Foundation's spending rate in light of the Cambridge Memo until July 2013—approximately eight months later.

26. At that meeting (which was presided over by Deutsch as the Chair), the Finance Committee only accepted Cambridge's third recommendation (i.e., to exclude the unspent portion of the spending allocation). Despite officially adopting the recommendation, the Defendants caused the Foundation to continue including the unspent carryover in future budgets. Thus, the Defendants—without authority—caused the Foundation to spend millions more than it should have.

27. The Finance Committee rejected Cambridge's second recommendation of returning to a three-year rolling average, instead expressly resolving to continue dropping the lowest year.

28. More importantly, the minutes contain no record of the Finance Committee or Deutsch discussing Cambridge's first and strongest recommendation—to reduce the 7.48% spending rate to 5.5%. It appears Deutsch, as Chair of Finance Committee, failed to even consider this recommendation or present it to the Finance Committee for consideration.

29. At a minimum, Deutsch did not recommend reducing the spending rate. The Foundation's spending remained 7.48% until 2016.

30. Deutsch knew, however, that the Foundation was required to spend less than it earned. The Investment Policy mandates that the "corpus of the Fund" must "keep pace with inflation" in order to "provide future generations with the same relative level of support currently enjoyed by the Fund's beneficiaries."

31. Deutsch also knew the Foundation was violating this central tenant. The Cambridge Memo described the spending rate as "unsustainable." Documentation from that time period corroborates Cambridge's critique and proves the Foundation was spending more than it made.

32. The other Defendants were also aware of this unsustainable spending. For example, in March 2013, Curtin admitted that cash outflows had greatly exceeded cash inflows to the Endowment over the previous five years.

33. To make matters worse, the Foundation actually spent more than the already-excessive, authorized 7.48% spending rate. The Defendants did this by using accounting tricks to inflate the Endowment Pool's value (on which the 7.48% was assessed). The Defendants (in particular, the former assistant treasurers, Curtin and Tomlinson) caused the Foundation (1) to recategorize expenditures as valuable Endowment Pool investments; and (2) to record fictitious returns on certain alleged investments. Tomlinson later admitted that the purpose of this scheme was to generate a higher spending policy allocation.

34. Deutsch was instrumental in re-categorizing certain expenditures as investments. However, he did critique the second scheme of recording nonexistent returns.

35. Despite this critique, Deutsch did little to stop this tactic and the Foundation continued to record fictitious returns for years afterwards.

36. These techniques artificially inflated the Endowment Pool's value by approximately $70 million in some years (thus inflating the spending allocation by millions).

The UHI Line of Credit

37. Ramsey, with the assistance of the other Defendants, caused the Foundation to transfer at least $55.7 million to University Holdings, Inc. ("UHI"),[1] which in turn made loans to certain Foundation subsidiaries, including (1) Nucleus Kentucky's Life Sciences and Innovation Center, LLC ("Nucleus"); (2) MetaCyte Business Lab, LLC ("MetaCyte"); (3) University of Louisville Development Corporation, LLC ("ULDC"); and (4) KYT-Louisville, LLC ("KYT").

[1] Ramsey was also a UHI director along with Deutsch.

38. The Foundation transferred this money through a line of credit (the “UHI line of credit”), which was supposed to bear interest at 3.5%.

39. Nucleus, MetaCyte, ULDC, and KYT used the money they received via the UHI line of credit to fund their operations, which are as follows:

a. Nucleus operates and maintains a research park in downtown Louisville;

b. MetaCyte assists in creating and growing life science companies created from intellectual property licensed from the University;

c. ULDC develops and manages real estate operations at the University’s ShelbyHurst campus; and

d. KYT manages the purchase and development of real estate proximate to the University’s Belknap Campus.

40. The Foundation’s loans to these subsidiaries (via UHI) resulted in substantial losses. To date, UHI (and, consequently, the Foundation) has received a total of approximately $3,819,000 from Nucleus, MetaCyte, ULDC, and KYT—who collectively owed at least $55.7 million *plus interest*.

41. As an initial matter, Ramsey should never have made *any* of these “investments” via the UHI line of credit because none of them satisfied the Investment Policy’s requirements.

42. The Investment Policy mandates, among other things, that the Endowment generate “annual real investment returns” to achieve an absolute “minimum net total return which is equal to the University’s spending rate [7.48%] plus the inflation rate [approximately 2% on average].” Accordingly, the Foundation’s investments were required to generate a *minimum*, annual return of approximately 9.5%. Further, the Investment Policy requires that any real estate or private equity investments exceed the benchmarks set by the UBS Global Real Estate Investors Index and the Russell 3000 +5% Index, respectively. Any Foundation

investments must satisfy these requirements "without the assumption of excessive investment risk."

43. The terms of the UHI line of credit violated the Investment Policy. The UHI line of credit loaned money at the prime rate of interest, or 3.5%, well short of the relevant benchmarks required by the Investment Policy. Further, the Defendants failed to evaluate how the UHI line of credit's *potential* 3.5% return would help the Foundation's portfolio generate the required 9.5% overall return.

44. More importantly, the Foundation's loans via the UHI line of credit involved substantial risk. The line of credit's repayment was largely contingent upon the highly-speculative generation of TIF proceeds. Tomlinson knew that capital markets refused to issue bonds or debt backed by TIF proceeds because of the inherent risk and unpredictability. Despite knowing this risk, the Defendants failed to obtain (let alone review) a forecast of expected TIF proceeds.

45. Put simply, Ramsey, without performing proper due diligence, caused the Foundation to make over $55 million worth of incredibly risky loans via the UHI line of credit that would return, *at best*, 3.5% to the Foundation.

46. These inappropriate expenditures were also unauthorized. The Foundation only authorized Ramsey to make the $35 million of *investments* via UHI—not expenditures.

47. However, much of the money transferred through the line of credit was for expenditures. For example, Ramsey transferred $262,078 to fund UHI's operating expenses. This expenditure could not have been an investment because UHI generates no independent income from which it could repay a loan. Had Ramsey intended to properly fund UHI's salaries,

he should have requested that the Foundation include a corresponding expenditure in its annual budget—as the Foundation did in other, similar instances.

48. UHI's W-2s reflect that it paid salaries to Smith and Tomlinson (among others). This is problematic because both Tomlinson and Smith are implicated in the misconduct surrounding the UHI line of credit.

49. Smith schemed with Stites to obfuscate the UHI compensation. For example, in a September 2013 email, Smith wrote to David Saffer ("Saffer"), a Stites attorney, "We need to protect UHI . . . I would like to make the paper trail to our holdings as obscure as possible . . . please think about how we can move our LLCs into something more obscure that would be difficult to find through ORRs [open records requests]."

50. Tomlinson, as the Foundation's assistant treasurer, improperly recorded the UHI line of credit as a return-generating asset.

51. Even if the UHI line of credit had been used to fund investments (as opposed to expenditures), Ramsey still exceeded his authority by causing the Foundation to loan at least $55.7 million to UHI—**<u>approximately $20.7 million more than was authorized</u>**.

52. Curtin and Tomlinson assisted with this egregious and unauthorized misspending by signing many of the documents effectuating the UHI line of credit despite knowing that the Foundation was spending more than was authorized.

53. Ramsey knew he could not *spend* endowment money on certain projects—the Foundation budget lacked available funds to do so. Thus, to avoid detection or scrutiny, the Defendants caused the Foundation to fraudulently record the UHI line of credit as an investment generating fictitious returns—while knowing it was truly an expenditure. This creative

accounting allowed the Defendants to circumvent the spending limit and fund whatever projects (or compensation) they desired.

54. The Defendants worked together to design the scheme that recategorized these expenditures as investments at Ramsey's insistence.

55. In fact, Deutsch subsequently conceded the Foundation was "recategorizing [its] investments" with the help of Stites and Saffer:

> **The way we have been able to spend Foundation funds for the vast majority of these expenditures is to make them as investments** of Foundation funds . . . I would like for Dave Saffer [a Stites attorney] to meet with us. He has done some work for me on **recategorizing our investments** that I would like to discuss.

56. Ramsey insisted that the UHI line of credit was an investment "just like GM or Ford stock" that did not need to be repaid. In reality, the UHI line of credit was not a stock—it was a risky loan that would at best reap a paltry return if it were repaid at all.

57. The Defendants simply recategorized expenditures as "investments" in order to avoid the repercussions associated with overspending. If the UHI line of credit were properly recorded, the hit to the Endowment would reduce future spending (and affect compensation).

58. Ramsey and his co-defendants failed to analyze the UHI line of credit's expected return because they didn't truthfully view it as an investment. They caused it to be reported as an asset generating fictitious returns because they had to disguise it as a performing investment in order to avoid violating the spending policy—as well as inflate the next year's spending allocation.

The JGBCC Grant

59. In March 2011, Ramsey promised the James Graham Brown Cancer Center ("JGBCC" or "Cancer Center") $10,000,000 of support from the Foundation.

60. While the Foundation allocated a small amount to the Cancer Center in its annual budgets, the Foundation did not authorize this donation.

61. At the time Ramsey promised the Cancer Center the $10,000,000 donation, he knew there was little chance that the Foundation would ever be repaid.

62. Because it was an unauthorized expenditure, Ramsey's team took steps to keep the circle who knew about this funding small, referring to it as "strictly an Office of the President initiative."

63. The inner circle funneled the money from the Foundation to the JGBCC through a complicated series of transactions. The Defendants came up with the plan to channel the money through several entities and disguise the transaction through misleading accounting entries.

64. To that end, the Foundation issued a promissory note to UHI for $10 million. The note carried interest at the floating prime interest rate.

65. Despite knowing that the note would probably not be repaid, the Foundation booked this note as a performing asset for the full value of the note and interest, nearly $11.2 million in all. This incorrect booking was done with the intent to disguise the unauthorized spending.

66. UHI issued a grant to the University of Louisville Research Foundation ("ULRF") with the same terms as the promissory note for the purpose of funding the Cancer Center. Because the JGBCC Grant was not expected to be repaid, UHI did not record a receivable and ULRF did not record a liability associated with the grant.

67. The Cancer Center had no obligation to repay the $10 million unless it no longer needed the money. All parties understood that the Cancer Center would never operate at a sufficient surplus to trigger repayment of the grant.

68. The grant could also be repaid to the extent of net proceeds received from a "dilution event" as defined in the operating agreement of Advanced Cancer Therapeutics, LLC, ("ACT") a startup in which ULRF held a substantial equity position. It is unclear how a "dilution event" could ever generate net proceeds sufficient to repay the grant.

69. The inner circle knew the connection between ACT and the Cancer Center was tenuous. More importantly, the JGBCC grant had no impact on the amount of money the Foundation or ULRF would receive through a dilution event.

70. Combined, the Foundation and Research Foundation owned approximately 37.16% of ACT. The Foundation received no additional shares in ACT or any other entity as a result of the grant to the Cancer Center. Thus, if ACT had a dilution event, the Foundation would receive the same amount of money it would have received had it not effectuated the JGBCC Grant.

71. Further, Ramsey and his team overestimated the amount of money a dilution event would provide ULRF to repay the grant. The Research Foundation was required, under the terms of the ACT Operating Agreement, to put at least 80% of any distribution received back into cancer research.

72. The $11.2 million remained as an asset included in the Endowment Pool until 2017 when it was written off. While the asset remained on the books, it artificially inflated the value of the Endowment Pool. Because the spending limits were set as a percentage of the Endowment Pool, this wrongful accounting entry allowed the Defendants to spend additional funds which would not have been authorized if the value of the endowment pool was correctly stated.

Excessive and Unauthorized Compensation

73. The Foundation established its deferred compensation plan in 2005.

74. Through 2016, the Foundation paid out approximately $21.8 million in deferred compensation, composed of around $8.4 million in vested contributions, $4.1 million in vested earnings, and $9.2 million in tax gross-ups.

75. Approximately $8.75 million of that total amount was paid to Ramsey and another $2.6 million was paid to Smith. These amounts were in addition to Ramsey and Smith's base salaries as University and Foundation officers.

76. Ramsey and Smith successfully insisted that deferred compensation expenses not be included in the Foundation budget.

77. Ramsey and Smith rationalized this exclusion by (1) intending to have the Foundation pay deferred compensation through other income sources (*e.g.*, current use gifts as opposed to Endowment assets); and (2) having deferred compensation grants approved separately by the Foundation Board or Executive Committee. These funds did not cover the large deferred compensation payments at issue.

78. In order to make up this deficit, the Defendants caused the Foundation to liquidate Endowment assets to fund deferred compensation payments. However, because any such Endowment expenditures were not approved as part of the budget, they were necessarily unauthorized because they were above and beyond the approved 7.48% spending policy allocation.

79. Further, at least some deferred compensation payments were not properly approved by the Foundation's Board or Executive Committee.

80. For example, in December 2012, Ramsey began receiving deferred compensation payments related to an alleged $1 million retention bonus. This bonus is not even discussed, let alone approved, during any Foundation or University minutes from this time period.

81. Crowe Horwath ("Crowe") raised a concern that the $1 million retention bonus was not included in Ramsey's 2011 taxable income when it vested. Curtin dismissed Crowe's concerns and attempted to explain the discrepancy.

82. Crowe insisted on seeing the minutes that authorized the bonus. No responsive record was found.

83. When Smith learned that people inside the Foundation were seeking minutes to send Crowe, Smith responded in a fearful tone:

> **Please do not send these minutes to anyone without my knowing why**. The wall between the ULF, Minerva [the deferred compensation plan administrator], and UofL is cracking because of unintended consequences. Please send me what you sent her.

84. The deferred compensation payments at issue were unreasonably excessive. Ramsey and Smith were paid significantly more than officers of similar universities and foundations.

85. Ramsey and Smith's compensation is particularly egregious given their wrongful conduct, which they suppressed from the Foundation and University board members. In other words, Ramsey and Smith were being excessively compensated from the Foundation while they were simultaneously improperly and secretly depleting the Foundation's assets. Accordingly, the Foundation did not receive a reasonable return for the millions it paid to Ramsey and Smith. Contrarily, the Foundation was substantially harmed by those individuals.

Other Transactions at Issue

86. The Defendants' wrongdoing is not limited to the above transactions, which only constitute representative examples thereof. For example, the Defendants also caused the Foundation to (1) invest (and lose) approximately $10 million in risky start-up companies; and (2) knowingly purchase real estate for millions above the appraised value.

87. Regarding the startups, the Foundation's Executive Committee authorized Ramsey "to cause the Foundation make investments in new ventures identified by the President from time to time . . . in an amount not to exceed $10,000,000.00."

88. Ramsey exceeded this authority by, among other things, loaning the full $10 million to certain startups, but then providing those startups additional benefits at great risk to the Foundation. For example, Ramsey caused the Foundation to guarantee certain debts the startups owed. These guarantees caused (or likely will cause) substantial losses to the Foundation.

89. Setting aside authorization issues, the Defendants nevertheless caused the Foundation to invest approximately $10 million in risky start-up companies without proper due diligence or consideration for the Foundation's best interests.

90. For example, the Defendants caused the Foundation to transfer $300,000 to PGxL without even receiving equity in return.

91. PGxL subsequently filed bankruptcy and the Foundation lost over $900,000.

92. The Defendants also had conflicts of interest regarding at least some of the startup companies. For example, Curtin was a director of Apovax/AppoImminue, one of the startups at issue.

93. When the University Compliance Department raised issues about potential conflicts, the Defendants offhandedly dismissed them. Smith referred to that department as the "compliance gestapo."

94. Regarding the real estate transactions, the Defendants caused the Foundation to pay approximately $10.3 million above the appraised values for certain properties.

95. The most egregious of these real estate transactions was the Foundation's purchase of property located at 2601 South Third St., Louisville, KY 40208 (the "KYT-Louisville Property").

96. Ramsey, Deutsch, and Curtin signed the documents relating to the Foundation's purchase of the KYT-Louisville Property.

97. The Foundation obtained an appraisal of this property around October 2007 for $13,600,000. Despite this appraisal, the Foundation subsequently purchased the KYT-Louisville Property a few months later for $19,500,000—almost $6 million above the appraised value.

98. The relevant minutes contain no explanation for why the Defendants caused the Foundation to pay this inflated price.

Stites & Harbison

99. The above-described breaches of duty were enabled by Stites.

100. Stites designed the transactional mechanisms to make the paper trails as obscure as possible to defeat open records requests. Stites made certain transactions appear to be loans or grants when it knew that there was no realistic chance of repayment. Stites was instrumental in the decision to book expenditures as investments or other performing assets.

101. Stites aided and abetted Curtin, Deutsch, and Smith in funding Ramsey's $10 million pledge to the JGBCC. Stites created the structure for the UHI line of credit to keep the spending from being discovered.

102. Stites also set up certain business entities with the express purpose of hiding deferred compensation payments from the media. Stites also gave advice on ways to book the authorization for compensation payments in such a way to frustrate open records requests.

103. Stites knew, or should have known, that some of the larger deferred compensation payments were not authorized by the Foundation board because its agents attended most board meetings.

104. While Stites owed a duty to the Foundation as a whole as its client, Stites attorneys acted like they represented, Smith, Ramsey, and the inner circle alone. Stites would intentionally restrict distribution lists to keep the wrongful acts from becoming known.

105. Stites even concealed this information from its other client, the University.

CAUSES OF ACTION

COUNT ONE: BREACH OF THE KENTUCKY UNIFORM PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

106. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

107. The Foundation manages and invests institutional funds, and is therefore governed, in part, by the Kentucky Uniform Prudent Management of Institutional Funds Act (the "KUPMIFA").

108. In fact, the Foundation's website states, in pertinent part:

> The University of Louisville Foundation's board of directors follows the Uniform Prudent Management of Institutional Funds Act . . . a law providing parameters for charitable institutions regarding investment and expenditure practices. The law ensures nonprofit administrators remain focused on the long-term viability of the funds entrusted to the organization.

109. The KUPMIFA imposes fiduciary duties of care, loyalty, and good faith on those managing and investing institutional funds:

> In addition to complying with a duty of loyalty imposed by law other than in KRS 273.600 to 273.645, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

KRS § 273.605.

110. The KUPMIFA also provides, among other things, guidelines such persons must consider when analyzing the propriety of a particular investment or management decision:

a. General economic conditions;

b. The possible effect of inflation or deflation;

c. The expected tax consequences, if any, of investment decisions or strategies;

d. The role that each investment or course of action plays within the overall investment portfolio of the fund;

e. The expected total return from income and the appreciation of investments;

f. Other resources of the institution;

g. The needs of the institution and the fund to make distribution and to preserve capital; and

h. An asset's special relationship or special value, if any, to the charitable purpose of the institution.

111. Ramsey, Smith, Deutsch, Curtin, and Tomlinson breached their fiduciary duties imposed by the KUPMIFA by, among other things:

a. Causing the Foundation—without authority—to continue including the unspent carryover in future budgets against Cambridge's recommendation and in violation of the Foundation's resolution to the contrary;

b. Failing to reduce the Foundation's excessive 7.48% spending rate against Cambridge's recommendation, in knowing violation of the Foundation's Investment Policy, and while failing to consider the KUPMIFA factors;

c. Inflating the Endowment Pool's value (on which the spending rate was assessed) by causing the Foundation (1) to recategorize expenditures (including, but not limited to, the UHI line of credit and the JGBCC Grant) as Endowment Pool investments; and (2) to record fictitious returns on certain alleged investments;

d. Approving and/or administering the UHI line of credit without proper due diligence and while failing to evaluate its propriety in light of the Investment Policy and/or the KUPMIFA factors;

e. Causing the UHI line of credit to fund certain expenditures (e.g., UHI salaries) without authorization to do so;

f. Causing the Foundation to fund the UHI line of credit with at least $55.7 million in violation of the authorized $35 million limit;

g. Causing the Foundation to pay at least $10 million to the James Graham Brown Cancer Center without authorization to do so, knowing that amount would not be repaid (or, at a minimum, that repayment was unlikely), and while failing to consider the KUPMIFA factors;

h. Accepting excessive and unauthorized compensation while simultaneously engaging in the wrongful conduct described herein and failing to consider the propriety of those compensation payments in light of the KUPMIFA factors;

i. Causing the Foundation to liquidate Endowment assets—without authorization—to fund compensation payments;

j. Causing the Foundation to guarantee debts related to certain startups without authorization to do so and while failing to consider the KUPMIFA factors;

k. Causing the Foundation to transfer approximately $10 million to risky start-up companies without proper due diligence and while failing to evaluate those expenditures in light of the Foundation's Investment Policy and the KUPMIFA factors;

l. Causing the Foundation to pay millions to start-up companies with which the Defendants had direct and/or indirect conflicts of interest;

m. Causing the Foundation to pay approximately $10.3 million above the appraised values for certain properties without any documented or reasonable justification and while failing to consider those transfers in light of the Investment Policy and KUPMIFA factors; and

n. Taking affirmative steps to conceal the above-described breaches of fiduciary duty.

112. Ramsey, Smith, Deutsch, Curtin, and Tomlinson were, at a minimum, grossly negligent in committing the above-described acts and omissions (i.e., the Defendants exhibited wanton or reckless disregard for the property of others).

113. Alternatively, Ramsey, Smith, Deutsch, Curtin, and Tomlinson's above-described acts or omissions constitute affirmative, willful misconduct (i.e., conduct they *knew* was not in the University or Foundation's best interest).

114. As a direct and proximate result of Ramsey, Smith, Deutsch, Curtin, and Tomlinson's breaches of fiduciary duty, the University and the Foundation were injured in that the Endowment lost millions of dollars. Not only was the Endowment depleted through improper and excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

COUNT TWO: BREACH OF FIDUCIARY DUTY
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

115. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

116. As officers and/or directors of the Foundation, Ramsey, Smith, Deutsch, Curtin, and Tomlinson owed fiduciary duties of care, loyalty, and good faith to the Foundation.

117. The Foundation is "a nonprofit fiduciary holding funds for the benefit of [the University]." KRS § 42.540. As Foundation agents expressly charged with investing and managing the Endowment for the sole benefit of the University, Ramsey, Smith, Deutsch, Curtin, and Tomlinson also owed fiduciary duties of care, loyalty and good faith to the University.

118. Ramsey, Smith, Deutsch, Curtin, and Tomlinson breached their fiduciary duties by, among other things:

a. Causing the Foundation—without authority—to continue including the unspent carryover in future budgets against Cambridge's recommendation and in violation of the Foundation's resolution to the contrary;

b. Failing to reduce the Foundation's excessive 7.48% spending rate against Cambridge's recommendation, in knowing violation of the Foundation's Investment Policy, and while failing to consider the KUPMIFA factors;

c. Inflating the Endowment Pool's value (on which the spending rate was assessed) by causing the Foundation (1) to recategorize expenditures (including, but not limited to, the UHI line of credit and the JGBCC Grant) as Endowment Pool investments; and (2) to record fictitious returns on certain alleged investments;

d. Approving and/or administering the UHI line of credit without proper due diligence and while failing to evaluate its propriety in light of the Investment Policy and/or the KUPMIFA factors;

e. Causing the UHI line of credit to fund certain expenditures (e.g., UHI salaries) without authorization to do so;

f. Causing the Foundation to fund the UHI line of credit with at least $55.7 million in violation of the authorized $35 million limit;

g. Causing the Foundation to pay at least $10 million to the James Graham Brown Cancer Center without authorization to do so, knowing that amount would not be repaid (or, at a minimum, that repayment was unlikely), and while failing to consider the KUPMIFA factors;

h. Accepting excessive and unauthorized compensation while simultaneously engaging in the wrongful conduct described herein and failing to consider the propriety of those compensation payments in light of the KUPMIFA factors;

i. Causing the Foundation to liquidate Endowment assets—without authorization—to fund compensation payments;

j. Causing the Foundation to guarantee debts related to certain startups without authorization to do so and while failing to consider the KUPMIFA factors;

k. Causing the Foundation to transfer approximately $10 million to risky start-up companies without proper due diligence and while failing to evaluate those expenditures in light of the Foundation's Investment Policy and the KUPMIFA factors;

l. Causing the Foundation to pay millions to start-up companies with which the Defendants had direct and/or indirect conflicts of interest;

m. Causing the Foundation to pay approximately $10.3 million above the appraised values for certain properties without any documented or reasonable justification and while failing to consider those transfers in light of the Investment Policy and KUPMIFA factors; and

n. Taking affirmative steps to conceal the above-described breaches of fiduciary duty.

119. Ramsey, Smith, Deutsch, Curtin, and Tomlinson were, at a minimum, grossly negligent in committing the above-described acts and omissions (i.e., the Defendants exhibited wanton or reckless disregard for the property of others).

120. Alternatively, Ramsey, Smith, Deutsch, Curtin, and Tomlinson's above-described acts or omissions constitute affirmative, willful misconduct (i.e., conduct they *knew* was not in the University or Foundation's best interest).

121. As a direct and proximate result of Ramsey, Smith, Deutsch, Curtin, and Tomlinson's breaches of fiduciary duty, the University and the Foundation were injured in that the Endowment lost millions of dollars. Not only was the Endowment depleted through improper

and excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

COUNT THREE: BREACH OF KENTUCKY NONPROFIT CORPORATIONS ACT
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

122. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

123. The Foundation is a non-profit corporation and is thus governed, in part, by the Kentucky Nonprofit Corporations Act (the "KNCA").

124. The KNCA imposes liability on individuals who cause a nonprofit corporation to engage in unauthorized transactions: "All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liability incurred or arising as a result thereof." KRS § 273.380. Indeed, it is well-established that the business judgment rule does not protect unauthorized transactions as they are necessarily not the product of any business judgment.

125. Accordingly, Ramsey, Smith, Deutsch, Curtin, and Tomlinson are jointly and severally liable for the Endowment losses resulting from the unauthorized transactions described herein.

126. The KNCA also imposes fiduciary duties of care, loyalty, and good faith on non-profit directors and officers:

> A director [or officer] of a nonprofit corporation . . . shall discharge his duties as a director [or officer], including duties as a member of a committee:
>
> (a) In good faith;
>
> (b) On an informed basis; and
>
> (c) In a manner he honestly believes to the in the best interests of the corporation.

KRS §§ 273.215(1) & 273.229(1).

127. Ramsey, Smith, Deutsch, Curtin, and Tomlinson breached their fiduciary duties imposed by the KNCA by, among other things:

a. Causing the Foundation—without authority—to continue including the unspent carryover in future budgets against Cambridge's recommendation and in violation of the Foundation's resolution to the contrary;

b. Failing to reduce the Foundation's excessive 7.48% spending rate against Cambridge's recommendation, in knowing violation of the Foundation's Investment Policy, and while failing to consider the KUPMIFA factors;

c. Inflating the Endowment Pool's value (on which the spending rate was assessed) by causing the Foundation (1) to recategorize expenditures (including, but not limited to, the UHI line of credit and the JGBCC Grant) as Endowment Pool investments; and (2) to record fictitious returns on certain alleged investments;

d. Approving and/or administering the UHI line of credit without proper due diligence and while failing to evaluate its propriety in light of the Investment Policy and/or the KUPMIFA factors;

e. Causing the UHI line of credit to fund certain expenditures (e.g., UHI salaries) without authorization to do so;

f. Causing the Foundation to fund the UHI line of credit with at least $55.7 million in violation of the authorized $35 million limit;

g. Causing the Foundation to pay at least $10 million to the James Graham Brown Cancer Center without authorization to do so, knowing that amount would not be repaid (or, at a minimum, that repayment was unlikely), and while failing to consider the KUPMIFA factors;

h. Accepting excessive and unauthorized compensation while simultaneously engaging in the wrongful conduct described herein and failing to consider the propriety of those compensation payments in light of the KUPMIFA factors;

i. Causing the Foundation to liquidate Endowment assets—without authorization—to fund compensation payments;

j. Causing the Foundation to guarantee debts related to certain startups without authorization to do so and while failing to consider the KUPMIFA factors;

k. Causing the Foundation to transfer approximately $10 million to risky start-up companies without proper due diligence and while failing to evaluate those expenditures in light of the Foundation's Investment Policy and the KUPMIFA factors;

l. Causing the Foundation to pay millions to start-up companies with which the Defendants had direct and/or indirect conflicts of interest;

m. Causing the Foundation to pay approximately $10.3 million above the appraised values for certain properties without any documented or reasonable justification and while failing to consider those transfers in light of the Investment Policy and KUPMIFA factors; and

n. Taking affirmative steps to conceal the above-described breaches of fiduciary duty.

128. Ramsey, Smith, Deutsch, Curtin, and Tomlinson were, at a minimum, grossly negligent in committing the above-described acts and omissions (i.e., the Defendants exhibited wanton or reckless disregard for the property of others).

129. Alternatively, Ramsey, Smith, Deutsch, Curtin, and Tomlinson's above-described acts or omissions constitute affirmative, willful misconduct (i.e., conduct they *knew* was not in the University or Foundation's best interest).

130. As a direct and proximate result of Ramsey, Smith, Deutsch, Curtin, and Tomlinson's breaches of fiduciary duty, the University and the Foundation were injured in that the Endowment lost millions of dollars. Not only was the Endowment depleted through improper and excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

COUNT FOUR: AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

131. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

132. As described in Counts 1–3, Ramsey, Smith, Deutsch, Curtin, and Tomlinson committed numerous breaches of the fiduciary duties they owed to the University and Foundation.

133. This Count is alleged in the alternative to Counts 1–3.

134. To the extent any of the aforementioned Defendants did not participate directly in a particular breach of fiduciary duty, he or she, at a minimum, gave the breaching person(s) substantial assistance or encouragement in effectuating the breach.

135. Ramsey, Smith, Deutsch, Curtin, and Tomlinson were all instrumental in developing and effectuating the overall scheme of causing the Foundation to excessively spend (and lose) Endowment assets.

136. Further, Ramsey, Smith, Deutsch, Curtin and Tomlinson were all aware of this scheme and knew that the misconduct of the others breached fiduciary duties.

137. As a direct and proximate result of Ramsey, Smith, Deutsch, Curtin, and Tomlinson's breaches of fiduciary duty, which breaches were substantially assisted or encouraged by one another, the University and the Foundation were injured in that the Endowment lost millions of dollars. Not only was the Endowment depleted through improper and excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

COUNT FIVE: FRAUDULENT MISREPRESENTATION
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

138. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

139. Ramsey, Smith, Deutsch, Curtin, and Tomlinson made material misrepresentations that (1) certain items (such as the UHI line of credit and JGBCC Grant) were investments; and (2) that certain alleged investments (including the UHI line of credit, the JGBCC Grant, and the startup investments) were generating returns.

140. These misrepresentations, which were made from 2008 until 2016, were transmitted to Cambridge, who subsequently published them in quarterly reports distributed to the Foundation and the University during that timeframe.

141. For example, in the June 2015 Cambridge Report, the value of the "UHI line of credit" was represented as $69,444,559 when it was truly close to zero.

142. The above-described statements were false because (1) these items were actually expenditures that were unlikely to generate a return sufficient to satisfy the Investment Policy; and (2) these items—regardless of how they were categorized—did not, in fact, generate returns, but rather resulted in multi-million dollar losses.

143. Ramsey, Smith, Deutsch, Curtin, and Tomlinson knew these misrepresentations were false at the time they made them. Indeed, Deutsch expressly admitted on September 11, 2012 that he knew misrepresenting the existence of fictitious returns was "inappropriate."

144. Ramsey, Smith, Deutsch, Curtin, and Tomlinson made these representations with the intent to induce the Foundation and University to act upon them. More specifically, those individuals intended that their misrepresentation would, among other things (1) cause the Foundation to increase its spending policy allocation; (2) cause the Foundation to continue spending money on their preferred projects and ventures; (3) cause the independent directors and officers within the University and Foundation to mistakenly believe Ramsey, Smith, Deutsch, Curtin, and Tomlinson were successfully investing Foundation funds; and (4) cause the independent directors and officers within the University and Foundation to approve substantial compensation payable to Ramsey, Smith, Deutsch, Curtin, and Tomlinson.

145. The Foundation and University relied upon the aforementioned misrepresentations by (1) increasing the spending policy allocation; (2) spending Endowment funds on various projects and ventures that did not comply with the Foundation's Investment Policy; (3) not taking action to replace Ramsey, Smith, Deutsch, Curtin, and Tomlinson or otherwise halt their concealed misconduct; and (4) approve substantial compensation payable to Ramsey, Smith, Deutsch, Curtin, and Tomlinson.

146. These misrepresentations injured the Foundation and the University in that the Endowment was improperly depleted and Ramsey, Smith, Deutsch, Curtin, and Tomlinson were paid substantial sums of money while they were simultaneously taking concealed actions that harmed the Foundation and University. Not only was the Endowment depleted through improper and excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

147. The Foundation and the University did not discover this fraud until on or about June 8, 2017, when Alvarez and Marsal released a Procedures & Findings Report that investigated potential mismanagement of Endowment funds.

COUNT SIX: FRAUDULENT SUPPRESSION/OMISSION
(Against Ramsey, Smith, Deutsch, Curtin, and Tomlinson)

148. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

149. Ramsey, Smith, Deutsch, Curtin, and Tomlinson were all fiduciaries of both the Foundation and the University in that they were all Foundation officers and/or directors who invested the Endowment for the University's sole benefit. As such, they had a duty to disclose all material and pertinent facts to the Foundation and the University.

150. Ramsey, Smith, Deutsch, Curtin, and Tomlinson breached that duty by failing to disclose to the Foundation and the University the following material facts (among others):

a. That the UHI line of credit was not generating investment returns, but was in fact losing millions of dollars;

b. That the Foundation's spending rate was excessively high and artificially inflated;

c. That the UHI line of credit was being used to fund expenditures (e.g., UHI salaries);

d. That the UHI line of credit had been funded with substantially more than the authorized $35 million limit;

e. That the Foundation had transferred $10 million to the James Graham Brown Cancer Center;

f. That Ramsey and Smith were accepting unauthorized compensation payments from the Foundation;

g. That the Foundation was liquidating Endowment assets to fund compensation payments; and

h. That the startup "investments" were not generating investments returns, but were in fact losing millions of dollars.

151. Not only did Ramsey, Smith, Deutsch, Curtin, and Tomlinson fail to disclose the above material facts, but they took affirmative steps to conceal them.

152. Ramsey, Smith, Deutsch, Curtin, and Tomlinson's fraudulent omissions caused the Foundation and University to (1) increase the spending policy allocation; (2) spend Endowment funds on various projects and ventures that did not comply with the Foundation's Investment Policy; (3) not take action to replace Ramsey, Smith, Deutsch, Curtin, and Tomlinson or otherwise halt their concealed misconduct; and (4) approve substantial compensation payable to Ramsey, Smith, Deutsch, Curtin, and Tomlinson.

153. These omissions injured the Foundation and the University in that the Endowment was improperly depleted and Ramsey, Smith, Deutsch, Curtin, and Tomlinson were paid substantial sums of money while they were simultaneously taking concealed actions that harmed the Foundation and University. Not only was the Endowment depleted through improper and

excessive spending, but it also missed out on the investment returns it could have received had the Defendants properly invested the misspent funds at issue.

154. The Foundation and the University did not discover this fraud until on or about June 8, 2017, when Alvarez and Marsal released a Procedures & Findings Report that investigated potential mismanagement of Endowment funds.

COUNT SEVEN: AIDING AND ABETTING BREACHES OF FIDUCIARY DUTY
(Against Stites)

155. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

156. As described in Counts 1–3, Ramsey, Smith, Deutsch, Curtin, and Tomlinson committed numerous breaches of the fiduciary duties they owed to the University and Foundation. The University and Foundation were damaged by these breaches.

157. Stites, through its agents, took an active part in designing mechanisms to effect the wrongful transactions complained of in this action. Stites also formed business entities and performed other acts with the express purpose of disguising the transactions or frustrating open records requests.

158. Stites actively aided and abetted the breaches of fiduciary duty possible. Because of Stites' substantial assistance or encouragement, Ramsey, Smith, Deutsch, Curtin, and Tomlinson were able to effectuate the transactions that breached fiduciary duties as described in Counts 1–3. Alternatively, the breaches of fiduciary duty would have been discovered in a timely manner by open records requests or other fiduciaries and the damage stemming from these breaches would have been significantly reduced.

159. Upon information and belief, Stites' agents knew or should have known that the other Defendants' actions breached fiduciary duties. This is supported by Stites' admission at a

board meeting that it structured certain transactions and business entities for the purpose of obfuscation. Even without this admission, Stites' intent is apparent from the parties' discussions of the various transactions and entities.

COUNT EIGHT: LEGAL MALPRACTICE
(Against Stites)

160. Plaintiffs incorporate by reference all foregoing factual allegations of this Complaint as if fully set out herein.

161. Stites had an employment relationship with the Foundation. As alleged above, Stites neglected its duties to the Foundation. Instead, Stites acted as if its clients were Ramsey, Smith, Curtin, Deutsch, and Tomlinson. Stites, though its agents, negligently or intentionally helped these insiders effectuate transactions that were not in the Foundation's or University's best interest.

162. Stites' negligence was a proximate cause of the damage to the University and Foundation. Absent this negligence, Ramsey, Smith, Deutsch, Curtin, and Tomlinson would not have been able to effectuate the unlawful transactions. Alternatively, the wrongful transactions would have been discovered in a timely manner by open records requests or other fiduciaries and the damage stemming from these breaches would have been significantly reduced.

WHEREFORE, Plaintiffs hereby respectfully request that the Court:

A. Enter a judgment against Defendants in favor of the Foundation and the University for compensatory damages in an amount to be determined by a jury, plus interest, costs, attorneys' fees, and punitive damages; and

B. Award all other relief to which Plaintiffs may be entitled.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

/s/ *Jeremy S. Rogers*
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