COMMONWEALTH OF KENTUCKY
COUNTY OF FRANKLIN CIRCUIT COURT
DIVISION II
CASE NO. 21-CI-00645

TIA TAYLOR, *et al.*, as Members and Beneficiaries of Trust Funds of the KENTUCKY RETIREMENT SYSTEMS, Its Pension and Insurance Trusts for the Benefit of Those Trusts — PLAINTIFFS

vs.

Plaintiffs' Notice of Motion and Motion for Order Directing the KKR and KKR-Prisma Defendants to Return over $137 Million in KRS Trust Funds, Plus Interest, Pay a Statutory Penalty, and Provide an Accounting

KKR & CO., L.P., *et al.* — DEFENDANTS

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* * * * * * * *

PLEASE TAKE NOTICE that plaintiffs Tia Taylor, Ashley Hall-Nagy, Bobby Estes and Jacob Walson (the "Tier 3 Plaintiffs") will, on Monday, May 20, 2024, at 9:00 a.m., or as soon thereafter as counsel may be heard, move the Court, before the Honorable Thomas D. Wingate, at the Franklin County Courthouse, located at 222 St. Clair Street, Frankfort, Kentucky 40601, for entry of the accompanying proposed order directing the KKR Defendants and the KKR-Prisma Defendants to:[1]

- return over $137,000,000 of misappropriated KRS trust funds, plus interest at 8% since April 2019,[2] for a total of $192,713,333 as of April 30, 2024; and
- pay a civil penalty, authorized by Subsection (3) of KY. REV. STAT. § 61.685, of $578,139,999 (three times the amount of $192,713,333 (as of April 30, 2024)),

[1] The KKR Defendants include KKR & Co., Inc. (formerly known as KKR & Co., L.P.), Henry Kravis, and George Roberts. The KKR-Prisma Defendants include Prisma Capital Partners L.P., Girish Reddy, and William S. Cook.

[2] Under KY. REV. STAT. § 360.010(1), the amount of interest accumulated from April 2019 (when the trust funds were withheld) to May 2024 (when this motion is prepared) is approximately $55,713,333 ($137,000,000 x 8% x 1/12 x 61 (months)).

to a special fiduciary appointed by the Court; and

- provide an accounting of all dealings with these KRS trust monies.

The Tier 3 Plaintiffs further request that the Court grant such other and further relief as the Court deems just and proper.

The Tier 3 Plaintiffs expect that the hearing time will exceed ten minutes.

In support of this motion, the Tier 3 Plaintiffs submit the accompanying memorandum, together with Exhibits A, B, and C, and the accompanying proposed order, and rely on all papers and proceedings in this action.

Dated: May 13, 2024

Respectfully submitted,

s/ Michelle Ciccarelli Lerach

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CERTIFICATE OF SERVICE

The above signature certifies that, on May 13, 2024, the foregoing was served via email in accordance with any notice of electronic service or, in the absence of an electronic notification address, via email or mail as indicated below, to:

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COMMONWEALTH OF KENTUCKY
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Plaintiffs' Memorandum in Support of Motion for Order Directing the KKR and KKR-Prisma Defendants to Return over $137 Million in KRS Trust Funds, Plus Interest, Pay a Statutory Penalty, and Provide an Accounting

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To recover misappropriated funds on behalf of the various trusts of the Kentucky Retirement Systems ("KRS," now known as the KPPA), plaintiffs Tia Taylor, Ashley Hall-Nagy, Bobby Estes, and Jacob Walson (the "Tier 3 Plaintiffs") respectfully submit this memorandum in support of their motion for an order directing the KKR Defendants[1] and the KKR-Prisma Defendants[2] to:

- return over $137,000,000 of misappropriated KRS trust funds, plus interest at 8% since April 2019 (accruing at $913,333.33 per month for 61 months),[3] for a total of $192,713,333 as of April 30, 2024; and
- pay a civil penalty, authorized by Subsection (3) of KY. REV. STAT. § 61.685, of $578,139,999 (three times the amount of $192,713,333 (as of April 30, 2024), to a special fiduciary appointed by the Court; and
- provide an accounting of all dealings with these KRS trust monies.

---

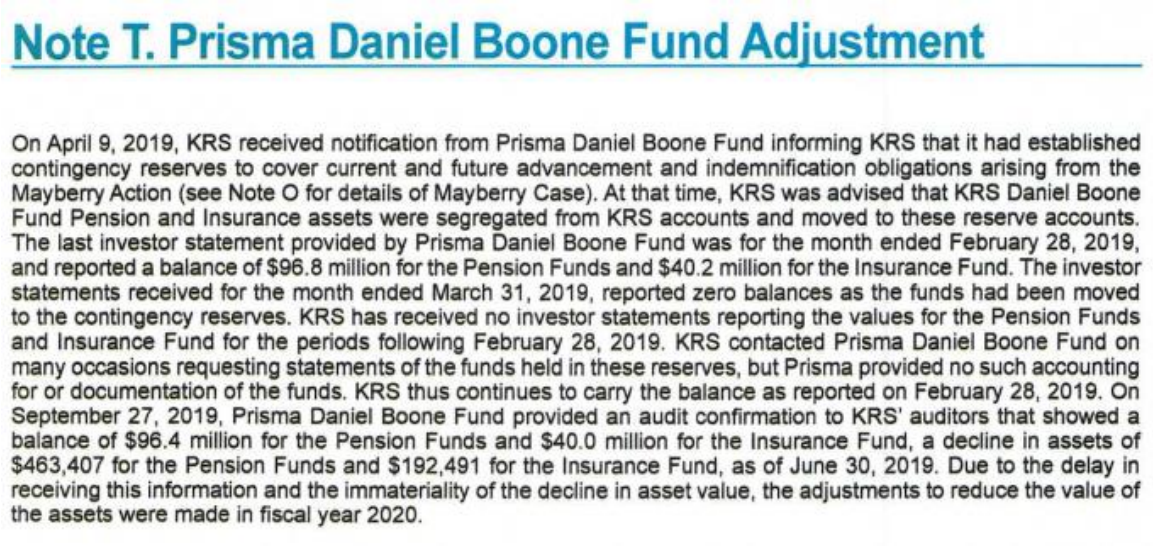
[1] The KKR Defendants include KKR & Co., Inc. (formerly known as KKR & Co., L.P.) ("KKR") and its two co-chairmen and co-CEOs, Henry Kravis and George Roberts. *See* Compl. ¶¶ 108–112. KKR is worth over $50 billion with yearly net income over $5 billion. *Id.* ¶ 108. Kravis and Roberts both actively managed and controlled KKR during all relevant times and were each paid over $100 million per year in 2017 and similar amounts going forward. *Id.* ¶¶ 111–112.

[2] The KKR-Prisma Defendants include Prisma Capital Partners L.P. ("Prisma" and, together with KKR, "KKR-Prisma") and its two co-founders, Girish Reddy and William S. Cook (also a KRS trustee). Compl. ¶¶ 113–114. Before co-founding Prisma with Reddy in 2004, Cook was an executive for over 17 years at a Louisville-based hedge fund outfit, Aegon USA, where he worked with Michael Rudzik. *Id.* ¶ 114. Reddy, Cook, and Rudzik managed and controlled Prisma during all relevant times and continued to receive "earn out" payments from KKR-Prisma after they sold their Prisma equity to KKR in 2012. *Id.* Cook and Rudzik helped place their protégé, a former Aegon and Prisma employee named David Peden, on KRS's investment staff in March 2009. *Id.* ¶ 115. Cook got himself appointed to the KRS board in 2016. *Id.*

[3] Under KY. REV. STAT. § 360.010(1), the amount of interest accumulated from April 2019 (when the trust funds were withheld) to May 2024 (when this motion is prepared) is approximately $55,713,333 ($137,000,000 x 8% (per annum) x 1/12 x 61 (months)).

INTRODUCTION

This motion seeks the return of $137 million of KRS trust funds, plus interest and penalties, that has been illegally withheld by KKR-Prisma for over five years. In April 2019, when the Daniel Boone Black Box Hedge Fund came due, KKR-Prisma withheld from KRS $137 million, purportedly based on its contractual right to be indemnified by KRS for its legal fees and expenses in connection with the "*Mayberry* Litigation":



Note T. Prisma Daniel Boone Fund Adjustment

On April 9, 2019, KRS received notification from Prisma Daniel Boone Fund informing KRS that it had established contingency reserves to cover current and future advancement and indemnification obligations arising from the Mayberry Action (see Note O for details of Mayberry Case). At that time, KRS was advised that KRS Daniel Boone Fund Pension and Insurance assets were segregated from KRS accounts and moved to these reserve accounts. The last investor statement provided by Prisma Daniel Boone Fund was for the month ended February 28, 2019, and reported a balance of $96.8 million for the Pension Funds and $40.2 million for the Insurance Fund. The investor statements received for the month ended March 31, 2019, reported zero balances as the funds had been moved to the contingency reserves. KRS has received no investor statements reporting the values for the Pension Funds and Insurance Fund for the periods following February 28, 2019. KRS contacted Prisma Daniel Boone Fund on many occasions requesting statements of the funds held in these reserves, but Prisma provided no such accounting for or documentation of the funds. KRS thus continues to carry the balance as reported on February 28, 2019. On September 27, 2019, Prisma Daniel Boone Fund provided an audit confirmation to KRS' auditors that showed a balance of $96.4 million for the Pension Funds and $40.0 million for the Insurance Fund, a decline in assets of $463,407 for the Pension Funds and $192,491 for the Insurance Fund, as of June 30, 2019. Due to the delay in receiving this information and the immateriality of the decline in asset value, the adjustments to reduce the value of the assets were made in fiscal year 2020.

See KRS Board of Trustees Meeting – Audit Committee Report at 103 (Dec. 5, 2019).[4]

But KKR-Prisma had no right to indemnification by KRS. In March 2022, the Honorable Philip J. Shepherd held in the Commonwealth's declaratory-relief action that the Kentucky Constitution prohibited the enforcement of the purported "indemnification" provisions asserted by KKR-Prisma. *See Commonwealth v. KKR & Co., Inc.*, Case No. 21-CI-00348, slip op. (Ky. Cir. Ct. Franklin Cnty. Mar. 24, 2022) (attached as Exhibit A). Judge Shepherd's holding — which was affirmed by the Court of Appeals

[4] *Available at* https://www.kyret.ky.gov/About/Board-of-Trustees/Board%20Action%20Items/12.05.19%20Board%20Meeting%20-%20All%20Material.pdf (last visited May 7, 2024).

in December 2023 — renders illegal KKR-Prisma's withholding of the KRS trust funds.[5] *KKR & Co. Inc. v. Commonwealth*, 2023 WL 8285978, at *20 (Ky. Ct. App. Dec. 1, 2023).

In fact, KKR-Prisma's withholding of KRS trust funds constitutes a "Misapplication of Entrusted Property" — a crime under the Kentucky Penal Code. The KKR Defendants acted in bad faith in litigating the declaratory-relief action, in which they submitted a false affidavit to contest personal jurisdiction. They also commenced retaliatory litigation in Delaware in an attempt to evade Kentucky's justice system. The KKR Defendants' bad-faith conduct warrants the imposition of a three-time civil penalty.

Long past due is the time for these funds to be returned to the KRS trusts. Time is of the essence not only because KRS has been — for over five years — deprived of the use and value of the $137 million in withheld funds, but also because the withheld funds have inexplicably decreased by hundreds of thousands of dollars:

> Note S. Prisma Daniel Boone Fund
> The funds invested with Prisma Daniel Boone Fund continue to be held in a contingency reserve to cover potential obligations arising from the Mayberry Action (see Note O for details of Mayberry Case). The total reported in reserve as of June 30, 2023, is $97.7 million for the Pension Plans and $40.6 million for the Insurance Plan. This is based on the May 31, 2023, report because Absolute Return managers are reported on a one month lag.

See KPPA Annual Comprehensive Financial Report for the Fiscal Year Ended June 30, 2023 at 90 (Dec. 6, 2023).[6] Those losses have harmed the Tier 3 Plaintiffs individually by reducing investment returns by way of negligent discharge of the Trustee's duties and the KKR Defendants' bad-faith conduct. To prevent the trust funds' further erosion at the hands of KKR-Prisma, the Court should grant this motion forthwith.

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[5] The Attorney General sued for the Commonwealth and not for the KRS Trusts, seeking only declaratory relief. He did not pray for a return of the funds.

[6] *Available at* https://www.kyret.ky.gov/Publications/Books/2023%20Annual%20Report.pdf (last visited May 7, 2024).

ARGUMENT

I. The Court Should Direct the Return of KRS Trust Funds, Plus Interest and a Statutory Penalty

A. This Court Has Extensive, Discretionary Power to Remedy — and Punish — Misappropriation of Trust Assets

"Courts of equity have extensive power in seeing that trust estates are preserved to the advantage of beneficiaries." *Breetz v. Hill*, 293 Ky. 526, 531 (Ky. Ct. App. 1943). In exercise of this power, courts may, in their discretion, fashion a broad range of reliefs as they see fit under the circumstances. *See*, *e.g.*, *Keeney v. Keeney*, 223 S.W.3d 843, 849 (Ky. Ct. App. 2007) (imposing constructive trust); *Hegan v. Netherland*, 133 S.W. 546, 547 (Ky. Ct. App. 1911) (selling trust assets).

B. Kentucky Statutes Require the Return of the Withheld Trust Funds and the Imposition of a Statutory Penalty

1. KKR-Prisma Violated Kentucky Statutes

Here, the Court should exercise its extensive, discretionary power based on two statutory provisions governing the KRS trust funds. First, under Subsection (1) of Section 61.650, all KRS trust funds must be managed "[s]olely in the interest of," and "[f]or the exclusive purpose of providing benefits to," the members and beneficiaries. KY. REV. STAT. § 61.650(1)(c)(2)(a)–(b). By the statute's own definition, this "sole interest" standard "shall be determined using only pecuniary factors and shall not include any purpose to further a nonpecuniary interest." *Id.* § 61.650(1)(c)(1)(a). KKR-Prisma's withholding of $137 million in trust funds does not— and cannot — satisfy the statutory standards of "sole interest" and "exclusive purpose." In fact, the withholding has been held to be unlawful by Judge Shepherd in the declaratory-relief action. *See* Ex. A at 74–75. And Judge Shepherd's holding has been affirmed by the Court of Appeals. *See KKR & Co.*, 2023 WL 8285978, at *20. Under the Kentucky Penal Code, KKR-Prisma can be found

guilty of "Misapplication of Entrusted Property," because its withholding of KRS trust funds constitutes taking "property that has been entrusted to [KKR-Prisma] as a fiduciary … in a manner which [KKR-Prisma] knows is unauthorized and involves substantial risk of loss or detriment to the owner of the property or to a person for whose benefit the property was entrusted." KY. REV. STAT. § 517.110(1).

Second, under Subsection (3) of Section 61.685, KKR-Prisma — having unlawfully withheld $137 million in KRS trust funds — "shall be liable for … [a] civil payment in an amount up to three (3) times the amount of [the withheld funds]." KY REV. STAT. § 61.685(3)(c)(2). This provision for civil penalty applies here because, consistent with the text of paragraph (b) of Subsection (3), KKR-Prisma "knowingly … [p]ossess[ed] … property used or to be used by [KRS] … and fail[ed] to deliver or deliver[ed] less than all of the money … or property to which [KRS is] entitled[.]" *Id.* § 61.685(3)(b)(3).

2. A Statutory Penalty Is Warranted Due to the KKR Defendants' Bad-Faith Conduct

A three-time civil penalty is justified here because, as Judge Shepherd found, KKR-Prisma had no legal basis to withhold the $137 million in KRS trust funds, and because the KKR Defendants acted in bad faith in litigating the declaratory-relief action. For example, KKR has repeatedly claimed that it had no legal connection with or responsibility for Prisma and was not subject to personal jurisdiction in Kentucky. Judge Shepherd has already rejected these specious claims in his detailed opinion in the *Mayberry* case — a finding that the Supreme Court left undisturbed in the *Overstreet* appeal. *See Mayberry v. KKR & Co, L.P.*, No. 17-CI-01348, slip op., at 17–19 (Ky. Cir. Ct. Franklin Cnty. Nov. 30, 2018). Undeterred, however, the KKR Defendants raised these specious challenges to personal jurisdiction in the declaratory relief action. Judge

Shepherd again rejected this ploy:

> Although the Court has been asked to rule on a member of specific legal issues in this case, an overarching question runs throughout these issues: what should be the expected tradeoff between receiving benefits from the Kentucky marketplace, including from contracts with a Kentucky administrative agency that contain express limitations originating in the Kentucky Constitution, and being held accountable in Kentucky by a Kentucky court under such constitutional provisions? Should KKR, a "leading global investment firm," currently managing more than $470 billion of investments in various assets, be able to exert ongoing influence over Kentucky policy by lobbying the Commonwealth's executive branch, control and manage operations for wholly-owned affiliates that are and were unquestionable doing business in Kentucky, and, ultimately, receive the benefit of substantial fees from the transaction at issue in Kentucky … yet escape the burden of litigating in a Kentucky court? Further, should sophisticated defendants who knowingly engaged in contract negotiations that explicitly recognized limitations on indemnification imposed by the Kentucky Constitution now be able to ignore the bargain they struck and, in doing so, seek judgements in foreign jurisdictions requiring Kentucky taxpayers to indemnify them for their legal fees? Finally, where there is on-going litigation in Franklin Circuit Court on the transactions that arose from those contracts, can certain Defendants bring preemptive suits in Delaware and California, asking those courts to opine on the Kentucky Constitution and, in doing so, disregarding the sovereign immunity of the Commonwealth? …

Ex. A at 2–3. The answer to these questions is obvious.

Worse, the KKR Defendants submitted false testimony to support their specious claim for lack of personal jurisdiction. Judge Shepherd detailed the false statements made by Christopher Lee, Assistant Secretary of KKR Management LLC, in his February 22, 2018 affidavit:

> Many of these facts ***overtly contradict KKR's assertion*** that it "lacks any business connections of its own with the Commonwealth." KKR's own Kentucky Executive Branch Ethics Commission filings, SEC filings, client documents and [other documents] along with KRS Board/Investment Committee minutes, are ***wholly inconsistent with KKR's sworn representations to this Court***.
>
> ***
>
> ***All of the facts … contrast starkly with the facts supplied by Christopher Lee, Assistant Secretary of KKR Management LLC***,

in his February 22, 2018 Affidavit …. The contrast in the two factual accounts is striking. Mr. Lee's Affidavit simply cannot be reconciled with other publicly-available facts.

***

The most significant discrepancies between the facts and Mr. Lee's affidavit, however, arise in his description of the purported absence of any KKR business activities in Kentucky:

***

Mr. Lee, under penalties of perjury, has sworn to this Court that KKR ***never***: maintained ***any*** office in Kentucky; had ***any*** employees who resided or regularly worked in Kentucky; and most troubling given the conflicting facts gathered by the Court, c***onducted any business in Kentucky relating to KKR, Prisma***, or their respective investment activities. However, KKR's own SEC filings and client documents along with archived pages from the KKR website and KRS Board/KRS Investment Committee minutes ***contradict his statements***. Given the consistency of the various factual accounts *supra* as well as their credibility as contemporaneous accounts of events occurring in 2012–2016, the Court finds them more inherently reliable than Mr. Lee's self-serving declaration. Moreover Mr. Lee and KKR **failed to disclose to the Court that KKR**, during the relevant time frame, employed an executive branch lobbyist in Kentucky. That fact alone establishes minimum contacts for the exercise of personal jurisdiction.

Id. at 9, 36–38 (emphases added).[7] Indeed, the evidence contradicting the KKR Defendants' claims are in plain sight. At the October 26, 2023 hearing in this case, the Tier 3 Plaintiffs presented visuals to highlight this ongoing deceit by the KKR Defendants to challenge Kentucky jurisdiction over it and its top officials:

[7] Although the Court of Appeals reversed Judge Shepherd's decision to convert the KKR Defendants' motion to dismiss to a motion for summary judgment, the Court of Appeals left undisturbed his factual findings. *See KKR & Co*., 2023 WL 8285978, at *5 (rejecting KKR's argument that Judge Shepherd's fact findings were erroneous). Judge Shepherd's findings remain valid and binding. *See Hengehold v. City of Florence*, 596 S.W.3d 599, 606 (Ky. Ct. App. 2020) ("When sitting as an appellate court, the circuit court is bound by the district court's factual findings unless they are clearly erroneous.").

Hedge Fund Solutions Proposal

April 2015

KKR PRISMA

Partnering with KKR

Benefits of a KYRET and KKR Prisma Strategic Relationship

KYRET can Benefit from KKR's Global Hedge Fund Platform and Resources

GLOBAL KKR NETWORK

Represents a network of senior executives that work with KKR and KKR portfolio companies

Employees of KKR Prisma located in the United States are dual employees of Kohlberg Kravis Roberts & Co. L.P.*
*Oct 7, 2016 Presentation

KYRET Would Have Dedicated Resources From Across **KKR's** Businesses

"Access to our **Kentucky Based** PM's with significant availability."

Highly Experienced Global Alternative Investment Provider

- **KKR Prisma, an affiliate of leading global investment firm, KKR,** is focused on providing multi-manager hedge fund solutions for alternative investors
- KKR Prisma has a ~70 person dedicated team and benefits from KKR's network of over 600 executives, including over 300 investment professionals and ~30 senior advisors, globally
- **KKR has** a global presence that includes offices in 15 countries across 5 continents

Significant Onsite Resources

- **A Lexington, KY-based portfolio manager team,** who have been with KKR Prisma since inception, is available for onsite consultation

- **Access to KKR's macroeconomic thought leaders, and benefits of their ongoing research**
- **Access to KKR's Global infrastructure that supports the efforts of the KKR's hedge fund platform from both investment and operational perspectives**

From: Michael Rudzik <Michael.Rudzik@kkr.com>
Sent: Wednesday, May 27, 2015 11:52 AM
To: Peden, David (KRS)
Subject: Bill Cook's email

Hi DP. I think you have Bill's email right. It is billcook113054@yahoo.com.

Michael J. Rudzik
Portfolio Manager
KKR PRISMA
10200 Forest Green Blvd., Suite 112
Louisville, KY 40223
Ph: 502-515-3336
michael.rudzik@kkr.com

¶¶ 89-96, 111-116, 117-124

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
FORM 10-K

PCM#34 **KKR & CO. L.P.**

In this report, references to **"KKR," "we," "us," "our" and "our partnership"** **refer to KKR & Co. L.P. and its consolidated subsidiaries.**

We are a leading global investment firm that manages investments across multiple asset classes including … hedge funds.

Our hedge fund business is comprised of customized hedge fund portfolios, hedge fund-of-fund solutions and direct hedge funds managed by **KKR Prisma** … Within **our** hedge funds business, … KKR Prisma managed $9.9 billion of AUM …

We conduct **our** advisory business through **our** investment adviser subsidiaries, [including] **Kohlberg Kravis & Roberts**, and its wholly owned subsidiaries … Prisma Capital Partners LP, **each of which is registered as an investment adviser with the SEC under the Investment Advisers Act**. The investment advisers are **subject to** … **fiduciary duties**….

Lee Dec ¶12 reference to "KKR/Prisma" in 10-K "is not to a combined company" ***BUT SEE***

Lee Dec ¶4 "KKR has not registered with the [SEC] as an investment adviser. KKR has not provided investment advice to KRS." ***BUT SEE***

¶108-136, 152-181

KKR-Prisma is a dishonest operation and litigant. It's time for this to stop.

The KKR Defendants' bad-faith conduct must also be viewed in the context of their underlying breaches of fiduciary duties in putting KRS trust funds in black box hedge funds. As recounted by Judge Shepherd in the declaratory-relief action, $768,728,901 in trust funds were put in the Daniel Boone Fund. Ex. A at 14. KKR and KKR-Prisma returned just $5,276,203 to the KRS trusts, plus its original capital. *Id*. at 14–15. This gave the KRS Trusts a return of .00686% on their eight-year $768 million investment, while KKR gouged the ***KKR Trusts for at least $120 million in "exorbitant" fees***.[8]

All told, the misconduct of the KKR Defendants and the KKR-Prisma Defendants constitutes a breach of fiduciary duties, a crime (KY. REV. STAT. § 517.110), and a violation of Kentucky's pension statutes (KY. REV. STAT. §§ 61.650(c), 61.685(b)(c)). The KRS trusts are entitled to their monies, plus 8% interest and a three-time payment of the amount due. Under KY. REV. STAT. §§ 61.685(3)(b) and 360.010(1)(4), the total amount due is calculated as follows:

[8] Management and incentive fees to Prisma are contained in Exhibit 43 to the Calcaterra Report (which includes the annual financial statements of Daniel Boone Fund LLC from 2011 to 2019) (excerpts of which are attached as Exhibit B). Management and incentive fees to the underlying funds have never been disclosed. They are estimated based on the ratios disclosed to the KRS Investment Committee in August 2011, *i.e.*, a ratio of 0.7-to-1.82, and an incentive fee ratio of 5-to-19.7. *See* Calcaterra Report, Ex. 14 at 14 (excerpts of which are attached as Exhibit C). Here is the detail (*see* Exs. B–C):

Year	Management Fees - Prisma	Incentive Fees - Prisma	Management Fees - Underlying Funds (Est.)	Incentive Fees - Underlying Funds (Est.)	Total Management and Incentive Fees	Total Expenses Per Calcataerra Report
2011	$ 944,634.00		$ 2,456,048.00		$ 3,400,682.00	$ 1,099,995.00
2012	$ 3,123,890.00	$ 1,414,882.00	$ 8,122,114.00	$ 5,574,635.00	$ 18,235,521.00	$ 5,012,349.00
2013	$ 3,432,808.00	$ 2,384,965.00	$ 8,925,300.00	$ 9,396,762.00	$ 24,139,835.00	$ 6,328,518.00
2014	$ 3,460,282.00	$ 652,023.00	$ 8,996,733.00	$ 2,568,970.00	$ 15,678,008.00	$ 4,657,706.00
2015	$ 3,343,933.00	$ 465,912.00	$ 8,694,225.00	$ 1,835,693.00	$ 14,339,763.00	$ 4,416,662.00
2016	$ 3,552,234.00	$ 200,684.00	$ 9,235,808.00	$ 790,694.00	$ 13,779,420.00	$ 4,225,178.00
2017	$ 3,271,757.00	$ 1,005,830.00	$ 8,506,568.00	$ 3,962,970.00	$ 16,747,125.00	$ 4,989,214.00
2018	$ 3,903,086.00	$ 590,617.00	$ 10,148,023.00	$ 2,327,030.00	$ 16,968,756.00	$ 6,097,118.00
2019	$ (1,335,645.00)				$ (1,335,645.00)	$ (1,634,251.00)
					$ 121,953,465.00	**$ 35,192,489.00**

Amount wrongfully withheld since April 2019	$137,000,000
Interest at 8% per year = $913,333 per month (April 2019 to April 2024) — 61 months[9]	$55,713,333
Total monies withheld plus interest	$192,713,333
Civil penalty 3 x $192,713,333	$578,139,999
Total to be paid[10]	$770,853,332

C. The Order Should Be Directed to All KKR Defendants and KKR-Prisma Defendants

Although, in technical terms, Prisma withheld the KRS trust funds, this motion seeks relief against all KKR Defendants and all KKR-Prisma Defendants because there is no assurance that the "technical" holder of the $137 million, *i.e.*, Prisma Capital Partners LP, has the means or liquidity to satisfy the turnover order.

Holding all defendants liable for the withholding is particularly warranted in light of KKR's corporate structure. Kravis and Roberts co-founded KKR, are its Co-Chairs, Co-CEOs, Managing Partners, and select all Directors. Compl. ¶ 111. KKR is worth $50-plus billion. They control the day-to-day "management of [KKR's] business and affairs." Reddy and Cook co-founded Prisma. *Id*. In 2012 KKR acquired Prisma, to get the profits generated by their exorbitant fees. They operated its hedge fund business as KKR-Prisma, with Reddy as CEO and Cook and Rudzik as KKR and KKR-Prisma partners/officers. *Id*. ¶¶ 108–111. Kravis and Roberts sit atop this corporate complex, operating the enterprise as the responsible corporate officers of their personal vehicle. *Id*. ¶¶ 152, 155–156, 159.

[9] KY. REV. STAT. § 360.010(1)(4) provides the legal rate of interest is 8% per annum.

[10] The precise final amount will depend on a complete accounting and on the exact payment date, as interest will run until then, impacting all totals.

II. The Court Should Appoint a Special Fiduciary to Manage Such Trust Assets

The return of $770-plus million of trust funds could make a difference to the grossly underfunded KRS Trusts. But the current situation at KRS is problematic. Influenced by David Eager (KRS Executive Director) and Victoria A. Hale (KRS General Counsel), both defendants in these KRS-related lawsuits, KRS has done nothing to get back the $137 million. Had the $137 million of KRS Trust funds been invested, such investment would have yielded at least $4 million per year (at a return rate of 3%) — almost $20 million between 2019 and 2024. ***Only a dishonest or incompetent Executive Director and General Counsel of a Culpable Trustee would ignore $137 million in Trust funds and allow $20 million to get away***.

Eager and Hale's neglect of this situation and their recent wasting of $1.6 million in Trust funds in engineering the "cover up" Calcaterra Report raise serious concerns as to the Culpable Trustee's ability to properly deal with these trust monies. Given KRS's history of incompetence and dishonesty, the Tier 3 Plaintiffs are skeptical of turning any money over to KRS, let alone over $770 million, without any safeguards.

Under these circumstances, the Court should, based on Rule 67.02 of the Kentucky Rules of Civil Procedure, direct these Defendants to pay over the withheld funds, interest, and civil penalty payment to a Special Fiduciary located in Kentucky for the benefit of the KRS trusts, ***who***, ***in consultation with plaintiffs' counsel and under Court oversight***, ***will safeguard and invest these Trust Funds pending the final outcome of this action and further order of this Court***.[11]

[11] The Special Fiduciary can be compensated from the earnings from the $770-plus million fund, which at 4% a year will generate approximately $30 million a year.

III. An Accounting Should be Ordered

The remedy of accounting has existed as long as equity:

> An accounting sounding in equity is essentially … [an] equitable remedy, designed to compel a defendant to account for and pay over money owed to the plaintiff but held by the defendant.
>
> An equitable accounting is a restitutionary remedy. It is designed to prevent unjust enrichment and require the relinquishment of property when there is a breach of a fiduciary duty … Thus, an accounting does not yield a judgment for damages, but rather seeks to restore to the plaintiff what is rightfully his or hers.
>
> [A Plaintiff] seeking an equitable accounting … need not identify a particular asset or fund of money in the defendant's possession to which the plaintiff is entitled … where a court finds that the transactions are complicated, a fiduciary or trust relation exists, and there is a need for discovery, a court has the equitable power to compel an accounting by the agent who is not a trustee in the technical meaning of the word.

1A C.J.S. Accounting § 6 (2010); *see also* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 51 (2001) (recovery of all profits flowing from wrongdoing permitted — "often called disgorgement" or "accounting"). This Court has the inherent power to order an accounting. *Peter v. Gibson*, 336 S.W.3d 2, 5 (Ky. 2010).[12]

[12] This Court has broad remedial powers and can order interim relief during the pendency of this litigation, customized to the particular facts presented. "Courts of equity have extensive power in seeing that trust estates are preserved to the advantage of beneficiaries." *Breetz*, 293 Ky. at 531. "For several hundred years, courts of equity have enjoyed sound discretion to consider the necessities of the public interest when fashioning injunctive relief. … The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. … In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *United States v. Oakland Cannabis Buyers' Coop.*, 532 U.S. 483, 496 (2001) (cleaned up) (quoting *Hecht Co. v. Bowles*, 321 U.S. 321, 329–30 (1944), and *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). And "where a suit in equity concerns the public interest as well as the private interests … this doctrine assumes even wider and more significant proportions …. It not only prevents a wrongdoer from enjoying the fruits of its transgressions but it averts an injury to the public." *Precision Instrument Mfg. Co. v. Auto Maint. Mach. Co.*, 324 U.S. 806, 815 (1945).

These Defendants should be ordered to provide an accounting regarding the $137 million so that the Tier 3 Plaintiffs and other trust beneficiaries will get answers to their questions. Has the $137 million been commingled with KKR's or KKR-Prisma's operating funds? Has anyone profited from this? What has been done with the $137 million in trust funds over the last four years? Why did they earn nothing for over four years?

This Court has the tools necessary to deal with this situation and the power to direct the KKR Defendants and KKR-Prisma Defendants to take action with respect to matters concerning the litigation. The requested order to pay over $770-plus million flows directly from the alleged misconduct and invalidity or inapplicability of the indemnity clause in the Daniel Boone Investment Contract, and KKR's and KKR-Prisma's breach of their fiduciary duties — key issues in this case and part of the equitable relief prayed for. After an accounting, the Tier 3 Plaintiffs may seek further relief from these Defendants.

CONCLUSION

For the reasons set forth above, the Court should grant this motion and enter the accompanying proposed order.

This rule is universal in our jurisprudence. *See*, *e.g.*, *Bechtel v. Wier*, 152 Cal. 443, 446 (Cal. 1907) ("The powers of a court of equity, dealing with the subject-matters within its jurisdiction, are not cribbed or confined to the rigid rules of law. From the very nature of equity, a wide play is left to the conscience of the chancellor in formulating his decrees, that justice may be effectually carried out … to be capable of dealing with novel conditions."); *Flanigan v. Munson*, 175 N.J. 597, 608 (N.J. 2003) ("[C]ourts are authorized to impose a constructive trust wherever specific restitution in equity is appropriate on the facts … to prevent unjust enrichment and force a restitution to the plaintiff of something that in equity and good conscience does not belong to the defendant. … When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee.") (cleaned up) (quoting *Beatty v. Guggenheim Exploration Co.*, 225 N.Y. 380, 386 (N.Y. 1919) (Cardozo, J.)).

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Respectfully submitted,

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