



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

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DANIEL S. OCH, HAROLD KELLY, )  
JR., RICHARD LYON, JAMES )  
O’CONNOR, and ZOLTAN VARGA, )  
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Plaintiffs, )  
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 )  
v. ) C.A. 2022-\_\_\_\_-\_\_\_\_  
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SCULPTOR CAPITAL )  
MANAGEMENT, INC., )  
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Defendant. )  
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**VERIFIED COMPLAINT FOR INSPECTION  
OF BOOKS AND RECORDS UNDER 8 DEL. C. § 220**

Plaintiffs Daniel S. Och, Harold Kelly, Jr., Richard Lyon, James O’Connor, and Zoltan Varga (collectively, the “Founders”), by and through their undersigned counsel, respectfully submit this Verified Complaint to Compel Inspection of Books and Records under 8 *Del. C.* § 220. The Founders allege, upon knowledge as to themselves and their own actions, and upon information and belief as to all other matters, as follows:

**NATURE OF MATTER**

1. The Founders, who number among the Company’s original and largest stockholders, bring this Section 220 action to enforce their statutory right to inspect certain books and records of Sculptor Capital Management, Inc. (“Sculptor” or the

“Company”), an alternative asset management firm. Either directly or through trusts, the Founders hold over 15% of Sculptor’s outstanding equity.

2. The Founders believe that Sculptor’s Board of Directors (the “Board”) may have breached its obligations to the stockholders by granting a series of escalating compensation awards to James Levin—the current Chief Executive Officer (“CEO”) and Chief Investment Officer (“CIO”). The latest award netted Mr. Levin \$145.8 million in compensation in 2021, exceeding the pay of the CEOs of nearly every other public company in the United States, including Apple, JP Morgan Chase, and Goldman Sachs.

3. The Founders seek to bring daylight and transparency to the corporate governance problems at Sculptor. Many of the requests for documents made in this Complaint concern decisions that have been severely criticized by independent third parties, including Institutional Shareholder Services (“ISS”), Institutional Investor, Citigroup Research, and Bloomberg. As significant and longstanding stockholders, the Founders are entitled to better understand what has transpired and to evaluate their options to rectify this apparent misconduct and mismanagement.

4. During the two-year period since Mr. Levin was designated the incoming CEO, he has devoted himself to entrenching his position at the Company, shaping the Board of Directors, and wielding that resulting leverage to extract ever-escalating pay packages. Yet, while bringing massive returns to his own pocket,

Mr. Levin has delivered less than mediocre performance to the limited partners in Sculptor's investment funds, and the Company's stock price has collapsed. This "Structural Performance Deficit," which results from the Board's failure to manage Mr. Levin and his ever-escalating demands, threatens the Company's core business to the detriment of stockholders and investors.

5. Mr. Levin has been paid in the 99th-percentile of public company executives even while Sculptor's market capitalization has fallen in the bottom quartile. As Bloomberg recently recognized, the compensation awarded to him reflected "a staggering amount at a firm with a market value then around \$1 billion" and which has since sunk below \$560 million.<sup>1</sup> The same Bloomberg report identified Mr. Levin as the 14th highest-paid CEO in the country in 2021. Sculptor's annual revenues, which last year were \$626 million, cannot possibly justify, much less support, paying a CEO hundreds of millions of dollars a year. The Company can hardly remain financially viable when such stratospheric payouts are directed to a single executive.

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<sup>1</sup> Anders Melin, *Outrage at Hedge Fund Proves Futile as U.S. CEOs Reap Record Pay*, Bloomberg (Aug. 18, 2022) ("Even in the moneyed world of high finance, advisers warned, Jimmy Levin's pay deal was an exceedingly rich one. The newly appointed chief executive officer of Sculptor Capital Management Inc. would almost certainly make around \$100 million a year, they told the hedge fund's board. And if results were good, Levin's haul could very well approach twice that—a staggering amount at a firm with a market value then around \$1 billion.").

6. A prudent and independent Board could not have concluded that Mr. Levin's skill as an investment adviser warranted such compensation because Sculptor has lagged behind its industry peers. In 2021, Sculptor's main fund returned just 5%, running 10% behind its competitors, and ranking "near the bottom of the pack compared with its multistrategy peers."<sup>2</sup> Sculptor has lagged even further behind in 2022, with the main fund down 13.2% in the first half of the year—16.6% behind the average of its peers and over 30% behind the market leader.<sup>3</sup> Sculptor's massive underperformance during both the market's upswing in 2021, and the market's decline in 2022, has created a performance chasm unprecedented in the Company's history.

7. Moreover, under Mr. Levin's new contract, the Board has insulated Mr. Levin from this poor investment performance by, inter alia, (1) severely watering down the high-water mark protections that typically prevent investment fund managers from earning performance fees absent gains for their investors,

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<sup>2</sup> Hema Parmar and Tom Maloney, *Hedge Fund Millions Are at Stake in Sculptor CEO Pay Dispute*, Bloomberg (Feb. 8, 2022) ("Last year, when Sculptor's main fund returned 5%—near the bottom of the pack compared with its multistrategy peers—Levin collected a bonus of almost \$48 million, mostly in cash.").

<sup>3</sup> Hema Parmar, *Sculptor Capital Says Investors Pulled \$138 Million in Down Year*, Bloomberg (Aug. 3, 2022) ("Investors pulled \$138 million from Sculptor Capital Management's main hedge fund in the second quarter as it failed to make money, reversing a trend of inflows the firm had been seeing. The multi-strategy Master fund and associated portfolios fell 10.6% in the second quarter—losing about \$1.2 billion and leaving it down 13% for the first half of the year.").

(2) substantially expanding the number of funds (as well as the percentage of profits from those funds) giving rise to extra payments to Mr. Levin, and (3) irresponsibly preserving Mr. Levin's opportunity for a bonus opportunity, even in years when the funds lose money. Mr. Levin's outsized and unjustified compensation creates misalignment between the Company and its investors, strains the Company's balance sheet, and limits its ability to attract, pay, and maintain high-quality investment talent.

8. While investors in Sculptor's funds have suffered, stockholders have done even worse. On April 1, 2021, the day that Mr. Levin became CEO, Sculptor's stock price closed at \$22.21. By December 17, 2021, the day that the Board approved Mr. Levin's latest compensation package, the stock had declined to \$20.02. By comparison, the S&P 500 increased 15% over that same period. Since the Board announced that package, Sculptor's stock price has fallen off a cliff. As of August 23, 2022, the stock price had fallen to \$9.56.

9. Sculptor's depressed stock price has led outside analysts to conclude that the Company is worth less than the sum of its parts. In February 2022, Citigroup advised that at \$12.50 per share (*notably*, 31% more than its *current* stock price), the Company's balance sheet appeared to be worth \$2.50 more per share than its value

as a combined concern.<sup>4</sup> In other words, in addition to the Structural Performance Deficit, the Company faces a “Structural Stockholder Deficit” in which the public markets have placed a significant discount on the share price because of the executive management of the firm, which has demolished stockholder value.

10. In view of these twin structural deficits, the Board’s December 2021 decision to award Mr. Levin such a massive compensation package (“the Compensation Package”) cannot be explained by any objective metric of performance. Mr. Levin instead has apparently created an environment in which the Board cannot function. Since January 2020, *seven* directors have departed, including *five* who resigned mid-term. All but one of those directors left without providing the public any detailed explanation for why they chose to depart. Mr. Levin has capitalized on these departures to appoint directors who appear hand-picked to serve his interests.

11. Because of that turnover, when the Board approved the Compensation Package, only one of the four outside directors voting in favor had served for more

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<sup>4</sup> William R. Katz, et al., Citi Research, *Sculptor Capital Management: Are the Parts Worth More Than Their Sum?* (Mar. 10, 2022). The Citigroup report points out that Sculptor’s balance sheet, CLO and real estate businesses are worth \$15 per share. Yet, the report observes that Sculptor’s entire hedge fund and opportunistic credit businesses as well as all of its future growth had a negative value of \$2.50 per share, at the then-share price of \$12.50 per share. At current values, the Structural Stockholder Deficit is even larger.

than thirteen months. That director, Marcy Engel, last stood for reelection in June 2021, and at that time, ISS recommended that stockholders withhold their votes because of her key role in approving Mr. Levin's last pay package. *See infra* ¶ 49. Despite this independent criticism of her performance, the Board promoted her to board chair and increased her 2021 compensation by 88%. *See infra* ¶ 72. In other words, during the very same year when Ms. Engel was supposed to be representing the stockholders' interests in negotiating with Mr. Levin over his latest demands, the Company chose to nearly double her compensation, which at a minimum, creates a question concerning whether her interests remained aligned with those of other stockholders.

12. While Ms. Engel's recent pay increase casts doubt on her independence, there can be no question at all about the independence of another director on the Board, Wayne Cohen, whose vote proved decisive in approving the latest Compensation Package. As part of his last compensation package, Mr. Levin received the right to appoint a second director to the Board, and he chose to appoint Mr. Cohen, his direct subordinate. Mr. Cohen therefore is plainly not independent of Mr. Levin. New York Stock Exchange ("NYSE") listing rules require that only independent directors vote on CEO compensation. Because the Company's Governance Agreement requires five directors to approve any changes in Mr. Levin's compensation, the Board asked Mr. Cohen to vote to approve the measure.

The Compensation Package passed by a vote of 5-1, with only Mr. Levin recusing. Had Mr. Cohen failed to vote for his boss's compensation, the Compensation Package would not have received the required votes.<sup>5</sup>

13. Third-party advocates have sharply criticized the Company's corporate governance failures and the extraordinary payments to Mr. Levin. In advance of Sculptor's June 2022 annual meeting, ISS criticized the Compensation Package for its "extraordinary magnitude" and as "excessively dilutive." ISS, Proxy Analysis and Benchmark Policy Voting Recommendations (the "2022 ISS Proxy Report"). In the same report, ISS gave Sculptor its worst possible score (10) in the Compensation category. ISS further indicated "High" concern based on (1) pay and TSR performance alignment on a three-year basis, (2) one-year pay as a multiple of the median for ISS-selected peers, and (3) absolute pay and TSR alignment over five years. ISS recommended that stockholders object by withholding votes for the sole director on the proxy ballot and by opposing the Company's management equity plan.

14. At the annual meeting, a substantial majority of the unaffiliated stockholders appear to have agreed with those recommendations. As to the

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<sup>5</sup> The Founders also have concerns about the propriety of the vote of Bharath Srikrishnan, whose independence the Company compromised by committing to acquire \$3 million in membership interests in BharCap Sponsor LLC, a sponsor for a special purpose acquisition company controlled by him.



director's election, 27,953,270 votes were cast in favor, and 17,389,307 votes were withheld. The management equity plan was similarly approved by 27,796,485 votes, compared to 17,164,101 votes opposed. In fact, the Board nominee and management equity plan only appears to have received majority support because of the more than 15 million shares controlled by Mr. Levin and other Sculptor insiders. Although Sculptor has declined to produce the tabulation report requested by the Founders, a majority of the unaffiliated stockholders appear to have voted to withhold support for the directors and to cast their votes against the management equity plan.

15. Mr. Levin's extraordinary and unjustified compensation follows years of weak Board oversight and control, during which what was once a Board comprised of truly independent members came apart, and the new Board demonstrated itself unwilling to take the basic steps necessary to supervise management and protect the stockholders. As CEO, Mr. Levin should have been focused on the financial success and overall strength of the Company, not his own compensation. Yet his efforts to entrench himself as both CEO and CIO has limited the hiring of investment and management talent, has constrained the compensation available for others in the talent pool, and has contributed to the Company's dramatic decline in performance.

16. Notwithstanding the Structural Performance Deficit, Structural Stockholder Deficit, and talent drain, the Board has proven itself unwilling to reduce

Mr. Levin's key-man leverage, either by imposing meaningful restrictions in his employment agreements, by engaging in meaningful succession planning, or by considering any internal or external alternatives. Instead, Mr. Levin has pushed the Board to agree to a series of escalating compensation agreements that are divorced from performance and cannot be supported by the core earnings power of the Company.

17. Under the Compensation Package that the Board approved in December 2021, Mr. Levin would receive annual compensation that the Board's compensation consultant estimated to be \$94.3 million annually under a conservative projection and which could potentially rise to well over \$200 million annually. In addition, Mr. Levin would receive an equity award, which was valued at \$113 million on the grant date (based on the Company's December 23, 2021 stock price), and which would increase his total stock holdings to approximately 20.7% of all outstanding shares. Based on these awards, the Company's 2022 Proxy recently disclosed that Mr. Levin earned approximately \$145.8 million in combined cash and stock awards in 2021.

18. The Board's process for reviewing the Compensation Package appears to have been woefully deficient. J. Morgan Rutman, the last independent director to oppose Mr. Levin's demands, publicly disclosed many of these problems in his resignation letter, which the Company disclosed to the Securities and Exchange

Commission. A true and correct copy of Mr. Rutman's resignation letter, dated February 2, 2022, is attached hereto as **Exhibit 1**.

19. Mr. Rutman explained that, at the time Mr. Levin pushed the Board to designate him as the CEO, he prevented the directors from considering any other candidates, from taking any measures to reduce Mr. Levin's key man leverage, or from even negotiating a CEO compensation package *before* the Company publicly announced Mr. Levin's elevation. Considering more than one candidate for CEO is one of the core responsibilities of the Board. Yet inexplicably, the Board appears to have made no effort to consider alternatives to Mr. Levin or to consider strategic transactions that might have reduced the threat of any departure. The Board instead supinely met his demands and allowed Mr. Levin to place his interests ahead of the Company's.

20. When it came to the Compensation Package, Mr. Rutman reported that the Board again found itself a hostage to Mr. Levin's demands. The Board did not engage in any effort to benchmark the Compensation Package against the Company's true peers or seriously consider why a package of this magnitude would be necessary or in the Company's best interests. Nor did the Board appear to have truly considered how these awards would dilute the interests of other stockholders or shrink the pool of cash and equity available to compensate other Sculptor executives.

21. The Founders therefore have brought this action because they seek the information necessary to understand how the Board has gotten to this point. The Founders have a credible basis to believe that Mr. Levin's tactics have harmed, and are continuing to harm, Sculptor's returns for its limited partners. The Founders see the impact on fund performance; they see the impact on the alignment between management and investors; and they see the impact it has had on investment in the funds and the assets under management by the Company.

22. The Founders have significant concerns about, among other things, (i) the Board's decision to elevate Mr. Levin, who has a history of putting his own interest ahead of the Company's, to CEO without considering any other candidates; (ii) the process—and more specifically, the lack of process—involved in that decision and the lack of any effort to reduce key-man risk; (iii) how the Board came to conclude that Mr. Levin's Compensation Package was in the interests of the Company's stockholders; (iv) the process by which the Board reviewed and approved the Compensation Package, including whether the Company complied with corporate governance policies and procedures; (v) the independence of the directors who voted to approve Mr. Levin's Compensation Package; (vi) the reasons for the continued director attrition; (vii) the veracity and completeness of statements made by the Company in the December 21, 2021 8-K concerning the Compensation Package; and (viii) the adequacy of the Board's policies, procedures, and safeguards

to oversee Mr. Levin, to ensure compliance with applicable laws, and to ensure that Company decisions are made in the best interests of stockholders.

23. On April 28, 2022, the Founders exercised their rights under Section 220 of the Delaware General Corporation Law to seek information related to the management of the Company and the serious issues summarized above (the “Section 220 Demand”). The information requested therein is necessary to investigate potential breaches of fiduciary duty and other wrongdoing related to mismanagement and waste, including with respect to the Board’s approval of the Compensation Package, the independence of the directors on the Board, and the propriety and accuracy of the Company’s public disclosures.

24. In the four months since the Founders submitted the Section 220 Demand, the Company has produced only a fraction of the requested material and has refused to produce many of the key books and records.

25. The Company has refused to respond to the Founders’ request to run email searches for specific custodians and search terms. These email searches are necessary because the Company has failed to produce formal minutes and materials of the Compensation Committee, despite the Company’s claim in a Form 8-K that this Committee “held dozens of meetings over a four-month period, including 15 with Semler Brossy,” its compensation consultant, regarding the Compensation Package. Because the Company has not produced formal documentation, the

Founders have no recourse other than to seek emails surrounding the negotiation, evaluation, and assessment of Mr. Levin's Compensation Package. Yet the Company has refused to produce emails in which the Company's executives, including Board members Mr. Levin and Mr. Cohen, discuss and structure the terms of the Compensation Package.

26. The Company has likewise withheld critical information related to the Board's assessment of the independence of various directors. The Company has declined to produce material documenting why five of the seven directors left the Company, and the Company has heavily redacted additional documents bearing on the directors' independence. In addition, the Company has refused to produce the employment file and any performance records relating to Mr. Levin, even though the Company has claimed publicly that his performance justifies his outlandish compensation.

27. In this action, Plaintiffs seek an order compelling the Company to produce:

- a. Communications, including emails and text messages, between or among Mr. Levin, Mr. Cohen, Dava Ritchea (the Company's Chief Financial Officer), and any other Officer or Director of the Company concerning the Compensation Package.<sup>6</sup>

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<sup>6</sup> Electronic communications should be collected pursuant to the custodians, search terms and date ranges in Appendix A to Mr. Levander's July 10, 2022 letter on behalf of the Founders to Sculptor's counsel.

- b. Outlook calendars, emails, or notes reflecting any meetings or oral, video or telephonic discussions by the members of the Compensation Committee concerning the Compensation Package.
- c. Communications, including emails and text messages, sent to, from, or among Board members related to the Board's decision to: (i) designate and later appoint Mr. Levin as CEO, including any measures taken to search for alternative CIO or CEO candidates, and Mr. Levin's threat to leave and destroy Sculptor if the Board considered other CEO candidates; (ii) renegotiate Mr. Levin's CIO agreement in June 2020, prior to and separate from the negotiation of the Compensation Package; and (iii) publicly announce Mr. Levin as CEO before negotiating an employment agreement with him.
- d. Materials regarding Sculptor's actual or potential investment in BharCap Sponsor LLC, or any other entity affiliated with an Officer or Director of Sculptor, including any memoranda or other materials documenting or evaluating such investment sent between or among Mr. Levin or the members of the Board; unredacted Conflict Committee minutes and materials related to Sculptor's and/or any Officer's or Director's potential or actual investment in BharCap Sponsor LLC; and documents sufficient to show all actual investments by Sculptor, if any, in a Special Purpose Acquisition Company other than Bharcap Sponsor LLC.
- e. Mr. Levin's personnel file and performance evaluations to the extent they address (i) the performance of the funds during Mr. Levin's service as CIO or CEO; (ii) Sculptor's investment performance as compared to peer funds during Mr. Levin's service as CIO or CEO; and (iii) any issues regarding Mr. Levin's qualifications to be CEO.
- f. From December 1, 2020 to the present, documents sufficient to show any agreements with each non-employee member of the Board regarding their compensation; the award of Restricted Stock Units, Restricted Class A Shares or Deferred Cash Interests to any non-employee member of the Board, including the determination of the grant date for such awards, and the Company's valuation of such awards on their grant date; and the changes in compensation of any non-employee member of the Board.

## **PARTIES**

28. Defendant Sculptor is a publicly traded alternative asset manager. Sculptor is a Delaware corporation with its principal place of business located at 9 W 57th St, 39th Floor, New York, NY 10019.

29. In 1994, Plaintiff Daniel S. Och founded Och-Ziff Capital Management. In 2007, the Company completed an initial public offering and listed its Class A Stock on the NYSE. After Mr. Och retired as Chairman of the Board, and at his request, the Company changed its name, becoming Sculptor in September 2019.

30. Each of the Founders currently holds, either directly or through trusts under their control, Class A Units, which reflect direct ownership interests in the Company's operating partnerships. In addition, each owns a corresponding amount of Class B Stock, which has equal voting rights with the publicly traded Class A Stock. The Founders generally have a right to exchange a Class A Unit and a Class B Share for an equivalent number of Class A Shares in a taxable transaction. Separate from their ownership of the Class A Units/Class B Shares, certain Founders, such as Mr. Och, also hold a significant number of Class A Shares.

31. The Founders have continuously held Sculptor stock since the Company's 2007 public offering, and they are committed to holding stock in Sculptor until the conclusion of all proceedings contemplated by the Section 220



Demand. Indeed, they have rejected repeated overtures by Mr. Levin to buy them out using Company funds.

## **JURISDICTION**

32. The Court has jurisdiction under 8 *Del. C.* § 220.

33. The Court has personal jurisdiction over the Defendant because the Company is organized under the laws of the State of Delaware.

## **BACKGROUND**

### **A. The Company And The Recapitalization**

34. In February 2019, as part of a generational change in leadership, the Company completed a recapitalization pursuant to which the Founders and other partners holding Class A Units (generally, retired partners), agreed to forego significant economic value to benefit the long-term interests of the Company. The goal of the recapitalization was to align the current and future management's interests with the stockholders and to promote the Company's long-term success.

35. The Founders did not cede this value lightly. They agreed to the recapitalization because they believed that it would ultimately redound to the stockholders' benefit. As part of the recapitalization, the Founders effectively forfeited 35% of their Class A Units to existing members of senior management and new hires, including Mr. Levin and then-Chief Operating Officer Wayne Cohen. Mr. Levin received over 3.5 million units in connection with the recapitalization.

36. In addition, as part of the recapitalization, the Founders agreed to a “Distribution Holiday,” which suspended their right to share in distributions until either (i) the Company achieved \$600 million in distributable income; or (ii) April 1, 2026. By foregoing the \$600 million in distributions, the unit holders sought to enable the Company to use those earnings to rebuild its balance sheet and invest in the Company’s future. In addition, Mr. Och agreed to retire as Chairman of the Board effective March 31, 2019.

37. At the time of the recapitalization, the Founders were concerned that Mr. Levin (and Mr. Cohen) had demonstrated an interest in taking steps to increase their own compensation in excess of what would be available to them at other funds and to the detriment of available compensation for other employees, as well as the broader interests of the Company’s stockholders. In order to protect the Company going forward, the Founders negotiated for protections that would incentivize incumbent management while safeguarding stockholders’ interests.

38. In exchange for the Founders’ concessions, the Company agreed to significant corporate governance provisions. A key protection provided that, during the Distribution Holiday, the Board could not modify the compensation of Mr. Levin or other senior executives without the approval of (i) the CEO (then Robert Shafir) and the Compensation Committee of the Board; and (ii) at least five out of seven members of the Company’s Board, supported by the advice of a third-party

compensation consultant. Each of the contracts between the Company and the senior executives, including Mr. Levin, restated this provision. These protective provisions sought to align Company management with the interests of the stockholders, and they were designed to ensure that the Founders' financial sacrifice would not simply go into management's pockets.

**B. Mr. Levin Repeatedly Renegotiates His Compensation Packages, Demands Increasingly Exorbitant Awards, And Drives Away Independent Directors**

39. Since the recapitalization, Mr. Levin has leveraged his now joint roles as CIO and CEO and capitalized on significant turnover among the members of the Board to renegotiate his compensation each year. Remarkably, he has demanded—and the increasingly ineffectual Board has agreed to—an ever-larger share of returns, catapulting his pay to stratospheric levels, well beyond what would be sensible for a company the size, and with the limited profitability, of Sculptor.

40. Mr. Levin has dramatically increased his pay by repeatedly initiating, and successfully renegotiating, “long term” deals with the Board. Each time, the Board not only yielded, but, worse yet, took no measures to prevent history from repeating itself, such as by demanding that Mr. Levin agree to serve out the term of his latest “long term” deal prior to renegotiating a new one, or by considering alternative CEO or CIO candidates.

41. In January 2014, Mr. Levin signed a lucrative ten-year deal as CIO. That deal lasted barely three years. Mr. Levin renegotiated a new one in 2017.

42. The 2017 deal did not even make it three years—Mr. Levin renegotiated in 2018, receiving 1.34 million restricted stock units (“RSUs”) valued at over \$32 million, and the chance for a potentially massive bonus, based on the capital appreciation generated by certain funds multiplied by a “participation ratio.” The 2018 deal set the participation ratio between 1.1% to 1.5%.

43. The very next year, in 2019, Mr. Levin negotiated another new deal, receiving a new grant of 3,290,511 Class E-1 Units, which ISS valued at \$43.7 million. This new package paid approximately \$60 million in cash and equity compensation in its first year alone. In its 2020 Proxy Report (“2020 Proxy Report”), ISS objected to the 2019 compensation deal, noting that “Levin received [] additional sizable equity awards that lack performance-vesting criteria,” and that, with respect to the portion of his bonus driven by fund performance, “the proxy statement does not provide sufficient information to allow stockholders to assess the linkage between company performance and the ultimate payout, which in this case exceeded \$17 million for the fund performance component of Levin’s bonus alone.”

44. In his resignation letter, Mr. Rutman recounted how he advised his fellow directors in February 2020 that they needed to exercise due care before committing to elevate Mr. Levin to CEO. Mr. Rutman urged the Board to evaluate

the perceived key-man dependency on Mr. Levin and seek to reduce it by (i) evaluating internal and external alternatives and (ii) developing a clear succession plan. He also advised his fellow directors that, if they were inclined to publicize their decision to designate Mr. Levin as the incoming CEO, they should negotiate an employment agreement beforehand, so as to ensure that the Company would have at least some leverage in negotiating its terms.

45. The Board ignored Mr. Rutman. The Board apparently did not evaluate any other candidates for the CEO position. In fact, the Board apparently promised Mr. Levin that it would not do so. In February 2020, by a vote of 5-2, the Board named Mr. Levin as CEO-apparent, without first reaching any agreement governing his compensation in that role or locking in a term of years during which such agreement would control.

46. Shortly thereafter, in April 2020, the Chair of Compensation Committee, Allan Bufferd, decided not to stand for re-election at the Company's annual meeting.

47. Mr. Levin did not wait until his elevation to CEO to extract more money from the Company. In June 2020, just over a year into his 2019 deal, Mr. Levin renegotiated his CIO agreement. Mr. Levin's annual compensation increased yet again, raising his participation ratio to 1.75% and increasing his guaranteed annual bonus to \$10 million. Mr. Levin also increased his control over the Board by

winning the right to appoint a member of his management team. Mr. Levin exercised that right by filling the seat of the retiring CEO, Mr. Shafir, with Mr. Cohen, Mr. Levin's loyal subordinate.

48. Remarkably, the Board agreed to renegotiate Mr. Levin's CIO compensation even though it had not yet negotiated an agreement for his compensation as CEO. The Board also apparently ignored Mr. Rutman's suggestion that it seek the advice of a compensation consultant concerning whether and how such a two-step negotiation could serve the Company's interest.

49. In advance of the June 2021 annual stockholder meeting, ISS expressed its disapproval. In its 2021 Proxy Report, ISS's "Key Takeaways" were that "[t]he company demonstrated only limited responsiveness to last year's low say-on-pay vote result. In addition, there are significant concerns surrounding the structure of the bonus program, including sizable, guaranteed bonuses and the lack of a cap on the CIO's bonus. Further, equity awards lack performance vesting criteria." Accordingly, ISS recommended stockholders "WITHHOLD" votes for Compensation Committee Chair Marcy Engel in June 2021.

50. Between June 2020 and November 2021, five more members of the seven-person Board departed. Three of those directors had served on the Compensation Committee. Four left before the end of their terms. In September 2020, Michael Fascitelli resigned mid-term without explanation. In February 2021,

Richard Ketchum, the Chairman of the Board, did the same. In March 2021, Mr. Shafir agreed to step down immediately from the Board upon his retirement as CEO, without staying on the Board through the end of his term as a director. In April 2021, Georganne Proctor chose not to seek re-election at the end of her term. In November 2021, while the Committee was discussing Mr. Levin's latest Compensation Package, Meghna Desai, who had served on the Board less than a year, resigned. These departures left the Board with only two Compensation Committee members to review the Compensation Package, and a full Board comprised of individuals with little to no involvement in the history of Mr. Levin's prior packages and demands.

### **C. Mr. Levin's Exorbitant 2021 Compensation Package**

51. In October 2021, well over a year after the Board designated Mr. Levin as the incoming CEO, and after he had started the job, the Compensation Committee finally began negotiating his compensation as CEO. That massive package was apparently only presented to the full board in December and approved just two weeks later.

52. The Compensation Package dramatically increased the participation ratio that determines Mr. Levin's annual bonus. Mr. Levin's new participation ratio was increased to between 2.75% and 5.225% of certain revenues, based on the performance of Sculptor funds. At the high end, this would be triple the 1.75%

participation ratio that Mr. Levin had just renegotiated in June 2020. Mr. Rutman discussed the analysis of Semler Brossy, the Compensation Committee’s consultant, in his resignation letter. According to Mr. Rutman, Semler Brossy estimated that under a conservative base scenario, Mr. Levin would receive an annual bonus worth \$94.3 million per year under this formula, and he might receive in excess of \$200 million per year under an upside scenario.

53. Mr. Levin was also awarded carried interest on assets that had been excluded from his carry pool in all prior deals. Semler Brossy anticipated the payout to Mr. Levin from these additional interests would approach \$25 million annually starting in 2025.

54. In addition to the annual bonus, Mr. Levin received yet another exorbitant equity grant—1.4 million RSUs and 5.4 million Performance Shares—with a grant-date value of \$113 million. Apparently, this sizable equity grant was not enough. Just six weeks later, on January 31, 2022, “in recognition of the significant accomplishments of our management team,” the Compensation Committee decided to grant Mr. Levin an additional “one-time” award of 700,000 RSAs and 700,000 RSUs that vest over the next three years.

55. All told, these equity awards bring Mr. Levin’s pro-forma holdings to approximately 12.5 million shares, or approximately 20.7% of all outstanding shares.



**D. The Board Relies On A Highly Qualified Compensation Opinion And Appears To Fail To Exercise Due Care In Approving The Compensation Package**

56. Although the Governance Agreement required that the Board's approval of the Compensation Package be supported by the advice of a compensation consultant, it is not at all clear that Semler Brossy truly "supported" the conclusion sought by Mr. Levin and a majority of the directors. According to Mr. Rutman, Semler Brossy opined that the Compensation Package would provide Mr. Levin with a total compensation package that would "rank" him "among the highest paid CEOs in recent years" and that would be "exceedingly rare" even under a base scenario. Semler Brossy likewise concluded that it would be "exceedingly rare" to approve the massive dilution to other stockholders that would come from awarding Mr. Levin such a massive equity grant.

57. According to Mr. Rutman, the Board apparently did not engage in a meaningful effort to benchmark the Compensation Package against the Company's true peers or to compare Mr. Levin's performance to that of any other asset managers. If it had, the Board would have seen that Sculptor's performance lags substantially behind its competitors. In 2020, for example, the Company's Sculptor Credit Opportunities Master Fund lost money, while many of its peers generated substantial growth.

58. To find “comparable” companies for the base scenario, Semler Brossy looked at some of the world’s highest paid private alternative asset managers. Yet those managers were not the CEOs of *public* companies, and their compensation arose from interests acquired in founding their companies and from their carried interest in assets that had appreciated under their management. The compensation did not come from grants of equity provided by an employment agreement.

59. To find “comparable” *public* companies for the upside scenario, Semler Brossy compared Sculptor with some of the most valuable companies in the world, including Tesla, Alphabet, and Oracle. None of these technology companies is remotely comparable to Sculptor, and their executives’ compensation reflects the appreciation in the value of stock held by founders and principals of the companies. Notably, Mr. Levin is not a founder and has not achieved any meaningful appreciation in value during his tenure as CEO. ISS agrees. In its 2022 ISS Proxy Report, ISS described Sculptor’s supposed peers as “aspirational,” with revenues more than five to forty times greater than the Company’s.

60. Accordingly, Semler Brossy cautioned the Board: “Given such limited precedent, it is critically important that the Compensation Committee and Board are comfortable that: (i) the design of the Management Equity Grant RSUs and MSVCP Performance Shares programs appropriately serves the stated objectives and unique needs of the organization, and (ii) that the performance requirements underlying the

MSVCP Performance Shares include sufficiently rigorous hurdles to substantiate the associated dilution for shareholders.” The Board appears to have disregarded Semler Brossy’s warnings.

61. The Board does not appear to have made any effort to consider, among other factors, (i) the compensation packages awarded to CEOs at the companies Sculptor identified in its 2021 proxy as its peer group, (ii) why Mr. Levin’s 2021 Compensation Package should be compared to the compensation for CEOs of companies with market capitalizations up to eighty times that of Sculptor, (iii) how Sculptor’s mediocre performance compared to these successful companies, and (iv) the disproportionate impact this off-market compensation has on the earnings power of the Company and its ability to generate market returns to the stockholders. ISS’s independent evaluation found Mr. Levin’s compensation to be 17.7 times the median of Sculptor’s peers.

62. There is no indication that the Board undertook any analysis, much less an adequate one, to determine whether such a large Compensation Package was truly necessary to retain Mr. Levin, particularly given the lucrative June 2020 compensation package under which he was already working. If the Board had a genuine fear that Mr. Levin might leave, the Board failed to take the basic steps necessary to negotiate protections for the benefit of the Company and its stockholders that would prevent Mr. Levin from continually renegotiating his

Compensation Package to extract even more wealth in the future, just as he has done over and over again during the last five years.

63. The Board apparently failed to consider whether the metrics in the Compensation Package would reward even mediocre performance. Although the Company conspicuously failed to disclose the precise formula to the stockholders, Mr. Rutman's resignation letter advised that, if the Company returned just 6% on its funds in a given year then Mr. Levin's participation ratio would be almost 4%. By comparison, in 2018, Mr. Levin's participation ratio was 1.1% to 1.5%; in 2019 it was .88% to 1.2%; and in 2020, it was 1.75%. Mr. Levin's new participation ratio is yet another example of his lack of alignment with other constituents. He can receive massive profits for himself even when the limited partners receive paltry returns.

64. Additionally, the Board does not appear to have considered the knock-on effect that the Compensation Package would have on other executives at the Company or on stockholder returns. By awarding Mr. Levin such a large percentage of returns, the Board necessarily decreased the pool of money available to other employees and decreased the returns available to stockholders. The Founders believe that the knock-on effect of the Compensation Package is a major factor in the Company's recent investment performance chasm and the destruction of stockholder value. Decreasing the money available to other employees undoubtedly

impacts the talent pool available to the Company and is likely to have even greater ramifications in the years to come.

65. The Board does not appear to have considered whether it was necessary or appropriate to award Mr. Levin carried interest on assets that had been previously excluded from his carry pool in prior compensation packages. As noted, these additional carried interest awards alone are expected to increase Mr. Levin's compensation by an additional \$25 million beginning in 2025.

66. The Board also failed to adequately consider the dilutive effect the equity awards would have on stockholders. As a result of Mr. Levin's repeated renegotiations, Mr. Levin's new equity awards will bring his pro-forma stock holdings to 12.5 million shares, representing ownership of approximately 20.7% of all outstanding shares. Semler Brossy conceded that "[t]he pro-forma amortized annual dilution of 3.1-3.6% would exceed competitive levels for the public, alternative asset management comparables," and "the 'headline' dilutive impact of the Proposals of approximately 14.9% of shares outstanding (on a net-basis) is exceedingly rare among publicly-traded companies." Semler Brossy's observation concerning the dilutive impact of the equity grant appears to have understated the problem, because it appears to have been limited to the equity grant and did not also include the earnings dilution suffered by the Company from the dramatic increase in

Mr. Levin's participation ratio, which would further dilute the profits available to the stockholders.

67. The Board also did not: (i) appear to consider the history of Mr. Levin's prior agreements, (ii) evaluate potential internal or external replacements for Mr. Levin, (iii) direct the Company to create a succession plan so it would be less dependent on Mr. Levin, or (iv) include provisions in Mr. Levin's 2021 Compensation Package and prior compensation packages preventing him from renegotiating.

68. For all of these reasons, the approval process raises substantial corporate governance concerns, and it suggests that the Compensation Package was little more than a *fait accompli* orchestrated by Mr. Levin.

**E. The Board Granted Mr. Levin The Compensation Package Through A Vote That Included One Or More Interested Directors**

69. Sculptor is listed on the NYSE, which requires that CEO compensation be approved either by the Compensation Committee (which must be composed entirely of independent directors), or by a vote of all the independent directors. However, the Company's Governance Agreement required five Board members vote in favor to approve any changes to executive compensation. To comply with the Governance Agreement the Board invited Mr. Cohen, Mr. Levin's subordinate, to vote.

70. As a Sculptor executive, Mr. Cohen was not independent. He not only reports directly to Mr. Levin, but he received his appointment to the Board from Mr. Levin, and Mr. Levin has a role in determining his compensation.

71. The Board also allowed director Bharath Srikrishnan to vote, even though the Company had recently committed to acquire \$3 million in membership interests in BharCap Sponsor LLC, a sponsor for a special purpose acquisition company controlled by Mr. Srikrishnan. The Founders have genuine concerns that Mr. Srikrishnan was not independent and should not have been permitted to vote.

72. There is also reason to doubt the independence of Marcy Engel, the Chair of the Board and the Chair of the Compensation Committee. During the period in which she led the Compensation Committee's consideration of the Compensation Package, her director compensation almost doubled, from \$241,532 in 2019 and \$257,229 in 2020 to \$482,079 in 2021. Her predecessor as Chair of the Compensation Committee, Allan Bufferd, received only \$231,651 in 2019. The Company's most recent proxy provides no explanation for why Ms. Engel's total director compensation increased by at least \$224,850 in a single year. The sudden spike in her compensation is cause for concern, particularly given her leadership of the Board and the Compensation Committee, and her service as the only outside director with any tenure who supported the Compensation Package. When she last

stood for reelection in 2021, ISS recommended that stockholders withhold their votes against her, precisely because of the Company's flawed compensation policies.

73. On December 17, 2021, the Board purportedly approved the Compensation Package by a vote of 5-1, with only Mr. Levin abstaining. Mr. Rutman was the sole director who voted against the package. Absent the votes from Mr. Cohen, Mr. Srikrishnan, or Ms. Engel, the Board would not have approved the Compensation Package.

74. In addition to requiring the five votes to approve the Compensation Package, the Governance Agreement required approval of the Compensation Package to be "supported by the advice of a third-party compensation consultant." Given Semler Brossy's halfhearted conclusions, it is not at all clear that their advice truly constituted "support" for the Board's decisions.

75. Further, the Board's evaluation and approval of the Compensation Package follows an extended period wherein the Board failed to consider alternatives or to take steps to prevent Mr. Levin's habitual renegotiation of his compensation deals. The Board's failures here amounted to shirking its duties to fulfil one of the most crucial roles for directors—hiring a CEO, evaluating candidates, and adopting a careful process for making that decision.



**F. Sculptor’s 8-K Filing Regarding The Compensation Package Appears To Conceal Key Details From Stockholders**

76. The Company disclosed the Compensation Package to stockholders in a two-page Form 8-K filed December 21, 2021. The Company did not publicly disclose a copy of the Employment Agreement with Mr. Levin as an exhibit to the December 21, 2021 Form 8-K. The 8-K appears to omit material information stockholders need to calculate the potential value of the Compensation Package. For example, although the 8-K discloses that Mr. Levin received an award of 5.4 million performance-based equity securities and forfeited 1 million Class P units, the Company does not measure the difference in value in the 8-K, despite the fact that the Class P units appear to be worth substantially less than Class A Units. Nor does the 8-K disclose critical measures necessary to assess the performance awards, such as disclosure of a sustainment requirement or a performance period during which the TSR goals must be achieved. Accordingly, ISS observed that stockholders “are left to assume that no such requirements exist.”

77. Similarly, although the 8-K discloses that Mr. Levin’s compensation will be based in significant part on a participation ratio, the 8-K does not disclose the formula for this calculation, beyond stating that it will range from 2.75% to 5.225%, depending on the funds’ annual performance. Therefore, stockholders cannot measure the projected value of this award.

78. The 8-K also states that Mr. Levin was granted additional carried interest on new funds, but it does not disclose why certain funds are included or excluded, how that decision was made, or the projected value of the new awards.

**G. After Protesting Mr. Levin’s Compensation Package, Yet Another Director Resigns**

79. Stockholders may not have learned about many of these apparent problems, except for Mr. Rutman’s decision to resign on February 2, 2022, and detail his concerns in his resignation letter. As required by Item 502(b) of Form 8-K, the Company disclosed Mr. Rutman’s resignation letter in its February 3, 2022 filing. In contrast with the Company’s two-page disclosure of Mr. Levin’s compensation in the December 21, 2021 Form 8-K, Mr. Rutman described in detail the compensation that Mr. Levin may receive, and the Board’s flawed processes for approving it.

80. In his resignation letter, Mr. Rutman described his extreme frustration with the Board’s maneuvers, its lack of objective analysis, and Mr. Levin’s undue influence. According to Mr. Rutman, after he objected to the Board’s failure to grapple with these issues, the Board responded by excluding him from committees, including the Compensation Committee, by chastising him for putting his concerns in writing, and by effectively forcing him to resign. Mr. Rutman’s departure made him the *seventh* director to leave since January 1, 2020, including four members of the Compensation Committee.

81. Because of its extensive turnover, when the Board approved Mr. Levin’s package in December 2021, only one member of the Compensation Committee, Ms. Engel, had served on the Board for more than a year. Likewise, other than Ms. Engel and Mr. Rutman, no non-employee member of the Board had served for more than thirteen months.<sup>7</sup>

#### **H. ISS And Stockholders Express Disapproval**

82. In its 2022 ISS Proxy Report, in advance of the annual stockholder meeting, ISS once again condemned Mr. Levin’s compensation. ISS rated Sculptor the worst possible score (10) in the compensation category for QualityScore, which measures risk in the program on a relative basis. ISS also indicated “High” concern on all three of its quantitative tests that measure (i) pay and total stockholder returns (“TSR”) performance alignment on a three-year basis, (ii) one-year pay as a multiple of the median for ISS-selected peers, and (iii) absolute pay and TSR alignment over five years. Additionally, ISS criticized the Company for giving Mr. Levin a “one-time” RSU award just a few months after receiving the December 2021 outsized performance share award. ISS observed that an outsized performance share award is typically expected to cover multiple years of pay with no additional long-term incentive grants during that timeframe.

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<sup>7</sup> Mr. Srikrishnan joined the Board in November 2020; Mr. Bonanno in March 2021; and Mr. Maynard in November 2021.

83. As its “Key Takeaways,” ISS advised: “Based on an evaluation of the estimated cost, plan features, and grant practices, support for the equity plan proposal is not warranted. In addition, the equity compensation program is estimated to be excessively dilutive. There are significant concerns surrounding the extraordinary magnitude of CEO pay, the lack of a disclosed cap on the CEO’s bonus and the lack of key disclosures for both bonuses and equity awards.”

84. Not surprisingly, ISS ended its report by concluding “[t]here are significant concerns regarding CEO pay magnitude. For 2021, CEO Levin received separate compensation for serving as CEO and CIO, with each component exceeding the median total pay of CEOs at the largest publicly traded alternative asset managers in the country, firms significantly larger than the Company in terms of both revenue and market capitalization.” Accordingly, ISS recommended that stockholders (i) “WITHHOLD votes for director nominee David Bonanno are warranted, due to an unmitigated pay-for-performance misalignment,” and (ii) “vote AGAINST the Omnibus Stock Plan” due to the following key factor(s): the equity program is estimated to be excessively dilutive (overriding factor); the plan cost is excessive; the three-year average burn rate is excessive; the plan permits liberal recycling of shares; and the plan allows broad discretion to accelerate vesting.”

85. At the annual stockholder meeting on June 22, 2022, the Company’s stockholders expressed their own concerns with the policies of the current

management. As to the election of David Bonanno, 27,953,270 votes were cast for his election, and 17,389,307 votes were withheld. The Compensation Package was similarly approved by low margins with 27,796,485 votes cast for approval and 17,164,101 votes opposed.

86. Even those numbers understate the degree of stockholder concern. According to the 2022 Schedule 14A, Mr. Levin and Sculptor's insiders control 15.8 million of the Company's shares. Although the Founders do not have the requested voting records, assuming that 15 million insider shares were cast in favor of the Board's chosen director and the management equity plan, then it would appear that a majority of the non-affiliated voters **withheld** support for Mr. Bonanno and a majority **voted against** the 2022 Incentive Plan. If so, over 60% of the non-affiliated stockholders voted against the Board's proposals.

#### **I. The Founders' Books And Records Request**

87. By letter dated April 28, 2022, the Founders, by and through their counsel, made a written demand on the Company for inspection of its books and records pursuant to Section 220. Attached as **Exhibit 2** is a true and correct copy of the Founders' Inspection of Books and Records Demand Letter dated April 28, 2022 (the "Demand Letter").

88. In the Demand Letter, the Founders sought material information which the Founders are entitled to as stockholders of the Company.

89. The Founders requested that the Company make the requested books and records available within fourteen days of receipt of the letter.

90. On May 5, 2022, the Company, through its counsel, responded to the Demand Letter. The response was perfunctory. The Company accused the Founders of acting out of personal animus. The Company indicated it would produce certain documents, subject to a Confidentiality Agreement and a meet and confer with the Founders regarding the scope of any production. A true and correct copy of the Company's letter dated May 5, 2022 is attached hereto as **Exhibit 3**.

91. On May 9, 2022, counsel for the Company and the Founders met and conferred regarding the Demand Letter. During that meet and confer, counsel for the Founders asked the Company to respond to each topic in the Demand Letter and to identify those documents the Company would agree to produce, agree to produce in part, or refuse to produce. On May 11, 2022, the Company sent a letter providing a summary of certain documents it would agree to produce. The company failed to provide the specific guidance that the Founders had requested. A true and correct copy of the Company's letter dated May 11, 2022 is attached hereto as **Exhibit 4**.

92. On May 23, 2022, counsel for the Founders responded to the Company's May 11, 2022 letter. The Founders requested that the Company advise whether it would be prepared to produce certain documents, which the Company had

not addressed in its May 11 letter. A true and correct copy of the Founders' May 23, 2022 correspondence is attached hereto as **Exhibit 5**.

93. On June 30, 2022, counsel for the Company and the Founders discussed the status of the Company's production and the Company's position on whether it would produce documents responsive to topics in the Demand Letter and the May 23, 2022 correspondence. The Company declined to commit to producing information related to: (i) the "dozens of meetings" during which the Compensation Committee supposedly discussed the Compensation Package; (ii) email correspondence regarding the reasons for the resignations of directors from the Board; (iii) Mr. Levin's performance record; and (iv) agreements dictating the compensation for the members of the Board, including documentation demonstrating how Ms. Engel's compensation increased from \$241,532 in 2019 and \$257,229 in 2020 to \$482,079 in 2021.

94. On July 10, 2022, counsel for the Founders sent an additional letter to Company counsel. Among other things, the Founders noted the need for the Company to expedite its production because of the Company's limited productions since the April 28, 2022 Demand Letter.

95. The Founders requested that the Company produce certain additional documents by July 15, 2022; and certain additional documents by July 27.

96. Last, the Founders requested that, to the extent that the Company had withheld from production any document based on privilege or other protection from production, the Company produce a privilege log by August 5, 2022.

97. On July 15, 2022, the Company provided an incomplete response. The Company again restated its accusation of animus and declined to confirm it would produce the outstanding documents responsive to each of the categories identified in the July 10, 2022 letter. The Company did not confirm that it would collect and review email pursuant to a search protocol identified in the July 10, 2022 letter. The Company further wholly ignored the Founders' request that the Company produce a privilege log, although the Company later clarified in a letter dated August 4, 2022, summarizing the production to date, that it would produce one. The Company instead indicated in its July 15 letter that it would produce certain additional materials by July 29, 2022. Later in the day on July 15, the Company produced a handful of additional materials—including a two-page document from which, except for a single sentence, all information has been redacted.

98. While the Company made additional productions on July 22, July 29, August 1, and August 17, 2022, as of the date of this Complaint, many of the requested books and records have not been made available by the Company. The Company has likewise refused to commit to producing the remaining books and records sought.



## CAUSE OF ACTION

### **(Inspection of Books and Records Under 8 *Del. C.* § 220)**

99. The Founders repeat and re-allege the allegations above as though fully set forth herein.

100. On April 28, 2022, the Founders made a written demand upon the Company for the inspection of books, records, and documents identified in the Demand Letter.

101. The Founders have fully complied with the requirements of Section 220 with respect to the form and manner of making a demand for inspection of the Company's books and records.

102. The Founders' demand for inspection is made for a proper purpose. Specifically, the Founders seek inspection for the following purposes:

- a. to investigate possible breaches of fiduciary duty, mismanagement, waste, other wrongdoing, and/or violations of law by members of the Company's Board and management, including the Company's senior officers (at times herein referred to as the "Directors and Officers") in connection with (a) statements in public disclosures; (b) the decision to approve Mr. Levin's compensation packages; and (c) the Board and management's failure to engage in succession planning and to manage risks related to reliance on key-man retention;

- b. to assess the propriety of Mr. Levin's Compensation Package, including the Compensation Committee and the Board's review and approval of it;
- c. to assess the veracity and completeness of the Company's public disclosures regarding Mr. Levin's Compensation Package, including the Company's December 21, 2021 8-K;
- d. to inquire into the independence of the directors on the Board and Compensation Committee;
- e. to assess the robustness and sufficiency of the Company's engagement in succession planning and mitigation of key-man reliance on Mr. Levin and efforts to consider strategic alternatives, such as alternative executive leadership and/or strategic transactions to mitigate the risk of Mr. Levin leaving the firm or improperly leveraging his position;
- f. to consider any remedies to be sought in respect of the aforementioned conduct;
- g. to use information obtained through inspection of the Company's books and records to confirm the Company's actions and to communicate with other stockholders;
- h. to evaluate possible litigation on behalf of the Company;

- i. to consider other corrective measures with respect to some or all of these matters; and
- j. to consider seeking an audience with the Board with respect to some or all of these matters.

103. Each of these is a proper purpose under Delaware law that is reasonably related to the Founders' interest as stockholders.

104. Yet the Company has refused to provide the Founders with a substantial portion of the books and records requested in the Demand Letter.

105. By reason of the foregoing and pursuant to Section 220, the Founders request a summary order permitting them to inspect and make copies of the following books and records:

- a. Communications, including emails and text messages, between or among Ms. Ritchea, Mr. Levin, or Mr. Cohen, and any Officer or Director of the Company concerning the Compensation Package.<sup>8</sup>
- b. Outlook calendars, emails, or notes reflecting any meetings or oral, video or telephonic discussions by the members of the Compensation Committee concerning the Compensation Package.

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<sup>8</sup> Electronic communications should be collected pursuant to the custodians, search terms and date ranges in Appendix A to Mr. Levander's July 10, 2022 letter on behalf of the Founders to Sculptor's counsel.

- c. Communications, including emails and text messages, sent to, from, or among Board members related to the Board's decision to: (i) designate and later appoint Mr. Levin as CEO, including any measures taken to search for alternative CIO or CEO candidates, and Mr. Levin's threat to leave and destroy Sculptor if the Board considered other CEO candidates; (ii) renegotiate Mr. Levin's CIO agreement in June 2020, prior to and separate from the negotiation of the Compensation Package; and (iii) publicly announce Mr. Levin as CEO before negotiating an employment agreement with him.
  
- d. Materials regarding Sculptor's actual or potential investment in BharCap Sponsor LLC or any other entity affiliated with an Officer or Director of Sculptor, including any memoranda or other materials documenting or evaluating such investment sent between or among Mr. Levin or the members of the Board; unredacted Conflict Committee minutes and materials related to Sculptor's and/or any Officer's or Director's potential or actual investment in BharCap Sponsor LLC; and documents sufficient to show all actual investments by Sculptor, if any, in a Special Purpose Acquisition Company other than Bharcap Sponsor LLC.

- e. Mr. Levin's personnel file and performance evaluations to the extent they address (i) the performance of the funds during Mr. Levin's service as CIO or CEO; (ii) Sculptor's investment performance as compared to peer funds during Mr. Levin's service as CIO or CEO; and (iii) any issues regarding Mr. Levin's qualifications to be CEO.
- f. From December 1, 2020 to the present, documents sufficient to show any agreements with each non-employee member of the Board regarding their compensation; the award of Restricted Stock Units, Restricted Class A Shares or Deferred Cash Interests to any non-employee member of the Board, including the determination of the grant date for such awards, and the Company's valuation of such awards on their grant date; and the changes in compensation of any non-employee member of the Board.

### **REQUEST FOR RELIEF**

WHEREFORE, the Founders pray that this Court summarily enter judgment in favor of the Founders and against the Company:

- A. Ordering the Company to produce to the Founders the books and records identified herein;
- B. Awarding the Founders their costs and expenses incurred in this action, including reasonable attorneys' fees; and

C. Granting the Founders any and all further relief as the court deems just and proper.

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Dated: August 24, 2022

*/s/ A Thompson Bayliss*

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