

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KSFB MANAGEMENT, LLC,

Plaintiff,

- against -

FOCUS FINANCIAL PARTNERS, LLC, GOLDMAN
SACHS & CO. LLC, LEONARD CHANG, and
PATRICK FELS,

Defendants.

Civil Action

Index No.: _____

COMPLAINT

Plaintiff KSFB Management, LLC brings this action against Defendants Focus Financial Partners, LLC, Goldman Sachs & Co. LLC, Leonard Chang, and Patrick Fels (together “Defendants”). Plaintiff alleges as follows:

NATURE OF THE ACTION

1. This case concerns a months-long scheme by Defendants Goldman Sachs & Co. LLC (“Goldman”) and Focus Financial Partners, LLC (“Focus”) to deceive Plaintiff, a well-regarded business manager for highly successful clientele, into remaining aligned with Defendants and providing them with support that they used, unbeknownst to Plaintiff, to pursue their own interests at Plaintiff’s expense. Defendants’ scheme worked—they made millions, while Plaintiff lost out on opportunities it had planned to pursue, and would have achieved, if not for Defendants’ false promises and bad faith. Plaintiff brings this action to hold Goldman and Focus to account for breaching their commitments and obligations, and for causing Plaintiff harm.

2. Nigro Karlin Segal Feldstein & Bolno LLC was built from the ground up, starting in 1981 with its predecessor company, Nigro Karlin & Segal. It began as an accounting firm with only three partners, but grew into a highly-regarded business management firm, providing a variety of services for high net worth individuals, including financial planning, insurance, day-

to-day bookkeeping, accounts payable and receivable, periodic financial statements, and tax return preparation for individuals and their entities. For many years, the firm has served the world's top artists in music, film and television, as well as athletes, executives, entrepreneurs and other high achievers. The firm is known for its carefully constructed, well-maintained relationships with clients, as well as a commitment to honesty in its business dealings.

3. Focus is an investor in independent, fiduciary wealth and business management firms. On April 1, 2018 (the "Closing Date"), Nigro Karlin Segal Feldstein & Bolno LLC and its principals sold its assets—all its employees, revenue, and operations—to a new, wholly owned subsidiary of Focus called NKSFB, LLC ("NKSFB"). Meanwhile, the principals of Nigro Karlin Segal Feldstein & Bolno LLC formed their own management company, Delaware limited liability entity "KSFB Management, LLC" ("Plaintiff" or "KSFB").

4. Focus looked to KSFB to run NKSFB. Indeed, since the Closing Date, KSFB has provided management services to NKSFB. KSFB provides those services to Focus for a fee, calculated based on NKSFB's profits. This arrangement has continued for a number of years and, under KSFB's management, NKSFB continues to thrive as an industry-leading firm and has become Focus's most valuable business management asset.

5. Focus sought to capitalize on the success of NKSFB. Starting in March 2022, or possibly earlier, Focus and its investment banker, Goldman, began exploring a possible sale of Focus, including NKSFB, to a third party. By June 2022, Focus had received expressions of interest from several investors, including Clayton Dubilier & Rice LLC ("CD&R"). Focus received its first oral purchase offer from CD&R in August 2022, which was followed by several months of negotiations over price. None of this was known to KSFB.

6. Focus and Goldman understood that in order for Focus to secure a favorable price for itself and NKSFB, it was essential that KSFB remain on board as the manager of NKSFB. Focus and Goldman therefore became concerned when, in April 2022, KSFB advised it was planning either to sell its business or enter the market as a stand-alone consulting firm at the end of an agreed upon non-competition period set to expire early the following year. Focus

understood it would be a far less attractive acquisition target if KSFB or its principals left to compete with NKSFB. Focus thus needed a way of keeping KSFB and its principals in the fold until Focus could complete an acquisition deal for itself and NKSFB.

7. Focus initially tried to intimidate KSFB. By the week of May 23, 2022, Focus's CEO, Ruediger Adolf, threatened to "crush" KSFB with litigation and make sure its principals would "never work again" if they attempted to compete with Focus. When threats didn't work, Focus offered to buy KSFB outright, which was something KSFB had proposed months earlier, and the parties settled on a price.

8. But on September 1, 2022, Focus suddenly backed out of its agreement to purchase KSFB, deciding on a new strategy to keep KSFB aligned with NKSFB for long enough to permit Focus to complete an acquisition deal for itself and NKSFB. Focus suggested the parties pursue a joint transaction by which Focus's subsidiary, NKSFB, and KSFB would be sold together to a third party (a "joint sale" of the "NKSFB Business"). KSFB was reluctant to team up with Focus in a joint sale process after Focus had exhibited bad faith by abandoning its agreement to purchase KSFB. KSFB therefore initially rejected Focus's proposal, and KSFB's principals advised they would instead proceed with their earlier plan to leave Focus and NKSFB to begin a competing business.

9. Focus remained determined to prevent KSFB from leaving its role managing NKSFB and entering the market as a competitor. The issue became more urgent for Focus when, on September 14, 2022, it received CD&R's first written non-binding offer to purchase Focus and NKSFB. So Focus kept pushing KSFB on the idea of teaming with Focus in a joint sale effort, concealing that Focus was not actually interested in such a joint transaction, but was simply seeking to buy time to complete its own deal with CD&R, by keeping KSFB and its principals aligned with NKSFB. Focus also lobbied KSFB to hire Focus's usual investment banker, Goldman, to support the proposed joint sale effort.

10. KSFB remained reluctant to pursue a joint sale, and was also reluctant to retain Goldman, fearing that Goldman's long-time role as Focus's investment banker would create a

conflict of interest. Focus assured KSFB there would be no conflict and, at Focus's urging, KSFB agreed to participate in a call with Goldman, which took place on September 16, 2022, to "hear them out."

11. During the call, when pressed by KSFB on its concern that Goldman would have a conflict of interest if it were to jointly represent KSFB and Focus, Goldman repeatedly assured KSFB that Goldman was not conflicted and could work, conflict-free, on behalf of both Focus and KSFB. Pat Fels of Goldman reassured KSFB, multiple times, that it would create no conflicts for KSFB and Focus to share Goldman as investment banker to pursue a joint sale of the NKSFB Business, and, moreover, there could **never be** a conflict because the goals of Focus and KSFB would always be aligned in maximizing the selling price of the NKSFB Business.

12. These representations were false. Focus and Goldman knew the joint sale directly conflicted with their ongoing efforts to sell Focus to CD&R, as NKSFB could not be sold to two buyers, and they were pressing KSFB to participate in a joint sales process only as a way to prevent KSFB or its principals from entering the market in competition with NKSFB. Focus and Goldman's plan worked. Relying on the false representations by Focus and Goldman that their interests were aligned with KSFB's, KSFB agreed to pursue a joint sale and to rely on Goldman as the investment banker for the sales effort.

13. For the next five weeks, Goldman, KSFB, and Focus negotiated the terms of a three-way non-disclosure agreement containing protections KSFB needed to feel comfortable with Goldman's joint representation (the "NDA"), Ex. 1. In the NDA, signed on October 25, 2022, the parties agreed Goldman would "advise and assist [both Focus and KSFB jointly] with respect to a possible strategic transaction involving [NKSFB]." The NDA restricted the use of any information provided by Focus and/or KSFB to their efforts to achieve a mutually agreeable transaction.

14. Goldman's and Focus's representations, and the NDA put in place to ensure that the parties would pursue only a mutually agreeable transaction, were very important to KSFB.

The last thing KSFB wanted was to share information with Goldman and Focus that they could use to pursue a transaction without KSFB.

15. The NDA was important to Goldman and Focus too, but for a different reason. The NDA ensured that KSFB and its principals would stay aligned with NKSFB, and not compete against it. With KSFB locked down, Focus and Goldman could pursue a transaction with CD&R at a far higher price than would have been available if KSFB or its principals had split from, and begun competing with NKSFB, or if KSFB chose to market and sell itself for potential acquisition. The NDA also ensured that KSFB, which in its role managing NKSFB knew the most about its business and operations, would provide Focus and Goldman with valuable information that Focus and Goldman could use, in violation of the NDA, in their negotiations with CD&R.

16. In order to maintain the pretense that they were committed to a joint sale, and to collect as much information from KSFB as possible, Focus and Goldman engaged in more than 300 hours of meetings with KSFB, took several meetings with potential buyers of the NKSFB Business, and sent out bid packages to 25 bidders. All the while, Focus and Goldman concealed their contemporaneous efforts and true intention to sell Focus in a transaction that would include NKSFB, but exclude KSFB.

17. By late January 2023, Focus was getting close to a deal with CD&R. Attempting to protect itself from liability on account of its misrepresentations to KSFB, Goldman insisted that KSFB sign an “Engagement Letter,” which included a broad release. KSFB had no idea that Goldman—at the same time it was presenting an engagement letter to supposedly work on KSFB’s behalf by pursuing a joint sale of KSFB and NKSFB—was actually nearing completion of a competing deal to sell Focus and NKSFB *without* selling or compensating KSFB. Rather, KSFB believed it was protected by the NDA and by Goldman’s representations that all parties’ interests were fully aligned. Relying on the NDA and on Goldman’s representations, KSFB signed the Engagement Letter on January 25, 2023.

18. Just a few days after KSFB signed the Engagement Letter at Goldman's urging, KSFB learned that all of Goldman's and Focus's efforts towards a joint sale had been a sham. On February 2, 2023, Focus issued a press release announcing private equity firm CD&R was planning to purchase Focus for a total price of approximately \$7 billion. This transaction, which Defendants were able to close only because they had deceived KSFB, was highly profitable for Focus and its three founders, each of whom pocketed in excess of \$12 million in golden parachute compensation.

PARTIES

19. Plaintiff KSFB Management, LLC is a Delaware limited liability company with its principal place of business located at 10960 Wilshire Blvd., 5th Floor, Los Angeles, CA 90024.

20. Defendant Focus Financial Partners, LLC is a Delaware limited liability company with its principal place of business at 873 3rd Avenue, 28th Floor, New York, New York 10022.

21. Defendant Goldman Sachs & Co., LLC is a Delaware limited liability company with its principal place of business at 200 West Street, New York, New York 10282.

22. Defendant Leonard Chang is an individual who, upon information and belief, is a citizen and resident of California.

23. Defendant Patrick Fels is an individual who, upon information and belief, is a citizen and resident of Connecticut.

24. Nonparty NKSFB, LLC is a Delaware limited liability company and a wholly owned subsidiary of Focus.

JURISDICTION AND VENUE

25. This Court has jurisdiction over this dispute and over Defendants pursuant to the New York Civil Practice Law and Rules ("CPLR") §§ 301 and 302. Venue is proper pursuant to CPLR § 503.

26. Jurisdiction and venue are proper because Defendants Focus and Goldman have maintained their principal offices in this County, done substantial business in this County, and derived substantial revenue from activities carried out in this County.

27. In addition, at all relevant times Defendants Chang and Fels either worked from offices in New York or otherwise had substantial contacts with the state of New York by, in relation to the claims herein, engaging in meetings that occurred in New York and interacting with New York residents.

FACTS

A. The NKSFB Business

28. In 1981, Fred Nigro, Michael Karlin, and Mickey Segal decided to join forces and start an accounting firm. Though it started as just a three-person firm, the NKSFB Business—the successor to that original firm—has become the largest business management firm in the United States. The NKSFB Business enjoys a reputation as a highly-regarded business management firm known for its carefully nurtured, well-maintained relationships with clients, as well as a commitment to honesty in its business dealings.

29. The NKSFB Business provides a sophisticated range of concierge-style business management services to its clients. The NKSFB Business offers tailored solutions to each individual client and meticulous attention to the details of its clients' lives. The carefully curated relationships and trust built between the principals of the NKSFB Business and their clients form the backbone of the business.

B. Focus's Relationship with KSFB

30. In the spring of 2018, Nigro Karlin Segal Feldstein & Bolno LLC sold Focus its assets—all its employees, revenue, and operating expenses—and those assets were placed into a new wholly owned subsidiary of Focus, called NKSFB. The principals of Nigro Karlin Segal Feldstein & Bolno LLC simultaneously formed KSFB.

31. KSFB and Focus entered into a Management Agreement by which KSFB would provide management services to NKSFB for a fee. Though it would appear from the outside that the NKSFB Business was operating through NKSFB as an integrated entity, NKSFB was made up of operational assets, with KSFB providing all of its management services by contract. The NKSFB Business, as a result of the exceptional and valuable management services provided by KSFB and its principals, and a client base consisting of their loyal clientele, constitutes a significant portion of Focus's overall value.

C. Focus and Goldman's Scheme to Sell Focus's Business, While Misleading KSFB So It Would Refrain From Entering The Market As A Competitor

32. In early 2022, the principals of KSFB were considering future opportunities in anticipation of the expiration of a non-competition period in early 2023. Recognizing the value of their contribution as managers of NKSFB, they proposed to Focus that Focus purchase KSFB's business, and advised that KSFB would otherwise offer itself for sale elsewhere in the market or start a business to compete in the same market as NKSFB.

33. Focus was determined to prevent KSFB from leaving its management role and potentially competing with NKSFB. This was especially critical to Focus because, unbeknownst to KSFB, Focus was seeking to sell itself and its subsidiary, NKSFB, in a deal being negotiated with CD&R. Focus understood that if KSFB or its principals split from NKSFB, Focus would not be able to secure a deal with CD&R, or any other potential purchaser, on nearly as favorable terms as if KSFB and its principals continued managing NKSFB.

34. Throughout much of 2022 into 2023, Focus pursued various strategies to discourage KSFB and its principals from leaving NKSFB and competing with it, never revealing to KSFB that Focus's intention was to keep KSFB in place long enough to maximize the price Focus could secure in its effort to sell itself and its subsidiary, NKSFB.

***1. Focus And Goldman Persuade KSFB To Pursue A Joint Sale of the NKSFB
Business, Pursuant To A Nondisclosure Agreement***

35. First, Focus threatened KSFB. In May 2022, Focus’s CEO Ruediger Adolf, shouted at KSFB’s Managing Partner, Mark “Mickey” Segal, that if KSFB were to leave its management role, Focus would “crush” KSFB and ensure that its principals would “never work again.” Segal responded that KSFB would not be intimidated, and reiterated that KSFB was prepared to enter the market to sell its own business, or to open shop as a competitor of NKSFB.

36. When threats did not work, Focus embraced an earlier proposal by KSFB for Focus to purchase KSFB. In June 2022, Focus’s cofounder and representative, Leonard Chang, told Segal that such a purchase was a “great idea,” and, over the next several weeks, the parties negotiated deal terms. On September 1, 2022, however, after agreeing to purchase KSFB at a substantial price, Focus abruptly backed out of the agreed-upon purchase plan, and proposed instead that Focus and KSFB team up to pursue a joint sale of NKSFB and KSFB.

37. During a call that day, Chang urged Segal that Focus’s longtime investment banker, Goldman, should advise and assist KSFB as well as Focus with respect to the joint sale. KSFB vigorously declined, both because of Focus’s bad faith in reneging on agreed-upon terms for its purchase of KSFB and because KSFB felt Goldman’s joint representation of KSFB and Focus presented a conflict. Chang insisted that he had already spoken with Goldman about that latter issue and urged Segal to just “hear [them] out.”

38. On September 16, 2022, Segal took a call with Pat Fels, Head of FIG Americas of Goldman, that Chang set up. On that call, Fels made repeated false representations to Segal to encourage him to agree to pursue a joint sale of the NKSFB Business, with Goldman working for both Focus and KSFB. In response to Segal expressing his concern that Goldman would be operating under a conflict in such a joint representation, Fels repeatedly assured Segal that there was no, and would be no, conflict.

39. Fels stated several times during the call that Focus and Goldman were committed to the same goal as KSFB—namely, pursuing and securing a joint transaction for the combined

sale of KSFB and NKSFB on the best available terms. For several minutes, Fels worked hard to persuade Segal that not only was there not a present conflict, but there could “never” be a conflict because the goals of Focus and KSFB were so fully aligned. As described more fully below, these statements were false because, as Fels knew, Focus and Goldman were secretly engaged in seeking a buyer for Focus and NKSFB (but not KSFB), since at least March 2022.

40. Based on these false assurances, and similar assurances from Chang that Focus was committed to pursuing a joint sale, KSFB finally agreed in principle for Goldman to serve as its representative in the sales process, and then spent several weeks negotiating protections for itself before entering into the NDA with Focus and Goldman on October 25, 2022. *See* Ex. 1. KSFB wanted to ensure it had transparency into the entire process of marketing and selling the NKSFB Business. KSFB recognized that bidders interested in purchasing KSFB or the NKSFB Business would, as an alternative, likely be interested in purchasing Focus because they operate in similar markets. KSFB did not want to share its confidential information, only for Goldman and Focus to then use that information for some other purpose besides the joint sale—for example, a separate deal for Focus that did not include KSFB.

41. Thus, in the NDA, Goldman agreed it would “keep the Confidential Information confidential, and will not, without prior written consent of [Focus and KSFB], (i) use, for itself or on behalf of any other person, any portion of the Confidential Information for any purpose other than the Purpose, or (ii) disclose any portion of the Confidential Information to any person [other than in connection with the Purpose]....” *Id.* at ¶ 2. The Purpose of the agreement was defined as “pursuing a possible relationship between Recipient [Goldman] and the Disclosing Parties [KSFB and Focus] in which Recipient may advise and assist with respect to a possible strategic transaction involving the Company [NKSFB].” *Id.* at Preamble.

42. The agreement defines “Confidential Information” as “all oral, written or digital information furnished by or on behalf of [Focus or KSFB] to [Goldman]” in connection with the potential strategic transaction involving NKSFB, “whether furnished before or after the date hereof.” *Id.* at ¶ 1. Moreover, “Confidential Information” includes “the identity of [Focus or

KSFB] and/or the identity of [NKSFB] or any other affiliate . . . , and/or the fact that [Focus or KSFB] or its affiliates may be considering a possible strategic transaction as contemplated” in the agreement. *Id.* The preamble of the NDA states “For the avoidance of doubt, material provided directly by the Company [NKSFB] or any other affiliate, agent or representative of the Disclosing Party [Focus or KSFB] shall constitute material provided by the Disclosing Parties and [be] subject to the protections hereof.”

43. In addition to the above language in Paragraph 2, KSFB negotiated for another provision prohibiting Focus from using KSFB’s confidential information for anything other than the a joint sale including KSFB. Specifically, Paragraph 8 of the NDA provides: “Each Disclosing Party [KSFB or Focus] will be granted access to any electronic dataroom or other file sharing platform used to share Confidential Information with Recipient [Goldman]. For the avoidance of doubt, any Confidential Information of another party received or accessed by a party, whether provided by Recipient [Goldman], another Disclosing party [KSFB or Focus], contained in a data room or otherwise, ***shall be used by such party only for the purposes of a mutually agreeable strategic transaction*** assisted by [Goldman].” Ex. 1, at ¶ 8 (emphasis added).

44. Paragraph 8 further provides that any confidential information received by Goldman from either KSFB or Focus would be made available to either KSFB or Focus “upon email or written request.” *Id.* at ¶ 8.

45. In sum, KSFB wanted to ensure, and successfully bargained to ensure, that if it was going to engage in a process with Focus and Goldman for a joint sale, Goldman and Focus could not then go behind KSFB’s back and use its confidential information to make a conflicting deal that would undercut the joint sale and impair KSFB’s ability to sell itself for full value. Thus, KSFB secured promises from Goldman and Focus that they would access and use KSFB’s confidential information solely in pursuit of a “mutually agreeable strategic transaction.”

46. The NDA further provides that: “This Agreement will be interpreted in accordance with the internal laws of the State of New York, without giving effect to the principles of conflicts of law.” *Id.* at ¶ 9.

2. KSFB, Focus, and Goldman Solicit Potential Buyers for the NKSFB Business

47. During October 2022, Focus, Goldman, and KSFB engaged in at least 50 hours of phone calls, during which KSFB explained the NKSFB Business to the Focus and Goldman teams. Segal and Brian Meath, a KSFB principal, explained “what we do and how we do it,” walked Focus and Goldman through the last three years of the NKSFB Business financials, discussed individual principals at KSFB and their compensation, explained the NKSFB Business’s operations, and defined specific services KSFB provided to clients. Segal and Meath provided this information because they trusted that Goldman was committed to selling the NKSFB Business, and knew that Goldman would require deep knowledge of the business to fulfill that mission.

48. Those were not Goldman’s true intentions. Rather, Goldman and Focus went through the motions of pursuing a buyer for the NKSFB Business only to keep up the pretense that they were seriously committed to such a transaction. After executing the NDA, Goldman advised Focus and KSFB on the process of identifying potential buyers. KSFB, Focus, and Goldman negotiated the contents of the request for bids. Goldman solicited initial bids from numerous interested parties.

49. As is standard for an initial round of gathering bids, Goldman, Focus, and KSFB negotiated nondisclosure agreements with each potential buyer interested in submitting a proposal. KSFB believed it was undergoing this process as part of a good faith effort by Focus and Goldman to work with KSFB to secure a buyer for the NKSFB Business. Neither Focus nor Goldman let on that they were already in the process of selling Focus and NKSFB, without KSFB, in a transaction they had secretly been pursuing since March 2022 or earlier.

50. Goldman took the lead to identify over two dozen potential buyers for the NKSFB Business, and KSFB trusted that Goldman had identified all reasonable prospects for such a

transaction. Goldman did not include CD&R, however, and the reason has since become clear—because Goldman and Focus were seeking to secure a deal with CD&R not for the joint purchase of the NKSFB Business, but for the purchase of Focus and NKSFB, without jointly selling KSFB. Further, KSFB does not know the extent to which Goldman excluded other potential counterparties from the list of prospective buyers for the NKSFB Business. Goldman’s omission of CD&R and possibly others from the list of prospective buyers for the NKSFB Business evinces Goldman’s duplicity and conflict of interest.

51. On December 13, 2022, KSFB, Goldman and Focus had in-person “fireside chat” meetings in New York with five potential buyers. Overall, the buyers asked thoughtful questions, demonstrated an understanding of the business, and showed great interest in acquiring the NKSFB Business. KSFB, Focus, and Goldman held another fireside chat on December 19, 2022 that went similarly well.

52. On December 21, 2022, KSFB, Goldman, and Focus met with another potential buyer, Galway Holdings. The meeting took place in Napa Valley, California and lasted over three hours. The meeting revealed substantial synergies compared to the other fireside chat meetings and Goldman, Focus, and KSFB agreed it had been the best meeting so far.

53. Throughout the rest of December 2022 and into January 2023, KSFB, Goldman, and Focus continued to meet with potential buyers to discuss a possible acquisition of the NKSFB Business. The meetings resulted in significant interest in the formal bid process, which was set to begin in early 2023.

54. Through the process of identifying buyers, negotiating nondisclosure agreements, attending meetings and telephone conferences, and researching and analyzing potential bids, KSFB expended over 300 hours and significant resources on the sales process for the NKSFB Business.

3. Long Before They Were Purportedly Teaming With KSFB To Pursue A Joint Sale, Focus and Goldman Were Secretly Working to Sell Focus

55. In reality and unbeknownst to KSFB, at the same time Focus and Goldman were assuring KSFB that they were committed to pursuing a joint sale of the NKSFB Business, Focus and Goldman were actually working on a competing, conflicting deal. Those efforts had been ongoing since at least March 2022. Indeed, on March 30, 2022, the Focus Board of Directors (the “Board”) met with Goldman to discuss long-term strategic goals and plans. Upon information and belief, Defendants began considering a sale of Focus on or around this date. Focus and Goldman concealed their intent to sell Focus from KSFB.

56. On May 11, 2022, the Board held a special meeting at which it approved the initiation of a study of potential financing and other strategic opportunities. Following this meeting, members of Focus management held introductory meetings with potential acquirors and investors.

57. On June 16, 2022, Focus’s CEO, Adolf, met with representatives of CD&R to discuss a potential acquisition. Goldman provided an initial analysis of a potential sales process and certain potential financial sponsors, including CD&R, at a special meeting of the Board on June 30, 2022. The Board authorized Goldman to engage in discussions with potentially interested financial sponsors, including CD&R, to gauge their interest in acquiring Focus. Efforts to sell Focus, and its wholly owned subsidiaries, including NKSFB, had begun in earnest.

58. By the summer of 2022, the secret process to sell Focus was fully underway. Focus management met with representatives from CD&R and at least four other potential financial sponsors to discuss the potential acquisition. In July 2022, Focus entered into a confidentiality agreement with CD&R to facilitate discussions about a possible transaction. And by August 11, 2022, CD&R had made an oral offer to acquire Focus.

59. By September 14, 2022, CD&R had submitted a written offer to acquire Focus, including its wholly owned subsidiary NKSFB. The Board did not accept the proposed terms, but authorized additional due diligence materials to be made available to CD&R, and

negotiations continued. CD&R was granted access to a virtual data room that contained non-public due diligence information, including Focus's long-term financial projections, on September 30, 2022.

60. It was two days after receiving CD&R's written offer, on September 16, 2022, that Focus and Goldman convinced KSFB to hire Goldman for the separate sales process for the NKSFB Business (*see* Section C.1., *supra*). Defendants accomplished this by misrepresenting that Focus and Goldman were committed exclusively to soliciting bidders for the sale of the NKSFB Business, and that Goldman could therefore jointly represent Focus and KSFB without any conflict; and by omitting that they were already actively engaged in a competing sales process. Goldman and Focus made these misrepresentations and omissions for the specific purpose of discouraging KSFB and its principals from breaking with NKSFB to pursue plans to sell their own business and/or enter the market as a competitor to NKSFB.

61. On information and belief, the data room for the CD&R negotiations included confidential information that KSFB provided pursuant to the NDA. Defendants thereby violated their agreement in the NDA that any data room containing the parties' confidential information would be used solely for the purposes of pursuing a "mutually agreeable strategic transaction." Defendants also violated their agreement under the NDA that any party would be provided access to a data room containing either of the parties' confidential information. Indeed, Defendants did not provide KSFB with access to the data room for the CD&R negotiations, or even make KSFB aware of its existence. Rather, Defendants concealed that they were actively pursuing a deal for CD&R to purchase Focus and NKSFB, without KSFB.

4. Goldman and Focus Pursue Their Deal With CD&R In Violation of the NDA

62. After Focus and Goldman provided CD&R with access to the non-public due diligence materials, the secret negotiations to sell Focus continued. Focus and CD&R held a full-day, in-person meeting on October 6, 2022 to discuss the potential acquisition of Focus and held due diligence meetings about the transaction throughout October.

63. Parallel with these secret negotiations, Focus and Goldman negotiated the terms of the NDA with KSFB, ostensibly providing for total transparency with respect to information shared between KSFB, Focus, and Goldman. As KSFB negotiated for terms to protect its confidential information and ensure that such information would solely be used for the NKSFB Business sales process, Defendants continued to feed CD&R non-public due diligence materials and other information, which, upon information and belief, included sensitive and confidential information belonging to KSFB and subject to the NDA.

64. On November 1, 2022, the Board of Focus formed a Special Committee for the purpose of reviewing, evaluating, and negotiating the terms and conditions of the potential transaction involving the company. Throughout November, the Special Committee evaluated CD&R's offer to purchase Focus and continued to negotiate the terms of a potential deal. By the end of November, the Special Committee and Goldman considered whether to grant CD&R exclusivity and whether to seek a go-shop provision. Goldman offered to conduct an additional canvas of the market in advance of any exclusivity agreement to determine whether there was any additional interest in a potential acquisition of Focus.

65. Focus's and Goldman's negotiations with CD&R and other potential buyers continued through December, culminating in a decision to reach out to six alternative potential financial sponsors on December 28, 2022. Adolf met with representatives from five of these potential financial sponsors in early 2023 to discuss Focus's business and a potential acquisition. Discussions with these other potential financial sponsors resulted in an offer from another party, identified as "Party I" in public filings, to compete with CD&R's offer.

66. By late January, Focus and Goldman were nearing a definitive deal to sell Focus. On January 23, 2023, Goldman conveyed to CD&R that Focus would be willing to negotiate a potential transaction at a price of \$53.00 a share. On January 24, 2023, the Special Committee asked Party I to increase its offer. Though Party I made a higher offer, it was preliminary, nonbinding and subject to continued due diligence. Because Party I had not arranged debt or

equity financing for a potential acquisition, Goldman advised that there was a high risk it would be unable to obtain the necessary funds.

67. Throughout the same period in which Focus and Goldman were actively seeking to close the sale of Focus, they were participating with KSFB in the numerous meetings with potential buyers for the NKSFB Business described above. Focus and Goldman never revealed to KSFB that Defendants were participating in those meetings without any genuine interest in engaging in such a joint transaction, and that they participated instead to ensure that KSFB would remain aligned with NKSFB based on KSFB's false understanding that all parties were pursuing the same goal of a mutually agreeable joint transaction.

***5. Shortly Before Closing Their Deal With CD&R, Focus and Goldman
Fraudulently Induce KSFB to Sign The Engagement Letter***

68. Focus and Goldman knew KSFB had no knowledge of their secret negotiations with CD&R and other potential buyers or of their efforts to explore alternative transactions for the sale of Focus. Focus and Goldman also knew they had exposed themselves to significant liability if KSFB were to assert claims against them on account of Defendants' repeated misrepresentations and omissions, which had caused KSFB to remain committed to NKSFB and forego plans to sell its own business.

69. Thus, on January 25, 2023, by which time Goldman and Focus had nearly reached an agreement with CD&R, Goldman suddenly insisted that KSFB sign an engagement letter (the "Engagement Letter"), Ex. 2. In the Engagement Letter, Goldman kept up the pretense that it was working in pursuit of a joint sale—notwithstanding that its true aim was to complete a deal for the sale of Focus, without KSFB—in order to insulate itself from the claims it knew KSFB could assert against it.

70. Under pressure, and in reliance on Goldman's misrepresentations and omissions, Segal signed the Engagement Letter on behalf of KSFB. Fels and Chang signed for Goldman and Focus, respectively. KSFB had no inkling at the time that Focus and Goldman had been secretly pursuing a conflicting transaction with CD&R and other potential buyers. It was only by

withholding this material information and reiterating their prior misrepresentations that Focus and Goldman induced KSFB to sign the Engagement Letter on January 25, 2023.

71. By the time it signed the Engagement Letter, KSFB had been led to believe, for months, that Focus and Goldman were genuinely committed to a joint transaction. Indeed, since September 2022, Focus and Goldman had taken dozens of actions, side by side with KSFB, advancing Defendants' false story that their sole aim was to pursue and achieve a sale of the joint NKSFB Business. And the Engagement Letter even provided further reassurance to KSFB by referencing and incorporating the terms of the NDA, pursuant to which, as discussed above, Goldman committed to complete transparency and to working in genuine pursuit of a mutually agreeable transaction for the sale of the NKSFB Business.

72. The timing of the Engagement Letter highlights Defendants' duplicitous conduct. Just days before Goldman and Focus induced KSFB to sign the Engagement Letter, Focus had two prospective bidders vying for exclusivity agreements to acquire Focus and its subsidiaries, including NKSFB. By January 30, 2023, just days after Defendants induced KSFB to sign the Engagement Letter, Focus and CD&R entered into an exclusivity agreement. In other words, at the same time Goldman was insisting that KSFB sign an agreement engaging Goldman to support KSFB in a joint transaction for the sale of the NKSFB Business, Goldman was nearing completion of a competing deal to sell Focus and NKSFB without KSFB's participation.

73. The Engagement Letter misleadingly stated: "We are pleased to confirm the arrangements under which Goldman Sachs & Co. LLC ... is exclusively engaged by Focus Financial Partners, LLC ... and KSFB Management, LLC ... as financial advisor in connection with the possible sale or all of a portion of (i) NKSFB, LLC ... and/or (ii) KSFB." Ex. 2 at 1. Goldman also committed, falsely, that "(i) Goldman Sachs will advise [KSFB and Focus] on a collective basis, (ii) that no Company [neither KSFB nor Focus] will be advised independently of the other, [and] (iii) that Goldman Sachs will not negotiate for one Company against the other with respect to any issue which may arise in connection with the transaction..." *Id.*

74. The purpose of the Engagement Letter was not to solidify a legitimate business relationship between KSFB and Goldman; it was solely to insulate Goldman from liability to KSFB for the very claims Goldman knew arose from its misconduct:

- a. As explained above and alleged herein, Defendants engaged in the joint sales process for the NKSFB Business despite substantial and significant conflicts of interest stemming from their participation in a secret and separate sales process to sell NKSFB to another party. The Engagement Letter thus specifically purports to eliminate liability for “any claim of conflict of interest against Goldman Sachs.” *Id.* at 1.
- b. As explained above and alleged herein, Goldman breached fiduciary duties owed to KSFB by engaging in a secret, competing sales process and using KSFB’s confidential information to enrich itself. The Engagement Letter thus purports to neutralize this claim, stating that “nothing in this letter or the nature of our services in connection with this engagement or otherwise shall be deemed to create a fiduciary duty . . . and each of the Companies agrees that it shall not make, and hereby waives, any claim based on an assertion of such a fiduciary duty or relationship.” *Id.* at 4.
- c. As explained above and alleged herein, Defendants’ deceptive actions give rise to both contract and tort liability. The Engagement Letter thus purports to eliminate this liability, stating that Goldman “shall not have any liability to the Companies ... as a result of either our engagement or any matter referred to in this letter[.]” *Id.* at Annex A.
- d. As explained above and alleged herein, Defendants knew that the joint sales process was a sham designed to keep KSFB in the fold until the larger deal for Focus closed. Defendants also knew that if KSFB hired an independent financial advisor, their plan would fail. The Engagement Letter thus purports to tie KSFB

down further by naming Goldman the “exclusive” financial advisor for a sale of either NKSFB or KSFB. *See id.* at 1.

- e. The Engagement Letter contains other onerous provisions, including a clause purporting to create a duty to indemnify Goldman in perpetuity, provisions that purport to require any successor-in-interest to acquire the indemnity obligations, and a pre-dispute waiver of jury trial (which is unenforceable in KSFB’s home state of California and which Focus and Goldman have recently stipulated not to seek to enforce). *See id.* at Annex A.

75. In signing the Engagement Letter, KSFB reasonably relied on the representations and actions of Focus, Goldman, Chang, and Fels—including their repeated false assurances that Focus and Goldman were committed to pursuing a joint sale of the NKSFB Business and their many actions taken consistent with that supposed intent—and had no reason to suspect that Defendants were secretly working on a competing deal.

76. KSFB would never have signed the Engagement Letter if it had known Defendants were secretly pursuing a larger, competing deal and were not in fact committed to pursuing a joint sale of the NKSFB Business.

77. KSFB would have never done all the work necessary to advance the sale of the NKSFB Business had it known Defendants were secretly working on a larger, competing deal that would make NKSFB unavailable for the joint sale.

78. Due to Defendants’ fraudulent misrepresentations and material omissions, the Engagement Letter in its entirety or, in the alternative, portions of the Engagement Letter are voidable or void.

79. Defendants’ fraudulent misrepresentations and material omissions have damaged KSFB’s ability to pursue and secure a favorable transaction for the sale of its own business.

D. KSFB Learns The Truth

80. On February 2, 2023, KSFB finally became aware of Focus and Goldman’s lies. Segal was forwarded an email that Adolf had sent to all the Focus partner firms except for

KSFB. From it and a press release that it referenced, also dated February 2, 2023, Segal learned that Focus had entered into an exclusivity agreement with CD&R to negotiate terms for a definitive agreement for CD&R to acquire Focus, based on a written CD&R offer to acquire Focus at \$53 per share. Such a deal would necessarily involve acquiring NKSFB as well—the very type of transaction Goldman and Focus said they were not pursuing, and would not and could not happen, and that served as the impetus behind the carefully negotiated protections in the NDA.

81. The February 2 press release indicated that Focus had formed a Special Committee of the Board of Directors as early as *November 1, 2022* to evaluate a nonbinding offer received from CD&R and explore alternative transactions. In addition, the press release said that, on *December 28, 2022*, the Special Committee of the Board of Directors had asked Goldman to go out into the marketplace and contact other specified potential buyers who might have interest in buying Focus. Focus and Goldman concealed this material information from KSFB while these events were playing out, and KSFB did not learn about it until February 2, 2023.

82. In a subsequent press release on February 27, 2023, Focus revealed it had reached a definitive agreement for CD&R to acquire Focus in an all-cash transaction with an enterprise value of over \$7 billion. The February 27 press release also revealed that Goldman was acting as financial advisor for Focus in the proposed transaction. This means that the entire time Focus and Goldman ostensibly searched for a prospective buyer for the NKSFB Business, they were simultaneously pursuing their secret deal to sell Focus without KSFB's participation.

83. The deal to sell Focus to CD&R necessarily relied on KSFB's confidential information that Focus and Goldman had promised in the NDA would not be used for any purpose other than selling the NKSFB Business. Indeed, it was the NDA and Defendants' misrepresentations about the joint sale that made it possible for Focus and Goldman to conduct a deep dive into KSFB's financials and business operations—and get all their questions about

KSFB's successful management of NKSFB answered—to make their sale of Focus, including its most valuable business management asset, NKSFB, on the most favorable terms possible.

84. The sale of Focus to CD&R conflicted with the sale of the NKSFB Business because it included a sale of one of the assets to be sold as part of the NKSFB Business and because it granted CD&R the irrevocable right to approve the sale of any Focus company until the Focus-CD&R deal closed. At no point prior to February 2, 2023 did Focus inform KSFB that Focus was considering an offer from CD&R to acquire Focus. At no point prior to February 2, 2023 did Goldman inform KSFB that Goldman was serving as financial advisor for Focus in a proposed transaction for CD&R to acquire Focus.

85. Instead of informing KSFB of the competing and conflicting deal, Goldman and Focus went through the motions of working to sell the NKSFB Business, while knowing that Focus and CD&R were nearing a definitive agreement, to prevent KSFB from being able to engage in an independent sales process that would diminish the value of the Focus-CD&R deal. Focus's and Goldman's actions, including negotiating the nondisclosure and waiver agreements for potential buyers, drafting a bid proposal, and conducting meetings with potential buyers, all fraudulently misled KSFB into believing that Defendants were honoring the terms of the NDA and working cooperatively with KSFB toward a mutually advantageous joint sale.

86. By stringing KSFB along for months until the CD&R acquisition closed, Focus and Goldman enriched themselves at KSFB's expense. Alongside other Focus executives who received tens of millions of dollars collectively upon closing the CD&R acquisition, Chang personally received \$12,472,845 in golden parachute compensation. And pursuant to its engagement letter with the Special Committee, Goldman received approximately \$25.4 million in transaction fees and may have been entitled to an additional discretionary fee of approximately \$6.9 million.

87. With CD&R's acquisition of Focus now closed, it appears that CD&R has the ultimate say-so on whether there will be any transaction, with or without KSFB, involving the

NKSFB Business. Thus, closing on the larger, competing deal diminishes the value of any sales process for the NKSFB Business.

E. Defendants' Misconduct Has Spoiled the Market for KSFB

88. Focus and KSFB have substantially similar business profiles. As a result, potential buyers of Focus operate in the same market as potential buyers of the NKSFB Business and/or KSFB.

89. Defendants' actions have spoiled the market for a transaction involving the NKSFB Business and/or KSFB. Defendants first spoiled the market by secretly marketing Focus at the same time they marketed the NKSFB Business, while using deception to keep KSFB in place as NKSFB's manager, thereby denying KSFB its rightful opportunity to fairly compete for a buyer in the marketplace.

90. Moreover, because Defendants stood to gain far more by securing a buyer for Focus—the larger and more lucrative deal—rather than for the NKSFB Business, they had no reason to use their best efforts to market the NKSFB Business. In other words, by working two competing deals simultaneously, Defendants ensured that KSFB could not possibly compete on a level playing field.

91. Defendants further spoiled the market for a transaction involving the NKSFB Business because Focus and Goldman shopped around the offer from CD&R for alternative transactions, and the same pool of potential buyers interested in acquiring the NKSFB Business likely considered an acquisition of Focus. A buyer who may have been interested in acquiring the NKSFB Business may have been even more interested in acquiring the larger firm. The value of the NKSFB Business decreases, and a closed deal for it becomes far less likely, if the market of prospective buyers knows that Focus is also for sale. Moreover, interested parties could also sit on the sidelines to see what happened with the CD&R deal to acquire Focus. The larger deal for Focus created a chilling effect on the market for any sale of the NKSFB Business.

92. Indeed, after the initial round of fireside chat meetings had gone so well, Goldman suggested that KSFB should expect at least 10 to 12 bids to acquire the NKSFB Business. But after the larger deal for Focus had been publicly announced, KSFB received only five bids, two of which were significantly below the true value of the NKSFB Business and none of which were as attractive as expected.

93. One potential buyer, Galway Holdings, has advised that it dropped out of the bid process for the NKSFB Business because of the larger, competing deal between Focus and CD&R. In fact, CD&R contacted Galway to discourage it from pursuing a joint transaction, and invited Galway, instead, to join CD&R in its acquisition of Focus. Galway contacted Fels at Goldman to ask for an explanation, and when Fels failed to provide one, Galway decided not to pursue any deal. Thus, Galway did not submit a bid despite having the most promising fireside chat meeting, precisely because of Defendants' conflicted dealings.

F. Focus's and Goldman's Malicious, Fraudulent, and Oppressive Actions

94. Focus's and Goldman's actions were taken with malice, fraud, and oppression. Focus's and Goldman's participation with KSFB in a long-term sham joint sale process included months of meetings in which Defendants continually lied to KSFB and its principals, leading KSFB to believe Defendants were working in KSFB's interests to maximize the value of a joint sale, when Defendants were actually seeking to sell Focus at a premium and cut KSFB out of the transaction entirely.

95. KSFB had no way of knowing about Defendants' scheme during the course of their confidential business dealings. Defendants' actions were reprehensible, fraudulent, and in violation of law and policy. Their secret dealings and overtly fraudulent concealment of material information rise to the level of extreme indifference to KSFB's rights and wanton disregard that decent citizens should not have to tolerate.

96. Part of Goldman's and Focus's scheme was to tie KSFB down in connection with the sale of the NKSFB Business, not only to obtain and use KSFB's confidential information, but so that KSFB would not be free to advance its own independent interests and rights and/or would

be subject to certain limitations on its ability to seek appropriate relief for wrongdoing under the law. The fraudulent Engagement Letter Goldman presented to KSFB is evidence that Goldman knew its scheme was illegal and put careful thought and effort into trying to escape liability for its wrongdoing.

97. As a result, KSFB is entitled to punitive damages in an amount to be determined at trial.

CLAIMS FOR RELIEF

COUNT ONE

Breach of Contract (New York Law)

Against Focus and Goldman

98. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

99. KSFB, Goldman and Focus entered into an NDA on October 25, 2022, in connection with their plan to secure a buyer for the NKSFB Business. *See* Ex. 1.

100. The NDA requires that Goldman keep all material provided by KSFB and Focus to Goldman confidential. *See id.* at ¶ 1 and Preamble. It also prohibits the use of such information for any purpose other than in connection with the potential sale of the NKSFB Business without prior written consent from KSFB and Focus. *See id.* at ¶ 2.

101. Goldman agreed that it would “keep the Confidential Information confidential, and will not, without prior written consent of [Focus and KSFB], (i) use, for itself or on behalf of any other person, any portion of the Confidential Information for any purpose other than the Purpose, or (ii) disclose any portion of the Confidential Information to any person [other than in connection with the Purpose]....” *Id.* at ¶ 2. The Purpose of the agreement was defined as “pursuing a possible relationship between Recipient [Goldman] and the Disclosing Parties [KSFB and Focus] in which Recipient may advise and assist with respect to a possible strategic transaction involving the Company [NKSFB].” *Id.* at Preamble.

102. The agreement defines “Confidential Information” as “all oral, written or digital information furnished by or on behalf of [Focus or KSFB] to [Goldman]” in connection with the potential strategic transaction involving NKSFB, “whether furnished before or after the date hereof.” *Id.* at ¶ 1. Moreover, “Confidential Information” includes “the identity of [Focus or KSFB] and/or the identity of [NKSFB] or any other affiliate . . . , and/or the fact that [Focus or KSFB] or its affiliates may be considering a possible strategic transaction as contemplated” in the agreement. *Id.* The preamble of the NDA states “For the avoidance of doubt, material provided directly by the Company [NKSFB] or any other affiliate, agent or representative of the Disclosing Party [Focus or KSFB] shall constitute material provided by the Disclosing Parties and [be] subject to the protections hereof.”

103. The NDA also includes a provision prohibiting Focus from using KSFB’s confidential information for anything other than the planned joint sale. It states: “Each Disclosing Party [KSFB or Focus] will be granted access to any electronic dataroom or other file sharing platform used to share Confidential Information with Recipient [Goldman]. For the avoidance of doubt, any Confidential Information of another party received or accessed by a party, whether provided by Recipient [Goldman], another Disclosing party [KSFB or Focus], contained in a data room or otherwise, shall be used by such party only for the purposes of a mutually agreeable strategic transaction assisted by [Goldman].” Ex. 1, at ¶ 8.

104. At all relevant times, KSFB performed all of its duties and obligations under the NDA.

105. Goldman materially breached Paragraph 2 of the NDA by using KSFB’s confidential information for a purpose other than the potential sale of the NKSFB Business without KSFB’s prior written consent, mainly to secure a buyer for Focus.

106. Goldman and Focus materially breached Paragraph 8 of the NDA when they used KSFB’s confidential information to secure a buyer for Focus, and not for a mutually agreeable transaction.

107. Goldman and Focus materially breached Paragraph 8 of the NDA by not providing KSFB access to the virtual data room shared with CD&R as part of the competing sales process to sell Focus. *Id.* at Preamble.

108. Since learning of Focus's agreement with CD&R, KSFB has requested that Goldman turn over all information that Focus shared with Goldman pursuant to Paragraph 8 of the NDA. Goldman has further materially breached Paragraph 8 by failing to comply with KSFB's request.

109. As a result of Goldman's and Focus's breaches of the NDA, KSFB suffered damages in the form of reliance and sunk costs stemming from the unauthorized use of its confidential information contrary to the terms of the NDA. KSFB honored its own obligations under the NDA, unaware of Defendants' breach, thereby foregoing opportunities to enter into an alternative transaction on potentially lucrative terms. Further, from September 2022 to January 2023, KSFB spent approximately 300 hours attending meetings, preparing pitch materials, and negotiating contracts with prospective buyers of the NKSFB Business expecting that its confidential information was protected by the terms of the NDA. By breaching Paragraphs 2 and 8 of the NDA, Focus and Goldman breached the NDA and caused KSFB to needlessly spend significant time and money towards the sham sale of the NKSFB Business.

COUNT TWO

Breach of Fiduciary Duty (New York Law)

Against Goldman

110. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

111. On September 16, 2022, Goldman convinced KSFB to use its investment banking and advisory services in an effort to secure a buyer for the NKSFB Business. To assuage KSFB's fears of a conflict of interest, Fels of Goldman insisted there was no potential conflict with respect to KSFB's, Focus's, and Goldman's proposed joint efforts to sell the NKSFB

Business, and there would never be a potential conflict, even though Goldman was Focus's normal investment banker and would be representing Focus at the same time. Goldman insisted it would work for KSFB (and Focus) only in the sales process for the NKSFB Business and that it would not engage in any secret competing activities with Focus.

112. Placing great trust in Goldman, and based on these assurances, KSFB opted to entrust Goldman with its confidential information and accepted Goldman's service as its investment banker in the sales process for the NKSFB Business.

113. As an advisor charged with seeking a deal in the best interests of KSFB, Goldman took on fiduciary duties at least as early as September 16, 2022, when these statements were made by Goldman representatives.

114. Aspects of the fiduciary relationship between KSFB and Goldman were referenced in the NDA entered into many weeks later on October 25, 2022. The reason and context for entering into this agreement between KSFB, Goldman, and Focus, was to reassure KSFB that the three companies were cooperatively working on securing a buyer for the NKSFB Business, and to maximize the value of that joint sale to KSFB and Focus.

115. Thus in the NDA, and consistent with its existing fiduciary duties, Goldman reassured KSFB that Goldman would "advise and assist [both Focus and KSFB jointly] with respect to a possible strategic transaction" and would not use KSFB's information, or Focus's information, in pursuit of any transaction other than a mutually agreeable joint sale, without prior written consent from KSFB.

116. But instead of acting in the best interests of KSFB, Goldman illicitly sought and secured a buyer for Focus without KSFB's knowledge. Goldman breached KSFB's trust by pursuing a secret transaction enriching itself and others at KSFB's expense.

117. Goldman breached KSFB's trust by tying KSFB down with a sham sales process. By doing so, Goldman sought to ensure NKSFB would remain part of Focus as it pursued its own sale. The sales process of the NKSFB Business was also cynically designed to keep KSFB

from abandoning its relationship with Focus to compete in the market. Goldman breached KSFB's trust in in pursuing a more lucrative competing deal for Focus at KSFB's expense.

118. Goldman thereby engaged in self-dealing and breached its fiduciary duty toward KSFB.

119. Because of Goldman's breach, KSFB lost the ability to fairly compete in the marketplace for a buyer of its own business or of the NKSFB Business. Goldman's duplicitous actions prevented KSFB from pursuing a joint sale without an investment banker that was actively undermining the sales process, or pursuing the sale of its own business. Because CD&R now has final say on any sale of NKSFB, it is likely that KSFB has permanently lost the ability to sell itself together with NKSFB. The market for KSFB, with or without NKSFB, was also diminished by the competing bidding process that Goldman was engaged in with Focus for the sale of Focus. Goldman's breach of fiduciary duty thus deprived KSFB of the value of a sale for the NKSFB Business without competition in the form of a conflicting sale.

120. Because of Goldman's breach, KSFB also suffered damages in the form of reliance and sunk cost damages stemming from the sham sales process. From September 2022 to January 2023, KSFB spent approximately 300 hours attending meetings, preparing pitch materials, and negotiating contracts with prospective buyers of the NKSFB Business. By breaching its fiduciary duties, Goldman caused KSFB to needlessly spend significant time and money towards the sale of the NKSFB Business and for its own personal gain.

121. KSFB is further entitled to punitive damages for Goldman's breach of its fiduciary duties. Goldman's treachery and duplicitous actions directed at its client were reprehensible, fraudulent, and in blatant violation of law and policy. Goldman's secret dealings and overtly fraudulent concealment of material information rise to the level of extreme indifference to KSFB's rights and wanton disregard that decent citizens should not have to tolerate.

COUNT THREE**Aiding and Abetting Breach of Fiduciary Duty (New York Law)*****Against Focus, Chang, and Fels***

122. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

123. On September 16, 2022, Goldman convinced KSFB to use Goldman's investment banking and advisory services in an effort to secure a buyer for the NKSFB Business. To assuage KSFB's fears of a conflict of interest, Fels of Goldman insisted that there was no potential conflict with respect to KSFB's, Focus's, and Goldman's proposed joint efforts to sell the NKSFB Business, and there would never be a conflict, even though Goldman was Focus's normal investment banker and would be representing Focus at the same time.

124. Placing great trust in Goldman and based on these assurances, KSFB opted to entrust Goldman with its confidential information and to hire Goldman to serve as its investment banker in the sales process for the NKSFB Business.

125. As an advisor charged with seeking a deal in the best interests of KSFB, Goldman took on fiduciary duties on or around September 16, 2022 when it agreed to work for KSFB in the sales process for the NKSFB Business.

126. Aspects of the fiduciary relationship between KSFB and Goldman were referenced in the NDA entered into many weeks later on October 25, 2022. The reason and context for entering into this agreement between KSFB, Goldman, and Focus, was to reassure KSFB that the three companies were cooperatively working on securing a buyer for the NKSFB Business, and to maximize the value of that joint sale to KSFB and Focus.

127. Thus, in the NDA, and consistent with its existing fiduciary duties, Goldman reassured KSFB that Goldman would "advise and assist [both Focus and KSFB jointly] with respect to a possible strategic transaction" and would not use KSFB's information, or Focus's information, in pursuit of any transaction other than the joint sale without prior written consent from KSFB.

128. KSFB used Goldman as its investment banker upon the urging of Chang, and based on significant assurances by Fels that Goldman would and could represent both the interests of KSFB and Focus fairly in connection with a joint sale. Focus and Chang gave those assurances because it was in their interests for Goldman to serve as KSFB's banker. They understood that Goldman, operating in that capacity, would continue to prioritize securing a deal on Focus's behalf, and would be able to make use of confidential information provided to it by KSFB in furtherance of securing such a transaction.

129. Defendants Focus, Chang, and Fels, separately and in conjunction with each other and with Goldman, hid from KSFB their knowledge that, by the time Goldman accepted its fiduciary relationship with KSFB on or around September 16, 2022, and at all times thereafter, Goldman was actually representing Focus in separate secret discussions with offerors for a sale of just Focus.

130. Goldman, at the direction of and in coordination with Focus, Chang, and Fels, continued to negotiate with CD&R behind KSFB's back through January 2023, using proprietary knowledge from KSFB, which was gained pursuant to the fiduciary relationship of trust and confidentiality that Goldman accepted with respect to KSFB.

131. But instead of acting in the best interests of KSFB, Goldman illicitly sought and secured a buyer for Focus without KSFB's knowledge. Goldman breached KSFB's trust by pursuing a secret transaction enriching itself and others at KSFB's expense.

132. Goldman, at the direction of and in coordination with Focus, Chang, and Fels, thereby engaged in self-dealing and breached its fiduciary duties owed to KSFB.

133. At all relevant times, Focus, Chang, and Fels knew and were aware of Goldman's fiduciary obligations, assurances and representations to KSFB.

134. Focus, Chang and Fels directed Goldman to engage in negotiations with CD&R behind KSFB's back, keeping these negotiations secret from KSFB until the deal with CD&R was consummated.

135. Fels simultaneously and secretly represented Focus at all relevant times before and after Focus negotiated the terms of the NDA with KSFB, supporting Goldman's efforts to negotiate Focus's sale to CD&R while withholding that information from KSFB.

136. Focus, Chang, and Fels substantially assisted Goldman's breach of its fiduciary duty to KSFB.

137. Because of Goldman's breach—and Focus's, Chang's, and Fels's participation in Goldman's breach—KSFB lost the ability to fairly compete in the marketplace for a buyer of the NKSFB Business or for a buyer of KSFB's business. Goldman's duplicitous actions prevented KSFB from pursuing a joint sale without an investment banker that was actively undermining the sales process, and/or pursuing a sale of its own business. Because CD&R now has final say on any sale of NKSFB, it is likely that KSFB has permanently lost the ability to sell itself together with NKSFB. The market for KSFB, with or without NKSFB, was also diminished by the competing bidding process that Goldman was engaged in with Focus for the sale of Focus. Goldman's breach of fiduciary duty thus deprived KSFB of the value of a sale for the NKSFB Business without competition in the form of a conflicting sale.

138. Because of Goldman's breach—and Focus's, Chang's, and Fels's participation in Goldman's breach—KSFB also suffered damages in the form of reliance and sunk cost damages stemming from the sham sales process. From September 2022 to January 2023, KSFB spent approximately 300 hours attending meetings, preparing pitch materials, and negotiating contracts with prospective buyers of the NKSFB Business. By breaching its fiduciary duties, Goldman undermined the purpose of the joint sales process and caused KSFB to needlessly spend significant time and money towards the sale of the NKSFB Business and for its own personal gain.

139. KSFB is further entitled to punitive damages for Focus's, Chang's, and Fels's participation in Goldman's breach of its fiduciary duties to KSFB. Focus's, Chang's, and Fels's treachery and duplicitous actions directed at KSFB were reprehensible, fraudulent, and in blatant violation of law and policy. Their secret dealings and overtly fraudulent concealment of material

information rise to the level of extreme indifference to KSFB's rights and wanton disregard that decent citizens should not have to tolerate.

COUNT FOUR

Breach of the Covenant of Good Faith and Fair Dealing (New York Law)

Against Focus and Goldman

140. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

141. KSFB, Goldman and Focus entered into an NDA on October 25, 2022, which is a contract governed by New York law. The reason and context for entering into this agreement between KSFB, Goldman, and Focus was to secure a buyer for KSFB and NKSFB together, and to maximize the value of that strategic transaction to KSFB and Focus.

142. Implied in all contracts governed by New York law is a covenant of good faith and fair dealing. The implied covenant of good faith and fair dealing provides that a party shall not do anything that will have the effect of interfering with or damaging the right of another party to receive the benefits of the contract.

143. Under the NDA, Goldman and Focus agreed to specific terms that prohibited them from using information submitted by Focus or KSFB to Goldman for any purpose other than the joint sale without prior written consent by KSFB. The implied covenant of good faith and fair dealing meant, in the context of that agreement, they could not undertake any actions that would create or pursue a secret conflict with the joint sale. This covenant therefore prohibited Focus and Goldman from engaging in conflicting negotiations with CD&R and others to sell Focus.

144. By creating a conflict, hiding that conflict, and acting as if they were honoring their contractual commitments to KSFB all along, when they were not, and by causing Focus to enter into a definitive agreement with CD&R to sell Focus, and by giving CD&R the irrevocable right to approve any sale of NKSFB, Goldman and Focus failed to honor the covenant of good

faith and fair dealing they owed to KSFB. Focus's and Goldman's duplicitous actions destroyed the underlying purpose of the NDA and were contrary to the spirit of the agreement.

145. As a result of Goldman's and Focus's breaches of covenant of good faith and fair dealing, KSFB suffered at a minimum damages in the form of expectation, reliance, and sunk costs related to its actions consistent with the understanding that it was engaged with Goldman and Focus in an effort exclusively targeted at the joint sale. From September 2022 to January 2023, KSFB spent approximately 300 hours attending meetings, preparing pitch materials, and negotiating contracts with prospective buyers of the NKSFB Business expecting that the parties to the agreement were acting in good faith in accordance with the purpose of the contract. By breaching the implied covenant, Focus and Goldman undermined the purpose of the NDA and caused KSFB to needlessly spend significant time and money towards the sale of the NKSFB Business.

146. By breaching the implied covenant, Focus and Goldman also caused Plaintiff to forego other opportunities to market itself on potentially lucrative terms.

COUNT FIVE

Tortious Interference with Prospective Economic Advantage (New York Law)

Against Focus and Goldman

147. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

148. KSFB had prospective economic advantage in the form of relations with prospective buyers for the NKSFB Business. KSFB had signed NDAs with buyers interested in submitting proposals to allow proprietary information to be shared during the bidding process.

149. Goldman and Focus interfered with KSFB's relations with prospective buyers by securing a buyer for Focus instead of for the NKSFB Business, all without KSFB's knowledge, and by unlawfully sharing KSFB's confidential information to do so.

150. Goldman and Focus acted for the wrongful purpose of benefitting themselves at KSFB's expense.

151. Goldman and Focus used dishonest, unfair and improper means to secure a buyer for Focus by failing to inform KSFB of the search for a buyer for Focus and, instead, leading KSFB to believe that Goldman and Focus were only engaged in the process of finding a buyer for the NKSFB Business.

152. Through their duplicitous actions, Goldman and Focus materially worsened KSFB's position in relation to its prospective buyers and decreased the number of potential buyers for KSFB.

153. KSFB has suffered damages in the form of lost business opportunities with the prospective buyers as a result of Focus's and Goldman's tortious actions.

COUNT SIX

Fraudulent Concealment and Misrepresentation (New York Law)

Against Focus, Goldman, Chang, and Fels

154. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

155. At least from early September 2022, Focus, Goldman, Chang, and Fels concealed from KSFB that Defendants were already engaged in the process of finding a buyer for Focus, including that Focus had formed a Special Committee of the Board of Directors on November 1, 2022, to evaluate a nonbinding offer received from CD&R and explore alternative transactions.

156. In September 2022, Chang of Focus and Fels of Goldman made representations to Segal of KSFB, to persuade KSFB to use Goldman as its investment banker, even though Focus was also using Goldman as its investment banker in an effort to sell the NKSFB Business. Defendants represented that there was "no conflict," and that Focus and Goldman were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business. These representations were false, and Chang and Fels knew they were false. Moreover, they and

others at Focus and Goldman continued to make misrepresentations and take actions consistent with these misrepresentations, including by concealing the truth that they were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business from September 2022 through February 1, 2023.

157. Focus, Goldman, Chang, and Fels intended to defraud KSFB by making misrepresentations that there were no conflicts of interest and that they were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business. They intended to defraud KSFB by concealing their true course of action—that, in reality, they were engaged in the process of finding a buyer for Focus all along, with knowledge that securing a buyer for Focus would substantially decrease the NKSFB Business's and KSFB's value and chance of sale. Focus, Goldman, Chang, and Fels knew that their misrepresentations that there were no conflicts of interest were false and were actively misleading KSFB to its detriment.

158. As discussed in detail above, KSFB reasonably relied upon Chang's and Fels's misrepresentations and fraudulent concealment during what KSFB reasonably believed was a bidding process for sale of the NKSFB Business. KSFB had no reason and no ability to discover that Chang and Fels were misrepresenting the truth.

159. Because of Defendants' fraudulent misrepresentations and concealment, KSFB lost the ability to compete in the marketplace for a buyer of the NKSFB Business or for a buyer of KSFB's business. Defendants' duplicitous actions prevented KSFB from pursuing a joint sale without an investment banker that was actively undermining the sales process. Because CD&R now has final say on any sale of NKSFB, it is likely that KSFB has permanently lost the ability to sell itself with NKSFB together. The market for KSFB, with or without NKSFB, was also diminished by the competing bidding process that Goldman and Focus were engaged in for the sale of Focus. Goldman's and Focus's fraudulent misrepresentations and concealment thus deprived KSFB of the value of a sale for the NKSFB Business without competition in the form of a conflicting sale.

160. Because of Defendants' fraudulent misrepresentations and concealment, KSFB also suffered damages in the form of reliance and sunk cost damages stemming from the sham sales process. From September 2022 to January 2023, KSFB spent approximately 300 hours attending meetings, preparing pitch materials, and negotiating contracts with prospective buyers of the NKSFB Business. By fraudulently misrepresenting that there were no conflicts of interest and concealing their true course of action, Defendants caused KSFB to needlessly spend significant time and money towards the sale of the NKSFB Business for their own personal gain.

161. KSFB is further entitled to punitive damages for Defendants' fraudulent actions. Defendants' treachery and duplicitous actions directed at KSFB were reprehensible, fraudulent, and in blatant violation of law and policy. Their secret dealings and overtly fraudulent misrepresentations and concealment regarding material information rise to the level of extreme indifference to KSFB's rights and wanton disregard that decent citizens should not have to tolerate.

COUNT SEVEN

Fraudulent Inducement (New York Law)

Against Focus, Goldman, Chang, and Fels

162. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

163. Unbeknownst to KSFB, Focus and Goldman were already engaged in actions to market and solicit bidders for the sale of Focus prior to execution of the NDA.

164. In September 2022, Chang of Focus and Fels of Goldman made representations to Segal of KSFB to persuade KSFB to use Goldman as its investment banker even though Focus was also using Goldman as its investment banker on the same effort to sell the NKSFB Business. Defendants gave assurances that there was "no conflict," and that Focus and Goldman were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business. These representations were false, and Chang and Fels knew they were false. Moreover, they and others at Focus and Goldman continued to make misrepresentations and take actions consistent

with these misrepresentations that they were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business from September 2022 through February 1, 2023.

165. Defendants knew KSFB incorrectly believed that the process toward sale of the NKSFB Business was progressing smoothly throughout at least January 2023. Defendants withheld the truth about their competing sales process and led KSFB to continue to believe the false representations made in September 2022 that Focus and Goldman were exclusively engaged in a sales process for the NKSFB Business and that there were not any conflicts of interest at play. Defendants did so intending to mislead KSFB and to induce KSFB to sign the Engagement Letter.

166. KSFB reasonably relied upon Defendants' misrepresentations, omissions, and actions in ignorance of their falsity and deceit. KSFB had no reason, and no ability, to discover the truth about Defendants' secret sales process. To the contrary, KSFB had ample reasons, as set forth above, to reasonably believe Defendants were telling the truth, when in fact they were being deceitful.

167. Defendants further withheld the fact of the material breach of the NDA. As described above, by using confidential information in support of a competing sales process and failing to share with KSFB the information shared during that process, Goldman and Focus materially breached Paragraphs 2 and 8 of the NDA. KSFB would have never signed the Engagement Letter had it known that Goldman and Focus were in breach of their contractual obligations.

168. Defendants thus fraudulently induced KSFB to sign the Engagement Letter with Goldman and Focus on January 25, 2023, and did so to try to escape liability for their duplicitous and fraudulent treatment of KSFB. Due to Defendants' fraudulent inducement, the Engagement Letter is voidable.

169. KSFB seeks rescission of the Engagement Letter based on Defendants' fraudulent conduct.

170. KSFB is further entitled to punitive damages for Defendants' fraudulent actions. Defendants' treachery and duplicitous actions directed at KSFB were reprehensible, fraudulent, and in blatant violation of law and policy. Their secret dealings and overtly fraudulent misrepresentations and concealment regarding material information rise to the level of extreme indifference to KSFB's rights and wanton disregard that decent citizens should not have to tolerate.

COUNT EIGHT

Unjust Enrichment (New York Law)

Against Focus, Goldman, Chang, and Fels

171. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

172. Since at least September 1, 2022, Goldman, Focus, Chang, and Fels engaged in an overall scheme against KSFB to lead it to believe that the three companies were engaged in a process to secure a buyer for the NKSFB Business and that none of them were engaged in, or would engage in, efforts to pursue a conflicting transaction, such as the sale of Focus, including its wholly owned subsidiary, NKSFB. *See* Ex. 1.

173. As a result of this overall scheme, and the many actions Goldman, Focus, Chang, and Fels took between September 1, 2022 and January 29, 2023 to promote this scheme, Goldman, Focus, Chang, and Fels enriched themselves and harmed KSFB.

174. Defendants profited handsomely from the sale of Focus to CD&R, which included the valuable wholly-owned subsidiary NKSFB. Defendants' ill-gotten gains were only made possible because of their scheme to secure confidential information from KSFB and tie KSFB down until the sale of Focus, along with NKSFB, closed. Focus and Chang were unjustly enriched through the sale of Focus and NKSFB at a substantially greater dollar amount than would have been possible without the scheme described herein. And Goldman and Fels were

unjustly enriched to the extent of their profits, fees, and compensation in connection with that transaction.

175. KSFB is entitled to restitution or disgorgement for Defendants' ill-gotten gains attributable to their fraudulent scheme.

COUNT NINE

Declaratory Judgment (New York Law)

Against Focus and Goldman

176. KSFB incorporates all of the allegations of the paragraphs above as if fully set forth herein.

177. KSFB, Goldman, and Focus entered into an NDA on October 25, 2022 in connection with their plan to secure a buyer for the NKSFB Business. *See* Ex. 1.

178. Unbeknownst to KSFB, Focus and Goldman were already engaged in actions to market and solicit bidders for the sale of Focus prior to execution of the NDA.

179. In September 2022, Chang of Focus and Fels of Goldman made representations to Segal of KSFB to persuade KSFB to use Goldman as its investment banker even though Focus was also using Goldman as its investment banker in its effort to sell the NKSFB Business. Defendants represented that there was "no conflict," and that Goldman and Focus were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business. These representations were false, and Chang and Fels knew they were false. Moreover, they and others at Focus and Goldman continued to make misrepresentations and take actions consistent with these misrepresentations that they were exclusively engaged in the process of soliciting bidders for the sale of the NKSFB Business from September 2022 through February 1, 2023.

180. Defendants knew that KSFB incorrectly believed that the process toward sale of the NKSFB Business was progressing smoothly throughout at least January 2023. Defendants withheld the truth about their competing sales process and led KSFB to continue to believe the false representations made in September 2022 that Focus and Goldman were exclusively

engaged in a sales process for the NKSFB Business and that there were not any conflicts of interest at play. Defendants did so intending to mislead KSFB and to induce KSFB to sign the Engagement Letter.

181. KSFB reasonably relied upon Defendants' misrepresentations, omissions, and actions in ignorance of their falsity and deceit. KSFB had no reason, and no ability, to discover the truth about Defendants' secret sales process. To the contrary, KSFB had ample reasons, as set forth above, to reasonably believe Defendants were telling the truth, when in fact they were being deceitful.

182. Defendants further withheld the fact of the material breach of the NDA. As described above, by using confidential information in support of a competing sales process and failing to share with KSFB the information shared during that process, Goldman and Focus materially breached Paragraphs 2 and 8 of the NDA. KSFB would have never signed the Engagement Letter had it known that Goldman and Focus were in breach of their contractual obligations.

183. Defendants thus fraudulently induced KSFB to sign the Engagement Letter with Goldman and Focus on January 25, 2023, and did so to try to escape liability for their duplicitous and fraudulent treatment of KSFB. Due to Defendants' fraudulent inducement, the Engagement Letter is voidable.

184. An actual controversy exists with respect to the enforceability of the Engagement Letter because KSFB contends that Defendants' fraudulent behavior, misrepresentations, and lies by omission render the Engagement Letter voidable whereas Defendants contend that the Engagement Letter remains a binding agreement.

185. KSFB thus seeks a declaration that the Engagement Letter is voidable by KSFB as to Focus and Goldman because KSFB was fraudulently induced into signing the agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff KSFB respectfully requests that the Court grant the following relief:


- a. For judgment in favor of KSFB on all causes of action enumerated herein;
- b. For a declaratory judgment that the Engagement Letter is unenforceable and voidable by KSFB as to Focus and Goldman because KSFB was fraudulently induced into signing the agreement and that KSFB is entitled to rescission;
- c. For actual and compensatory damages, including for the value of a sale of the NKSFB Business and/or for the value of a sale of KSFB without competition in the form of a conflicting sale, KSFB's loss of value due to the sale of Focus to CD&R, and KSFB's out-of-pocket losses in the form of reliance and sunk cost damages stemming from the sham sales process, in an amount to be determined at trial, plus interest thereon at the statutory rate;
- d. For restitution or disgorgement for Defendants' ill-gotten gains stemming from their fraudulent scheme, in an amount to be determined at trial, plus interest at the statutory rate;
- e. For punitive damages for Focus's, Goldman's, Chang's, and Fels's egregious, malicious, and fraudulent conduct, in an amount to be determined at trial, plus interest thereon at the statutory rate;
- f. For statutory costs, expenses, and reasonable attorneys' fees as against the Defendants plus interest thereon at the statutory rate; and
- g. For such other and further legal and equitable relief as the Court deems just and proper.

Respectfully submitted,

Dated: New York, New York
February 8, 2024

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By: _____


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