



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

SANJIV MEHRA, individually, and
SAMRITA MEHRA, as trustee of the
SANJIV MEHRA 2014
IRREVOCABLE TRUST,

Plaintiffs,

v.

JONATHAN TELLER,
EOS INVESTOR HOLDING
COMPANY LLC, **ANGRY**
ELEPHANT CAPITAL, LLC,
and **SARAH SLOVER**,

Defendants.

C.A. No.

VERIFIED COMPLAINT

Plaintiffs Sanjiv Mehra (“Mehra”), individually, and Samrita Mehra, as trustee of the Sanjiv Mehra 2014 Irrevocable Trust (the “Mehra Trust”), by and through undersigned counsel, for their Verified Complaint against defendants Jonathan Teller, EOS Investor Holding Company LLC, Angry Elephant Capital, LLC, and Sarah Slover, allege as follows:

NATURE OF THE ACTION

1. Sanjiv Mehra (“Mehra”) is the co-founder and co-CEO of a private, consumer-products business, best known for its colorful, egg-shaped lip balms. The company does business under the name “EOS” and is herein referred to as such. EOS is owned primarily through defendant EOS Investor Holding Company LLC, a Delaware limited liability company (“EOS Holdco”), in which Mehra holds a minority membership interest through the Mehra Trust. Mehra is the victim of an ongoing scheme by Jonathan Teller—co-founder and Mehra’s co-CEO of the EOS operating entities, and the controlling member of EOS Holdco—to squeeze Mehra out of the EOS structure and illegally strip him of his economic rights. Mehra is forced to bring this action to protect and vindicate his rights against Teller’s fiduciary and contractual breaches, aided and abetted by defendant Sarah Slover, EOS’s general counsel. Because the scheme and breaches are ongoing, and because Teller may continue to take actions irreparably harming Mehra’s rights and interests, Mehra’s need for expedited relief is great.

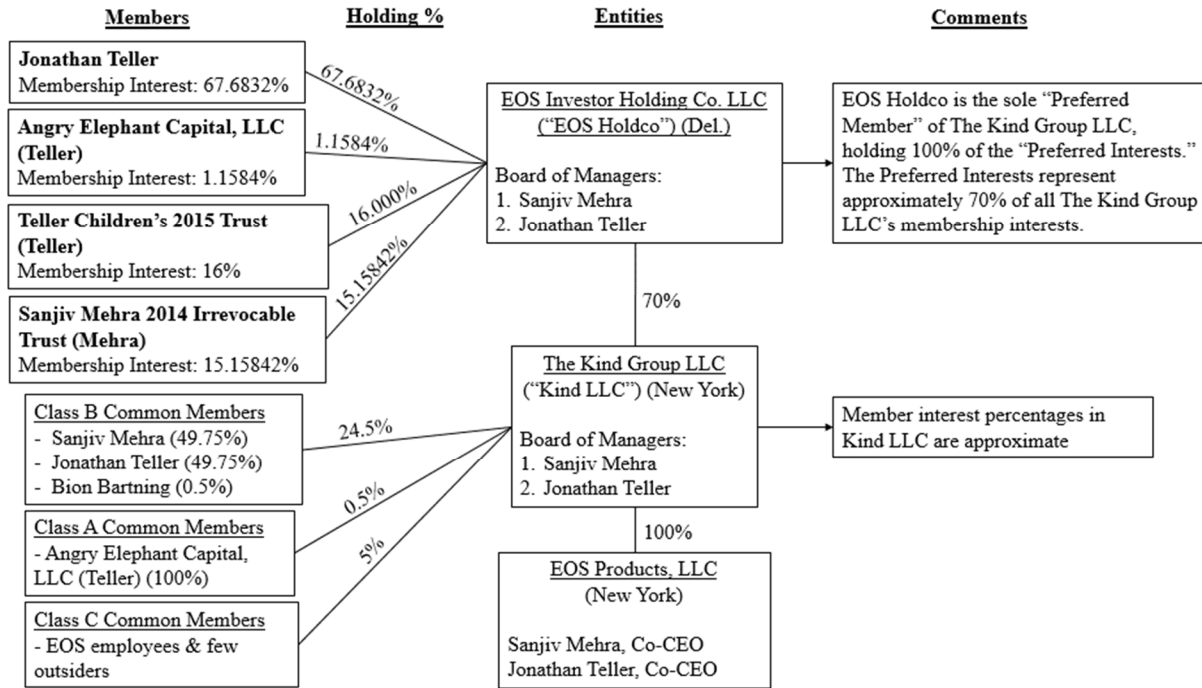
2. Mehra and Teller are co-CEO’s of non-party EOS Products, LLC (“EOS Products”), a New York limited liability company based in New York City. EOS Products is the primary operating entity for the business, which engages in the marketing and selling of a variety of lip balms, shave creams, and lotions.

3. EOS Products is wholly owned and controlled by non-party The Kind Group LLC (“Kind LLC”), another New York limited liability company. Kind LLC is owned by several different members as described in more detail below (including both Teller and Mehra individually), but as most relevant here, approximately 70% of its membership interests (and 100% of its “Preferred Interests,” as defined in its operating agreement) are held by EOS Holdco. A copy of EOS Holdco’s Amended and Restated Limited Liability Company Agreement, effective as of May 26, 2016 (the “EOS Holdco Operating Agreement” or “EOS Holdco’s Operating Agreement”), is attached as Exhibit A.¹ A copy of Kind LLC’s Seventh Amended and Restated Limited Liability Company Agreement, effective as of April 4, 2016 (the “Kind Operating Agreement” or “Kind’s Operating Agreement”), is attached as Exhibit B.

4. Mehra, through the Mehra Trust, has a minority membership interest of just over 15% in EOS Holdco. EOS Holdco’s sole purpose is to hold membership interests in Kind LLC. Teller, individually and through certain entities, owns the remaining approximately 85% of EOS Holdco. Teller and Mehra are the sole managers of EOS Holdco, the sole managers of Kind LLC, and co-CEOs of EOS

¹ The EOS Holdco Operating Agreement includes a cover page, purporting to represent a written consent of the members, identifying EOS Holdco as a New York limited liability company. This appears to be an error. At all relevant times, EOS Holdco was and is a Delaware limited liability company.

Products. As noted above, Mehra also individually has a membership interest in Kind LLC. The chart below depicts the membership and management of the limited liability companies in the EOS structure.



5. While Mehra owns only about 15% of EOS Holdco's membership interests, his right to ongoing distributions from EOS Holdco tripled—to 50% of EOS Holdco's distributions—once EOS Holdco's aggregate distributions to its members reached a "Threshold" level established by a formula in EOS Holdco's Operating Agreement. As of the date of this Complaint, the Threshold level has been reached, and Mehra's ongoing right to 50% of all future EOS Holdco distributions has been triggered.

6. EOS Holdco's Operating Agreement contains important protections designed to preserve Mehra's distribution rights—including his ongoing right to 50% of EOS Holdco's distributions—in the event EOS Holdco is dissolved. Under the EOS Holdco Operating Agreement, in a dissolution, the company must distribute its membership interests in Kind LLC to its members pro rata. But critically, the members, including Teller, are also required to take "necessary or appropriate" actions to ensure that the distribution percentages—including Mehra's right to 50% once aggregate distributions equal the Threshold, which they have—are given effect at the Kind LLC level. Mehra's distribution rights in the EOS Holdco Operating Agreement, in other words, override anything in the Kind Operating Agreement that otherwise could undermine or impair his distribution rights.

7. In or around September 2019, Teller, displeased with Mehra's efforts to persuade him to agree to a measure of financial discipline in the business, devised and began to implement a scheme to squeeze Mehra out of the EOS structure and strip him of his economic rights. Over a number of years, Teller, who was only minimally involved in EOS's business strategy and operations, drew at least approximately \$100 million out of the EOS structure to finance his lavish lifestyle, including an \$11 million apartment in Manhattan and a \$15-18 million, newly constructed, opulent house in the Hamptons, the high-end, summer-resort community on the east end of Long Island, New York. These advances impaired the

business's liquidity and hampered its growth. Despite Mehra's advice to the contrary, Teller regularly caused EOS Holdco to make large cash distributions to himself without regard for the company's liquidity needs. Teller also caused EOS Products to pay him compensation without regard to his actual contributions to the business and without regard to the business's liquidity needs.

8. Beginning in 2016, a combination of Teller's large cash distributions to himself and declining revenues left EOS's liquidity in a precarious state. Mehra's steady hand in implementing direction and control kept the business afloat.

9. In 2018, both Teller and Mehra loaned EOS Products money, which was repaid in 2019. Later in 2019, Mehra advised Teller that additional funding would be needed, but this time it would not be repaid for some time. While Mehra stated his willingness to contribute millions of dollars to the business, Teller said he did not have the cash and indicated that he had only sufficient money to fund his lifestyle until the end of 2020. Cognizant of their ten years of partnership and the emotional issues that Teller would have with the dilution of his interests if Mehra contributed new capital, Mehra worked diligently to try and borrow funds and manage EOS Products' expenses to delay the need for additional funding. He even brought new business opportunities to EOS to create potential liquidity opportunities.

10. Apparently unhappy with the resulting state of affairs, and the effects of Mehra's necessary management decisions on Teller's access to cash, Teller, with the knowledge and assistance of defendant Sarah Slover, EOS's general counsel, embarked on his scheme to take full control of EOS and deprive Mehra of his economic interests in the business he built.

11. Teller called a meeting on September 26, 2019 of EOS Holdco's Board of Managers, which consisted only of Mehra and Teller. Slover purported to act as the corporate secretary of EOS Holdco at the meeting. Teller provided neither an advance agenda nor any advance explanation of the purpose of the meeting. At the meeting, Teller proposed a resolution—a clear pretext for implementing his scheme—by which EOS Holdco, in its capacity as a member of Kind LLC, would consent to “remove” Mehra as a member of Kind LLC (as noted, Mehra individually had a membership interest in Kind LLC). But under Kind's Operating Agreement, there is no mechanism for members to involuntarily “remove” another member. The proposed resolution was thus not a proper subject for action of EOS Holdco as a member of Kind LLC. Teller and Slover used the resolution as a pretext to manufacture a “deadlock” of EOS Holdco's Board of Managers—Teller knew Mehra would not approve such a resolution—and purportedly trigger the dissolution of EOS Holdco pursuant to a term of the EOS Holdco Operating Agreement providing for dissolution in the event of a “deadlock.”

12. Upon information and belief, the “deadlock dissolution” is part of a scheme aimed at extinguishing Mehra’s membership interests in EOS Holdco and Kind LLC through a “Call Option” provision in Kind’s Operating Agreement that permits Kind LLC, in certain circumstances, to purchase a member’s interests at their capital account balance. Upon information and belief, Teller’s goal in this scheme is to (i) avoid paying Mehra the distributions he is and will continue to be entitled to under the clear terms of the EOS Holdco Operating Agreement and (ii) allow Teller to resell Mehra’s membership interests to fund Teller’s lifestyle.

13. After proposing the sham resolution, Teller voted in favor of it, and after Mehra refused to vote, Teller ordered him to leave the premises, denied him access to his computer, cut off his access to his company e-mail account, and, along with Slover, insisted on calling the police to remove Mehra from the premises. Slover then falsely told the New York City police that Mehra had no right to remain on the premises. Slover, an attorney, knew that the meeting of EOS Holdco’s Board of Managers was a pretextual sham and that EOS Holdco had no authority to remove Mehra as a member of Kind LLC.

14. Based on Mehra’s refusal to vote on the sham resolution, Teller unilaterally declared a “deadlock,” purporting to trigger a dissolution of EOS Holdco. That same day, Teller unilaterally executed “assignments” of EOS Holdco’s membership interests in Kind LLC to the individual members of EOS

Holdco, and in doing so breached the provisions of the EOS Holdco Operating Agreement, which require a liquidator, selected by the Board of Managers, to distribute the assets in the event of a dissolution. Mehra remains a manager on EOS Holdco's Board of Managers and no vote has been taken on the selection of a liquidator.

15. Teller's actions breached EOS Holdco's Operating Agreement and his fiduciary duties as a controlling member and manager of EOS Holdco, to Mehra. Mehra seeks relief that includes: (i) a preliminary injunction preventing any further steps to effect the dissolution or termination of EOS Holdco, and prohibiting Teller and Angry Elephant Capital, LLC from voting at the Kind LLC level purportedly based on the "assignments" Teller unilaterally executed on or about September 26, 2019; (ii) a permanent injunction requiring the restoration of the EOS Holdco membership interests to the status quo prior to the sham dissolution; (iii) declaratory relief stating that the purported dissolution was ineffective and that Mehra's distribution rights under the EOS Holdco Operating Agreement override anything in the Kind LLC Operating Agreement that could undermine or impair those distribution rights; and (iv) damages in an amount to be determined at trial.

PARTIES AND OTHER RELEVANT ENTITIES

16. Plaintiff Sanjiv Mehra is an individual residing in Scarsdale, New York. Mehra is a co-founder of EOS and co-CEO of EOS Products. Through the Mehra Trust, Mehra is a member of defendant EOS Holdco. Mehra individually is also a member of Kind LLC. Mehra is a manager of both EOS Holdco and Kind LLC.

17. Plaintiff Samrita Mehra, as trustee of the Mehra Trust, holds a 15.1585% membership interest in EOS Holdco. For ease of reference, this complaint refers to Mehra as the member of EOS Holdco and refers to the membership interest held by the trust as Mehra's membership interest.

18. Defendant Jonathan Teller is an individual residing in New York, New York. He is a co-founder of EOS and co-CEO of EOS Products. Teller individually holds a 67.6832% membership interest in EOS Holdco. Through defendant Angry Elephant Capital, LLC, Teller holds or controls an additional 1.1584% membership interest in EOS Holdco, and through non-party the Teller Children's 2015 Trust, he controls another 16% membership interest in EOS Holdco, making his total membership interest 84.8416%. Teller is also a member of Kind LLC, and a manager of both EOS Holdco and Kind LLC.

19. Defendant EOS Investor Holding Company LLC (previously defined as "EOS Holdco") is a Delaware limited liability company. As set forth in the EOS Holdco Operating Agreement, EOS Holdco's only authorized purpose is to hold

membership interests in Kind LLC. (*See* Ex. A § 2.04.) EOS’s business in turn operates through Kind LLC, EOS Products, and at least one other subsidiary not relevant here. Mehra, through the Mehra Trust, and Teller, individually and through Angry Elephant Capital, LLC and the Teller Children’s 2015 Trust, are the only members of EOS Holdco.

20. Defendant Angry Elephant Capital, LLC is a Delaware limited liability company that holds a 1.1584% membership interest in EOS Holdco on behalf of Teller.

21. Non-party the Teller Children’s 2015 Trust holds a 16% membership interest in EOS Holdco on behalf of Teller. As Mehra currently serves as the trustee of the Teller’s Children’s 2015 Trust, neither the trust nor its trustee are named as a party here.

22. Defendant Sarah Slover is an individual residing in New York. She serves as general counsel of EOS Products. She purported to act as the corporate secretary for EOS Holdco at the meeting of its Board of Managers on September 26, 2019.

23. Non-party The Kind Group LLC (previously defined as “Kind LLC”) is a New York limited liability company. Kind LLC’s membership interests are divided as follows: (i) all “Preferred Interests” (as defined in the Kind Operating Agreement) are held by EOS Holdco, making EOS Holdco the only “Preferred

Member” of Kind LLC; (ii) “Class A Common Interests” are held by defendant Angry Elephant Capital, LLC; (iii) “Class B Common Interests” are held by Mehra, individually, Teller, and a third individual; and (iv) “Class C Common Interests” are held mainly by other EOS employees.

24. Non-party EOS Products is a New York limited liability company. It is the primary operating entity for the business of the EOS structure. It is wholly owned by Kind LLC.

JURISDICTION

25. This Court has personal jurisdiction over defendants Teller and Angry Elephant Capital, LLC because, pursuant to Section 11.12 of the EOS Holdco Operating Agreement, they consented to jurisdiction in the State of Delaware. (*See* Ex. A § 11.12.)

26. This Court has personal jurisdiction over defendant Slover because she engaged in acts directed toward this state, in that she aided and abetted breaches of fiduciary duty by Teller, the controlling member of EOS Holdco. She also purported to act as the corporate secretary of EOS Holdco at the Board of Managers meeting on September 26, 2019. Alternatively, Slover took direct action as an officer/employee and is directly liable for breach of fiduciary duty as a participant in the wrongful conduct alleged herein and is therefore subject to personal jurisdiction pursuant to 6 *Del. C.* §§ 109 and 111.

27. This Court has subject-matter jurisdiction pursuant to 10 *Del. C.* § 341 and 10 *Del. C.* § 6501.

28. This Court also has subject-matter jurisdiction pursuant to (i) 6 *Del. C.* § 18-111 because this action involves the interpretation and/or enforcement of the EOS Holdco Operating Agreement, and (ii) 6 *Del. C.* § 18-110 because this action contests a vote of the managers of EOS Holdco.

FACTUAL ALLEGATIONS

Through Mehra's Efforts, EOS Becomes Successful While Teller Siphons Millions To Finance A Lavish Lifestyle

29. Mehra co-founded EOS with Teller and another individual in about 2008. Mehra has managed EOS Products, along with Teller and, briefly another individual, since about 2009. They have held equal titles, including Managing Partner and co-CEO. Teller's contributions to the company's business were limited primarily to providing financing (which came mainly from his mother) in the business's early years. Teller was only tangentially involved, if at all, in business strategy and operations.

30. Mehra had decades of experience in the consumer-goods industry and particular expertise in brand strategy and growing new businesses to very large scale. Through the efforts of Mehra and others, EOS's business grew rapidly, going from the launch of the lip balm in 2009 to approximately \$25 million in revenues in 2011, and, at its peak in 2015, revenues of approximately \$200 million. Much of EOS's

success was attributed to its popular lip balm, which was brought to market through highly effective brand and profitability strategies, both of which Mehra spearheaded.

31. At the first sign of EOS's success, Teller began to withdraw large sums of money from the EOS structure to finance his lavish lifestyle, which included the purchase of an \$11 million apartment on Park Avenue in Manhattan, the construction of a new home in the Hamptons, private-jet travel, and more. Teller was mostly uninvolved in the business on a day-to-day basis, content to siphon money out of the business to spend extravagantly. As Mehra tried to build a lasting brand and run a functional and fiscally responsible organization, Teller largely sat back, but he did see fit to make recommendations related to business expansion based on prognostications from his fortune teller, commit significant time and resources to the office's feng shui, and involve his friends as event planners and interior decorators.

32. From the founding of EOS through the present, Teller has withdrawn a total of approximately \$100 million from the EOS structure, the majority of which was distributed to him through EOS Holdco.

33. Teller's extravagant spending drained the company's cash position, and when EOS's revenues started to decline in the years following some bad publicity from the filing of a class-action lawsuit against it, it found itself without adequate cash to finance various growth opportunities available to the company.

34. Mehra's steady hand in managing EOS's business through this period kept it afloat, while Teller sat on the sidelines and lamented the fact that his source of spending money was drying up, and his personal travel was being downgraded from private jets to using credit-card points.

**Mehra Earns And Purchases An
Ownership Interest And Economic Rights In The Business**

35. As EOS experienced success from Mehra's efforts, he and Teller negotiated Mehra's purchase of an ownership interest in the company. Teller agreed to reward Mehra for building EOS's business and wanted to incentivize him to remain as CEO of EOS Products.

36. As relevant here, Mehra currently has the following ownership and economic rights in the EOS structure.

37. First, through the Mehra Trust, Mehra owns a 15.1584% share of EOS Holdco's membership interests. Under section 7.01(a)(ii) of EOS Holdco's Operating Agreement, Mehra is entitled to pro-rata distributions in accordance with his membership interest (*i.e.*, 15.1584%), and then, once aggregate distributions to EOS Holdco's members reached a certain "Threshold," Mehra became entitled, from then on, to 50% of all of EOS Holdco's distributions. (*See* Ex. A § 7.01(a)(ii) and Ex. A thereto.) Section 7.01(a)(ii) provides:

Unless otherwise determined by the Managers, all Distributions shall be made to the Members pro rata in accordance with their respective Membership Interests;

provided, however that, from and after the time that aggregate Distributions to the Members equal the Threshold, all subsequent Distributions shall be made to the Members in accordance with their respective revised sharing percentages as set forth on Exhibit A attached hereto.

(*Id.* § 7.01(a)(ii).)

38. The “Threshold” is determined by a formula set forth in the EOS Holdco Operating Agreement. The “Threshold” is equal to, at the time of a given distribution, approximately \$188 million minus the sum of all distributions made to EOS Holdco’s members between July 29, 2014 and the date of the distribution at issue. (*See id.* at 6.)

39. Mehra’s “revised sharing percentage[]” referenced in section 7.01(a)(ii) and set forth on Exhibit A of the EOS Holdco Operating Agreement is 50% of EOS Holdco’s distributions (referred to herein as Mehra’s “Revised Sharing Percentage”). (*See id.* § 7.01(a)(ii) and Ex. A thereto.)

40. No later than 2017, aggregate distributions equaled and exceeded the Threshold, thus triggering Mehra’s ongoing right to receive his Revised Sharing Percentage from that point forward. (*See id.*)

41. The Revised Sharing Percentage was critical to Mehra and a key component of the deal. It granted Mehra permanent upside in the business, and a mechanism by which he would be compensated should Teller continue to seek to

prioritize his desire for cash over the long-term health of the enterprise. It was a principal purpose of EOS Holdco to protect Mehra's interests in the business by, among other means, memorializing the Revised Sharing Percentage and ensuring that it would override any provision in the Kind Operating Agreement that could be deployed to injure Mehra's interests.

42. Second, Mehra individually is a member of Kind LLC and is entitled to receive distributions in accordance with Kind's Operating Agreement. Mehra, individually, along with Teller and a third individual, are holders of Kind LLC's "Class B Common Interests." As noted, Mehra also has an indirect ownership in Kind LLC through his membership in EOS Holdco, which owns all the "Preferred Interests" of Kind LLC.

**EOS Holdco's Operating Agreement Protects
Mehra's Right To Distributions, Including The
"Revised Sharing Percentage," In The Event Of Dissolution**

43. As detailed below, EOS Holdco's Operating Agreement protects Mehra's economic right to distributions, including the Revised Sharing Percentage, in the event EOS Holdco is dissolved.

44. In addition, Teller, as a controlling member and manager of EOS Holdco, has a fiduciary duty to Mehra as a minority member of EOS Holdco, to ensure that EOS Holdco is managed in the best interests of the company and its members, and to further ensure that Mehra's rights under the EOS Holdco Operating

Agreement, including his right to distributions at the Revised Sharing Percentage, are honored and given effect. Nothing in EOS Holdco's Operating Agreement purports to waive Teller's fiduciary duties.

45. The management of EOS Holdco is vested in a Board of Managers. (*See* Ex. A § 4.01.) EOS Holdco's Board of Managers consists solely of Mehra and Teller. Under the EOS Holdco Operating Agreement, the only way to remove a manager from the Board of Managers is through either a vote of the members holding not less than 90% of the membership interests or a resignation of a manager. Since Teller did not and does not control 90% or more of the membership interests, he could not and cannot unilaterally remove Mehra from EOS Holdco's Board of Managers. (*See id.* § 4.01.)

46. Under the EOS Holdco Operating Agreement, the Board of Managers is required to "act at all times in good faith and in such manner as may be required to protect and promote the interests of the Company and the Members." (*Id.* § 4.03.)

47. Each member of the Board of Managers (*i.e.*, Mehra and Teller) was given one vote. In the event of a "deadlock," the "Board of Managers shall dissolve the company in accordance with" the EOS Holdco Operating Agreement's provisions on dissolution set forth in article 10. (*Id.* § 4.10.)

48. In the event of such a dissolution (referred to in this complaint as a “deadlock dissolution”), the EOS Holdco Operating Agreement provides specific protections to ensure that Mehra’s distribution rights, including his right to the Revised Sharing Percentage, continue to be given effect even after any dissolution.

The applicable provision, section 4.10, provides in relevant part:

[I]n the event the vote upon an action by the Board of Managers results in a deadlock, then the Board of Managers shall dissolve the Company in accordance with Article X; provided that notwithstanding anything to the contrary contained herein, in connection with such dissolution, the membership interests of Kind [LLC] then held by the Company . . . shall be distributed to the Members pro rata in accordance with their respective Membership Interests and each of the Members shall take such actions as are necessary or appropriate to give effect as members of Kind to the economic arrangements among the Members set forth in Section 7.01(a)(ii) (i.e., it is the intent of the Members that, as between such Members, the same distribution provisions shall apply as Members of the Company or as members of Kind).

(*Id.* § 4.10 (emphasis added).)

49. Thus, in the event of a deadlock dissolution, shares of Kind LLC would be distributed to the members in accordance with their membership interests, and the members, including Teller, would be required to take “necessary or appropriate” actions to give effect to Mehra’s distribution rights, including the Revised Sharing Percentage, (which are provided for in section 7.01(a)(ii)), at Kind LLC. In other words, even if EOS Holdco went through a deadlock dissolution, Teller was required

to do what is necessary (whether by amending the Kind Operating Agreement or otherwise) to ensure Mehra continued to have the right—at the Kind LLC level—to 50% of the distributions that would have been paid to EOS Holdco absent any dissolution, once aggregate distributions to EOS Holdco’s members (or former members, as the case may be) equaled or exceeded the Threshold, as occurred here.

50. The mechanics of such a dissolution were controlled by article 10 of the EOS Holdco Operating Agreement. Under section 10.02, EOS Holdco’s assets were to be distributed by a “liquidator (who may be a Member) appointed by the Board of Managers”: “Upon dissolution of the Company, a liquidator (who may be a Member) appointed by the Board of Managers (the ‘Liquidator’), shall liquidate the assets of the Company, apply and distribute the proceeds thereof as contemplated by this Agreement and cause the cancellation of the Certificate of Formation.” (*Id.* § 10.02.) As the deadlock-dissolution provision of section 4.10 says nothing about *who* must distribute the Kind LLC shares in the event of deadlock dissolution, the liquidator provision of section 10.02 controls.

51. The dissolution article also provides that a dissolution becomes effective “on the day the event occurs giving rise to the dissolution,” but EOS Holdco does not “terminate its existence” until the assets get distributed and the Certificate of Formation is cancelled. (*Id.* § 10.01.)

**Kind’s Operating Agreement Provides
No Mechanism To “Remove” A Member**

52. As with EOS Holdco, the management of Kind LLC is vested in a Board of Managers. (*See* Ex. B § 4.1.) During the period relevant here, and as with EOS Holdco, Mehra and Teller were the sole managers of Kind LLC’s Board of Managers.²

53. The members of Kind LLC—including EOS Holdco—have only the rights and powers expressly granted to them under the Kind Operating Agreement, and “[e]xcept as expressly provided in this Agreement, the Members shall not have any voting, approval or consent rights.” (*Id.* §§ 5.1, 5.2.)

54. The Kind Operating Agreement has no provision granting members the right or authority to involuntarily “remove” another member.

55. Under section 11.8 of the Kind Operating Agreement, titled “Call Option,” the company has the option to repurchase a member’s interest “[i]f any Member who is an employee of the Company or of any Affiliate of the Company ceases to be employed by the Company or any Affiliate of the Company.” (*Id.* § 11.8.) The repurchase price depends on the circumstances of the employee’s departure, namely whether the employee was terminated with or without cause or

² Though the Kind Operating Agreement identifies four managers on the Board of Managers as of the agreement’s effective date (*see* Ex. B § 4.2(e)), the number of managers was later changed to include only Teller and Mehra.

voluntarily quit. (*See id.*) Where such a termination was “for Cause,” the repurchase price is the lower of the member’s “Capital Account balance and the Fair Market Value Amount” (as those terms are defined in the operating agreement). (*Id.*) Nothing in the Kind Operating Agreement gives members (as opposed to the Board of Managers) the right to approve an exercise of the Call Option provision.

56. Mehra’s right to distributions, including pursuant to the Revised Sharing Percentage, under the EOS Holdco Operating Agreement—including his right to receive those distributions through Kind LLC in the event of a deadlock dissolution—supersedes any right of Kind LLC to repurchase his membership interest through the Call Option provision.

**Teller And Slover Concoct A Deadlock Dissolution
As Part Of A Scheme To Strip Mehra Of His Economic Rights**

57. By on or about late September 2019, Teller—unhappy with the necessary controls Mehra implemented to ensure the continued viability of the business and the effect of those controls on Teller’s continued ability to fund his high-end lifestyle with advances of company cash—embarked on a scheme to squeeze Mehra out of the EOS structure and deprive him of his economic rights in the business. Slover, EOS Products’ general counsel, knew about the scheme and substantially assisted in its execution.

58. The first step in the scheme was to concoct a deadlock dissolution.

59. On or about September 23, 2019, Teller e-mailed Mehra, purportedly to provide notice of an upcoming meeting of EOS Holdco's Board of Managers (which, as noted, consisted only of Mehra and Teller). Teller refused to provide an agenda for the meeting or explain its purpose.

60. The meeting was held on September 26, 2019. Teller explained that the purpose of the meeting was to vote on a resolution authorizing EOS Holdco to "execute a consent, as a member of The Kind Group LLC, to remove Sanjiv Mehra as a member of The Kind Group LLC." When Mehra asked for a rationale for the proposal, Teller made vague, unsupported allegations of Mehra being a "negative force," "dishonest," and "difficult to work with." Mehra refused to vote on the proposal.³

61. Upon information and belief, Slover participated in drafting the proposed resolution, which was executed on the same day as the meeting. Slover also purported to act as the corporate secretary for EOS Holdco at the meeting.

62. The proposed resolution was pretextual and proposed in bad faith. As noted above, there is no mechanism in the Kind Operating Agreement allowing members to involuntarily "remove" another member, as Teller's proposed resolution purported to authorize. Teller proposed a resolution that would be utterly pointless at the Kind LLC level, because members of Kind LLC do not have the authority to

³ The meeting was recorded with the consent of all parties present.

involuntarily “remove” other members, regardless of any supposed written consent from EOS Holdco. Teller’s “resolution” was not a proper subject for action of EOS Holdco in its capacity as a member of Kind LLC.

63. Teller’s motivation for proposing this resolution was only to manufacture a “deadlock” so that he could declare a deadlock dissolution and, upon information and belief, take advantage of a purported shift in membership interests at the Kind LLC level to strip Mehra of his economic rights by, for example, purporting to exercise the Call Option to attempt to extinguish Mehra’s membership interests and avoid honoring Mehra’s long-term distribution rights.

64. Because the supposed “deadlock” related to a matter that was not a proper subject for action by EOS Holdco and could not have had any legal effect, it was not a valid deadlock, not a valid trigger for a deadlock dissolution, and totally ineffectual.

65. Teller breached the EOS Holdco Operating Agreement and his fiduciary duty as a controlling member and manager of EOS Holdco in purporting to dissolve EOS Holdco.

66. Teller and EOS Holdco also breached the EOS Holdco Operating Agreement through the manner in which Teller purported to unilaterally implement the manufactured deadlock dissolution.

67. As noted, under the EOS Holdco Operating Agreement, the distribution of EOS Holdco's assets upon dissolution is to be performed by a liquidator appointed by the Board of Managers.

68. Teller, however, personally and unilaterally executed "assignments" purporting to transfer EOS Holdco's interests in Kind LLC to the members of EOS Holdco, namely, to himself individually, as well as the Mehra Trust, Angry Elephant Capital, LLC, and the Teller Children's 2015 Trust.

69. The Board of Managers of EOS Holdco did not authorize Teller to act as the liquidator, and Teller's actions breached the agreement and were invalid.

70. Upon information and belief, Slover was involved in drafting the invalid "assignments" with knowledge of Teller's scheme to strip Mehra of his economic rights.

71. The purported dissolution and these "assignments" would also improperly dilute Mehra's voting power at the Kind LLC level. The improper dissolution would shift ownership of Kind LLC's Preferred Interests from EOS Holdco (where Mehra had 50% of the voting power as one of two managers on EOS Holdco's Board of Managers) to the individual members of EOS Holdco (where Mehra held only about 15% of the membership interests), diluting his voting power on matters subject to the vote of Preferred Members holding the Preferred Interests of Kind LLC. Actions subject to the vote of Preferred Members holding a majority

of Preferred Interests include the ability to remove managers elected by the Preferred Members, (*see* Ex. B § 4.2(b)), and the ability to force a sale of all of Kind LLC's membership interests to a third party under certain circumstances, (*see* Ex. B § 11.9(a)).

72. The dissolution and "assignments" would also alter the composition of Kind LLC's Restricted Members (a group consisting of Preferred Members, Class A Common Members, and Class B Common Members) by changing the Preferred Members from EOS Holdco to the individual members thereof (three of whom are controlled by Teller, and only one of which is controlled by Mehra) and would similarly dilute Mehra's voting power on matters subject to the vote of Restricted Members. Actions subject to the vote of a majority of Restricted Members include the ability to increase or decrease the number of managers of Kind LLC and to remove managers elected by the Restricted Members. (*See* Ex. B § 4.2(c), (d).)

73. Teller violated his fiduciary duties by seeking to cause a dilution of Mehra's voting power at Kind LLC with the purpose of squeezing Mehra out of the EOS structure and depriving him of and undermining his economic rights.

74. The dilution of Mehra's voting power at Kind LLC as a result of Teller's unlawful dissolution of EOS Holdco threatens Mehra with irreparable harm and underscores the urgency of undoing the dissolution to avoid potentially

irreversible decisions that may be made at Kind LLC based on an improper balance of voting power.

75. Teller has also failed to take necessary or appropriate steps at the Kind LLC level to give effect to Mehra's distribution rights under the EOS Holdco Operating Agreement.

76. At the September 26, 2019 meeting, after Teller purported to vote on his sham resolution, he ordered Mehra to leave the premises, denied him access to his computer, cutoff his company e-mail account, and, with Slover, insisted on having the police called to remove him from the premises.

77. To date Mehra has received no notice that he has—even purportedly—been fired as co-CEO of EOS Products or removed as a manager for either EOS Holdco (as noted above, Teller lacks the authority to remove Mehra unilaterally) or Kind LLC.

78. Nonetheless, Teller and others on his behalf reached out to EOS's business contacts and other contacts of Mehra immediately after the meeting to advise them that Mehra is no longer associated with the company. Mehra has suffered reputational harm as a result. Teller's actions jeopardize the industry relationships that Mehra has worked for decades to build.

COUNT I - BREACH OF FIDUCIARY DUTY
(Against Teller)

79. Plaintiffs repeat and reallege the allegations of the above paragraphs as if fully set forth herein.

80. Teller, as a manager and controlling member of EOS Holdco, owes fiduciary duties of care and loyalty to EOS Holdco and directly to Mehra (through the Mehra Trust) as a minority member.

81. Teller breached his fiduciary duty of loyalty by, among other things:

- a. Executing a scheme to strip Mehra of his economic rights in the EOS structure for Teller's own benefit, including to strip Mehra of his right to distributions, including the Revised Sharing Percentage, and including in the event of a deadlock dissolution;
- b. Using a pretext to dissolve EOS Holdco for the purpose of executing his scheme to deprive Mehra of his economic rights and to dilute his voting power at Kind LLC.

82. Mehra and the Mehra Trust have been harmed by these breaches in an amount to be proven at trial.

83. Especially because Mehra's rights to distributions are ongoing and indefinite in duration, Mehra and the Mehra Trust's damages will be difficult to quantify in dollars and, especially given the impact of the illegal dissolution on his voting rights, the harm cannot be addressed simply by awarding money damages.

COUNT II - BREACH OF CONTRACT
(Against Teller)

84. Plaintiffs repeat and reallege the allegations of the above paragraphs as if fully set forth herein.

85. The EOS Holdco Operating Agreement is a valid and enforceable contract.

86. At all times, Mehra, individually, and Samrita Mehra, as trustee of the Mehra Trust, performed all obligations required of them under the EOS Holdco Operating Agreement.

87. Teller, purporting to act on behalf of EOS Holdco, breached the EOS Holdco Operating Agreement by, among other things:

- a. Manufacturing a “deadlock” in bad faith by proposing a resolution that was an improper subject for action of EOS Holdco as a member of Kind LLC and incapable of having a legal impact on any relevant issue;
- b. Failing to act in good faith and in such manner as may be required to protect and promote the interests of EOS Holdco and its members, including Mehra;
- c. Failing to follow the proper procedure to effect a deadlock dissolution by, among other things, Teller’s unilateral “assignment” of EOS Holdco’s interests in Kind LLC; and
- d. Failing to take necessary and appropriate steps to give effect to Mehra’s distribution rights under the EOS Holdco Operating Agreement at the Kind LLC level.

88. Mehra and the Mehra Trust have been harmed by these breaches in an amount to be proven at trial.

89. Especially because Mehra's rights to distributions are ongoing and indefinite in duration, Mehra and the Mehra Trust's damages will be difficult to quantify in dollars and, especially given the impact of the illegal dissolution on his voting rights, the harm cannot be addressed simply by awarding money damages.

COUNT III - AIDING AND ABETTING BREACH OF FIDUCIARY DUTY
(Against Slover)

90. Plaintiffs repeat and reallege the allegations of the above paragraphs as if fully set forth herein.

91. As noted above, Teller owed fiduciary duties to Mehra and the Mehra Trust, and he breached those duties.

92. Slover knew about the breaches as she knew about Teller's scheme to strip Mehra of his economic rights for Teller's own benefit.

93. Slover provided substantial assistance to Teller's breaches by, among other things, participating in the drafting of pretextual corporate documents designed to implement the scheme.

94. Mehra and the Mehra Trust have been harmed by these breaches in an amount to be proven at trial.

95. Especially because Mehra's rights to distributions are ongoing and indefinite in duration, Mehra and the Mehra Trust's damages are difficult to quantify in dollars and, especially given the impact of the illegal dissolution on his voting rights, the harm cannot be addressed simply by awarding money damages.

96. Alternatively, Slover is directly liable for breach of fiduciary duty as an officer/employee who participated in the wrongful conduct alleged herein.

COUNT IV - DECLARATORY JUDGMENT

(Against All Defendants; as to EOS Holdco and Angry Elephant Capital, LLC,
they are named for relief purposes only)

97. Plaintiffs repeat and reallege the allegations of the above paragraphs as if fully set forth herein.

98. This matter presents a controversy involving Mehra's rights, including his rights as a member of EOS Holdco and including his rights to distributions in accordance with the provisions of EOS Holdco's Operating Agreement, including his revised share percentage.

99. The defendants, as either members, managers, or employees of EOS Holdco or one of its subsidiaries, have an interest in contesting the claim, as evidenced by Teller's purported attempt to dissolve EOS Holdco in violation of the EOS Holdco Operating Agreement and his fiduciary duties. The entities through which Teller holds a portion of his membership interests have an interest in this action as their membership interests were affected by Teller's actions.

100. The controversy is real and adverse, and the issues are ripe for determination.

101. Plaintiffs are entitled to a declaratory judgment stating the following:

- a. The purported dissolution of EOS Holdco violated the terms of the EOS Holdco Operating Agreement and Teller's fiduciary duties and was therefore invalid and ineffectual;
- b. Any votes of Teller or Angry Elephant Capital, LLC as Preferred Members or Restricted Members of Kind LLC purportedly based on the membership interests of Kind LLC "assigned" by Teller on or about September 26, 2019 are invalid;
- c. Mehra (through the Sanjiv Mehra 2014 Irrevocable Trust) is entitled to the distributions, including the Revised Sharing Percentage, set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, at the Kind LLC level;
- d. Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage, overrides any provision in the Kind Operating Agreement that could impair his right to such distributions, including the Call Option provision in section 11.8 of the Kind Operating Agreement;
- e. The Call Option provision in section 11.8 of the Kind Operating Agreement cannot be exercised in any manner that impairs or diminishes Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage; and
- f. Under the EOS Holdco Operating Agreement, Teller must take all necessary or appropriate acts to give effect to Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage, at the Kind LLC level.

PRAYER FOR RELIEF

Plaintiffs respectfully request the following relief:

1. A preliminary injunction:
 - a. Prohibiting the defendants from taking any further steps to dissolve and terminate the existence of EOS Holdco; and
 - b. Prohibiting Teller and Angry Elephant Capital, LLC from voting as Preferred Members or Restricted Members of Kind LLC, to the extent such votes purport to be based on the membership interests of Kind LLC “assigned” by Teller on or about September 26, 2019.
 - c. Prohibiting Teller and Angry Elephant Capital, LLC from taking any action to purportedly exercise the “Call Option” provision in section 11.8 of the Kind Operating Agreement to repurchase any membership interests in Kind LLC held by Mehra or the Mehra Trust.
2. A permanent injunction requiring the defendants to reinstate the membership interests and all other provisions of EOS Holdco in effect immediately prior to the purported dissolution.
3. A declaration stating:
 - a. The purported dissolution of EOS Holdco violated the terms of the EOS Holdco Operating Agreement and Teller’s fiduciary duties and was therefore invalid and ineffectual;
 - b. Any votes of Teller or Angry Elephant Capital, LLC as Preferred Members or Restricted Members of Kind LLC purportedly based on the membership interests of Kind LLC “assigned” by Teller on or about September 26, 2019 are invalid;
 - c. Mehra (through the Sanjiv Mehra 2014 Irrevocable Trust) is entitled to the distributions, including the Revised Sharing Percentage, set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, at the Kind LLC level;

- d. Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage, overrides any provision in the Kind Operating Agreement that could impair his right to such distributions, including the Call Option provision in section 11.8 of the Kind Operating Agreement;
 - e. The Call Option provision in section 11.8 of the Kind Operating Agreement cannot be exercised in any manner that impairs or diminishes Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage; and
 - f. Under the EOS Holdco Operating Agreement, Teller must take all necessary or appropriate acts to give effect to Mehra's right to distributions as set forth in section 7.01(a)(ii) of the EOS Holdco Operating Agreement, including at the Revised Sharing Percentage, at the Kind LLC level.
4. Damages in amount to be determined at trial; and
 5. Such other relief as the Court deems just and proper.

DATED: October 10, 2019

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