

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

----- x
TILLAGE COMMODITIES FUND, L.P.,

Plaintiff,

- against -

SS&C TECHNOLOGIES, INC.,

Defendant.

----- x
SS&C TECHNOLOGIES, INC.,

Third-Party Plaintiff,

- against -

TILLAGE COMMODITIES, LLC and
TILLAGE COMMODITIES
MANAGEMENT, LLC,

Third-Party Defendants.
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ELECTRONICALLY FILED

Index No.: 654765/2016

The Honorable Justice Barry Ostrager

Third-Party Plaintiff designates New
York County as the place of trial

Venue is based on CPLR 503(a) & (c)
Third-Party Plaintiff's and Third-
Party Defendants' residences are in
New York County

THIRD-PARTY SUMMONS

TO THE ABOVE-NAMED THIRD-PARTY DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the Third-Party Complaint in the
above-captioned action and to serve a copy of your Answer, or, if the Complaint is not served
with this summons, to serve a notice of appearance, on Davis Polk & Wardwell LLP, counsel for
Third-Party Plaintiff SS&C Technologies, Inc., within twenty days after the service of this
summons, exclusive of the day of service, or within thirty days after the service is complete if

this summons is not personally delivered to you within the State of New York. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the Third-Party Complaint. Venue is proper because Third-Party Plaintiff and Third-Party Defendants reside in New York County, because of the choice-of-forum clause provided in the Agreement To Provide Administration Services executed by the parties, and because of the pending first-party action in New York County Supreme Court.

Dated: New York, New York
June 5, 2017

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Paul Spagnoletti
Paul Spagnoletti

Of Counsel
Matthew A. Kelly

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*Attorneys for Third-Party Plaintiff SS&C
Technologies, Inc.*

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**SS&C’S THIRD-PARTY COMPLAINT AGAINST TILLAGE COMMODITIES,
LLC AND TILLAGE COMMODITIES MANAGEMENT, LLC**

Defendant and Third-Party Plaintiff SS&C Technologies, Inc. (“SS&C”), by its undersigned attorneys, brings this Third-Party Complaint against Tillage Commodities, LLC (“Tillage’s General Partner”) and Tillage Commodities Management, LLC (“Tillage’s Management”) (collectively, the “Tillage Defendants”).

In support of its claims, upon evidence adduced in documentary discovery in the above-captioned first-party action, upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters, SS&C hereby alleges as follows:

NATURE OF THE ACTION

1. This is a Third-Party Complaint for breach of contract, breach of the implied covenant of good faith and fair dealing, and contribution under Article 14 of the New York Civil Practice Law and Rules (“CPLR”). This action is based on the Tillage Defendants’ breaches of their fiduciary, common law, and contractual duties, all of which caused or contributed to the injuries that Tillage Commodities Fund, L.P. (“Tillage,” or the “Fund”) alleges it suffered in the above-captioned first-party action against SS&C, which is currently pending before this Court. SS&C denies all liability in the first-party action, but brings this Third-Party Complaint, in part, for contribution against the Tillage Defendants if SS&C should be found liable.

2. At base, Tillage’s first-party action is a transparent attempt to distract its investors from the real cause of its losses: the fundamental failures of the Tillage Defendants to uphold their fiduciary, common law, and contractual obligations to the Fund and to SS&C. While benefitting from monthly fees based on their professed management of Tillage, the Tillage Defendants’ principals—most notably Thomas A. Funk (“Funk”), their shared controlling principal—failed to safeguard the Fund’s confidential information and failed to perform even the most basic oversight of the Fund’s bank account. By abdicating their core responsibilities, the Tillage Defendants enabled unknown criminals to obtain authentic credentials for the Fund and go undetected while using those credentials to steal millions from the Fund’s coffers. Yet Tillage, which Funk entirely controls, does not seek to hold the Tillage Defendants accountable

for their failures. Instead, Funk (through Tillage) casts blame on the Fund's back-office administrative services provider, SS&C, based on the fact that SS&C was duped by the fraudsters' use of the Fund's credentials. SS&C's good-faith efforts to satisfy its contractual obligations to the Fund were entirely frustrated by the Tillage Defendants' willful and persistent neglect of their own responsibilities. The Tillage Defendants should be held accountable for their incompetence and the losses that resulted therefrom.

3. In its first-party action, Tillage alleges that SS&C engaged in gross negligence and breached its contractual obligations under the Agreement To Provide Administration Services (the "Services Agreement") when it processed six fraudulent wire transfer requests in March 2016, and then allegedly failed to cooperate with Tillage's attempt to investigate the fraud. Tillage's allegations rely on false and misleading claims, baseless conjectures, and inflammatory accusations, including nonsensical allegations that SS&C—without any alleged motivation or benefit—may have colluded with the criminals to facilitate the fraud.

4. But the record, including the documentary evidence, shows that Tillage's claims are both divorced from reality and fatally flawed for at least three reasons:

(a) First, SS&C was engaged solely to provide back-office administrative services at the direction and under the supervision of Tillage's Management. SS&C had no obligation or authority to challenge the decision-making of Tillage's Management with respect to the Fund, and was not responsible for ensuring that Tillage's Management complied with the Fund's governing documents.

(b) Second, for each of the transfer requests at issue, an individual purporting to represent Funk sent SS&C wire transfer requests on the proper form, with signatures that matched those of Tillage's authorized signatories, and with Tillage's confidential account information. SS&C reasonably believed the requests reflected genuine instructions from Tillage's Management, which SS&C followed. Although not required under the contract or otherwise, each request was also subjected to a multi-step review and approval process before execution.

(c) Third, far from causing the loss, SS&C was responsible for discovering the fraud and thwarting any further theft from the Fund. On the morning of March 24, 2016, SS&C contacted Funk to understand how to record the transactions in the company's month-end books and records. Only then did SS&C learn that the requests had not been authorized. SS&C immediately halted a pending transfer per an instruction that had been received earlier that day, reported the theft to authorities, and began coordinating with Tillage and First Republic Bank ("First Republic"), the bank at which Tillage's account was held. It was only because of SS&C's proactive efforts that morning to reach out to Tillage that the fraud was discovered and the Fund's account was not entirely drained.

5. Despite all these facts, when the Tillage Defendants learned from federal authorities that there was no realistic chance of the funds being recovered, the Tillage Defendants, without any meaningful investigation of the facts, began to cast blame on SS&C, issuing threats of litigation.

6. What is now clear is that this was all an effort to distract from the culpability of the Tillage Defendants. The record shows that the Tillage Defendants failed to take basic measures to satisfy their contractual, common law, and fiduciary obligations. The Tillage Defendants' gross neglect of their responsibilities allowed the fraud to occur and caused Tillage's losses in at least three ways:

(a) First, the Tillage Defendants failed to safeguard the confidential information and credentials of the Fund and engaged in inadequate cybersecurity practices, including by sharing passwords and user accounts and by intermingling personal and business records on insecure web-based services. The Tillage Defendants knew or should have known that the security of the Fund's accounts depended on protecting their own account and signature information, and that a third party in possession of such information could use it to initiate fraudulent transfers from the Fund's account. Nonetheless, the Tillage Defendants left these materials—effectively the keys to the Fund's account—exposed for the taking.

(b) Second, having left the Fund's account vulnerable to fraud, the Tillage Defendants recklessly and/or willfully ignored it. For at least two consecutive weeks, the Tillage Defendants violated their obligation to monitor and oversee the services provided by SS&C, in violation of their contractual and fiduciary duties. In particular, the record shows that the Tillage Defendants did not once check the balance of their account between March 8, 2016 and March 23, 2016, despite having the ability to do so instantaneously via an online portal. That simple step—the bare minimum that could be required of a fund manager—would have inevitably revealed the existence of the fraud and put it to an end.

Indeed, the fraud was only discovered when SS&C brought the wire transfer requests to the attention of the Tillage Defendants to understand how such transfers should be recorded for month-end accounting purposes.

(c) Third, rather than make any good-faith attempt to cooperate in the recovery of the funds, the Tillage Defendants set out to distract attention from their own culpability, spreading baseless rumors that SS&C had been hacked, that SS&C (not the Tillage Defendants) was the source of the credentials used by the fraudsters, and that SS&C may even have been complicit in the fraud. Over a month later, the Tillage Defendants, in bad faith and under the guise of attempting to investigate and recover the funds from the thieves, purported to invoke contractual rights to inspect books and records related to the Fund. Yet, as SS&C has since learned through discovery, the Tillage Defendants had been informed by federal law enforcement authorities just days after the fraud that there was likely no hope of recovering the stolen money, which had been transferred from the receiving account to accounts in other countries almost instantly. The Tillage Defendants' investigatory claims were simply false pretenses—part of a bad-faith effort to obtain improper pre-litigation discovery that they hoped would help them further hide their own culpability.

7. Tillage's complaint reflects the culmination of that bad-faith effort. The first-party action amounts to a mere attempt to shift blame from the Tillage Defendants to their back-office administrator, SS&C.

8. As alleged herein, Tillage's Management breached the Services Agreement and the implied covenant of good faith and fair dealing, and the Tillage Defendants

collectively abdicated their fiduciary and common law duties to the Fund and its investors. Together, these actions and non-actions enabled the fraud to occur and were the direct and proximate causes of Tillage's alleged loss. Now, the Tillage Defendants must be held accountable for their fundamental failures.

THE PARTIES

9. Third-Party Plaintiff SS&C Technologies, Inc. is a Delaware corporation headquartered in Windsor, Connecticut, with offices located throughout the world, including at 675 Third Avenue, New York, New York 10017 in New York County.

10. Third-Party Defendant Tillage Commodities, LLC is a Delaware limited liability company with its principal office at 535 Fifth Avenue, 4th Floor, New York, New York 10017 in New York County. From in or around the third quarter of 2015 to the Fund's dissolution, the managing members of Tillage Commodities, LLC were Thomas A. Funk and Bradley T. McKay. From the Fund's inception to in or around the third quarter of 2015, the managing members of Tillage Commodities, LLC were Thomas A. Funk and Oliver A. Lennox.

11. Third-Party Defendant Tillage Commodities Management, LLC is a Delaware limited liability company responsible for certain administrative and investment advisory matters of Tillage with a principal place of business at 535 Fifth Avenue, 4th Floor, New York, New York 10017 in New York County. From in or around the third quarter of 2015 to the Fund's dissolution, the managing members of Tillage Commodities Management, LLC were Thomas A. Funk and Bradley T. McKay. From the Fund's inception to in or around the third quarter of 2015, the managing members of Tillage Commodities Management, LLC were Thomas A. Funk and Oliver A. Lennox.

JURISDICTION AND VENUE

12. This Court has personal jurisdiction over Tillage Commodities, LLC and Tillage Commodities Management, LLC pursuant to CPLR § 302(a) because they transact business within New York State, have committed tortious acts within New York State, have committed tortious acts throughout New York State causing injury to property within New York State, should reasonably have expected the acts to have consequences in New York State, have derived substantial revenue from interstate commerce, and own, use, or possess real property within New York State.

13. Venue is proper because Third-Party Plaintiff and Third-Party Defendants reside in New York County, because of the choice-of-forum clause provided in the Services Agreement executed by the parties, and because of the pending first-party action in New York County Supreme Court.

FACTUAL ALLEGATIONS

A. The Parties' Respective Obligations to the Fund

14. Tillage was a multi-million-dollar fund founded by Funk and Oliver A. Lennox ("Lennox") in the fourth quarter of 2011 that used computer-driven algorithms to make investments in commodity futures and other esoteric products.

15. At all times relevant to this Third-Party Complaint, Funk completely controlled the Fund. According to the Fund's offering documents, Funk was responsible for "all aspects of managing the Fund," including "strategy development, risk management, trading, operations and marketing."

16. Funk represented to investors that he had substantial experience in investment management and commodities markets through his previous roles, including as the managing director in the commodities department at Morgan Stanley.

17. As a managing member of Tillage's General Partner, Funk was charged with managing the Fund and directly benefited from the Fund's performance.

18. The revenue that Funk garnered from the Fund was not, however, entirely dependent on the Fund's performance. Funk also received handsome fees for his role as the co-managing member of Tillage's Management, which was responsible for making all decisions for the Fund. Specifically, Funk, together with his co-managing member, Lennox or Bradley T. McKay ("McKay"), received a monthly management fee calculated at 2% of each investor's capital account. As a result, Funk was paid each month, no matter how the Fund performed. For example, in April 2012, Tillage's management fee totaled approximately \$11,800, despite the Net Asset Value ("NAV") of the Fund declining by around \$174,000 (or 2.5%) since the previous month.

19. The Tillage Defendants engaged SS&C to provide various back-office record-keeping and administrative services on behalf of Tillage and Tillage's Management.

20. The Services Agreement was a tri-party contract that established the clear roles and responsibilities between the Fund, Tillage's Management, and SS&C.

21. Under the contract, SS&C was responsible for maintaining the books and records for the Fund on a monthly basis, providing month-end investor statements, assisting Tillage's Management in preparing regulatory reporting, and processing capital transactions for the Fund. When an investor wanted to subscribe to the Fund or redeem its investment, SS&C would process the investor's subscription and/or redemption documents. When Tillage's

Management wanted to make a transfer out of its administrative funding account (for example, to move funds to its prime brokerage account, to pay a routine expense, or for any other purpose), SS&C was responsible for receiving, processing, and recording the transfer request.

22. The Services Agreement made clear that SS&C was not responsible and did not have authority to perform any management functions or make any management decisions with respect to the Fund. Instead, “[t]he management and control of the Fund [was] vested exclusively in [Tillage’s] Management, subject to the terms and provisions of the governing documents,” and all of SS&C’s services were explicitly subject to the oversight of Tillage’s Management. Accordingly, SS&C’s ability to perform its services under the contract was heavily dependent on the active and continued engagement of Tillage’s Management in the day-to-day operations of the Fund.

23. The modest fees that SS&C received on a monthly basis per the Services Agreement’s fee structure reflected that SS&C provided only a limited set of services for the Fund, most of which were executed at the end of the month.

24. The Services Agreement had an initial term of one year and was renewed annually without modification.

B. SS&C’s Wire Transfer Process

25. Among the services it performed, SS&C processed wire transfer requests at the instruction of its clients. To aid in the processing of such requests, SS&C provided its clients with a standard template form (the “Wire Transfer Request Form”) that required the client to enter certain information, including the client’s account number and the name of the bank at which the account was held.

26. The Wire Transfer Request Form also required the signatures of two authorized signatories of the client.

27. SS&C separately provided its clients with a signature card (the “Signature Card”) and required them to provide the name and signature of each authorized signatory for each fund. SS&C maintained a Signature Card on file for each client.

28. SS&C had a comprehensive system to process wire transfer requests, which purposefully divided responsibilities among multiple employees in order to mitigate the risk of error. When SS&C received a wire transfer request either via fax or as an attachment to an email, an associate from its investor services department would ensure that the proper information on the Wire Transfer Request Form was included. SS&C would also validate the signatures on the Wire Transfer Request Form by ensuring they matched the signatures on the Signature Card. SS&C would then send the file to its India-based Treasury Team (the “Treasury Team”).

29. The Treasury Team, in turn, confirmed that the bank account information on the Wire Transfer Request Form was correct and that there were sufficient funds available in the client’s account. Although it was not required under any agreement, four different members of the Treasury Team independently reviewed the wire transfer request before releasing the funds.

30. SS&C would then forward a confirmation slip of the executed wire transfer to its client.

C. The Fraudulent Transfers

31. On March 3, 2016, SS&C received an email from an individual purporting to represent Funk from the spoofed email address tfunk@tillagecapital.com. The individual

requested a wire transfer from Tillage's account at First Republic for the purpose of making a capital investment in a Hong Kong technology business.

32. The March 3 request was submitted on the Wire Transfer Request Form and included the correct account information for the Fund's transferring bank.

33. The March 3 request also bore signatures that matched those on Tillage's Signature Card for Tillage's authorized signatories at the time, Funk and McKay.

34. Per its standard practice, SS&C reviewed the March 3 Wire Transfer Request Form to ensure that the signatures matched those on Tillage's Signature Card and that the bank account and bank name for Tillage were correct, after which SS&C sent the request to the Treasury Team.

35. The Treasury Team, in turn, entered the wire in the First Republic online portal and then, before releasing the wire, confirmed that the bank account information provided on the Wire Transfer Request Form was correct and that there were sufficient funds available at Tillage's account at First Republic.

36. After the March 3 wire was released, SS&C sent the individual purporting to be Funk a copy of the confirmation slip.

37. On March 7, 2016, First Republic confirmed the funds had left Tillage's account.

38. On March 8, 2016, SS&C received another email from an individual purporting to be Funk, who again requested a wire transfer from the Fund's account. Like the March 3 request, the March 8 request was submitted on a Wire Transfer Request Form, included the correct account information for the Fund's transferring bank, and bore signatures that matched those on file for the Fund's authorized signatories. The stated purpose of the transfer

was, again, to make a capital investment in a Hong Kong technology company. SS&C reviewed and processed the March 8 request according to the same practice it had followed for the March 3 request.

39. Shortly after SS&C processed the March 8 wire without incident, SS&C was informed by First Republic that the March 3 wire had been returned by the beneficiary bank for unknown reasons.

40. SS&C notified the individual purporting to be Funk about the returned wire. The individual responded that the recipient had confirmed that the issue was on its end, and that no further work was required. The individual also confirmed that the subsequent March 8 wire had been successfully completed.

41. On each of March 9, 14, 16, and 21, 2016, SS&C received and processed similar wire transfer requests from the individual purporting to be Funk from the email address tfunk@tillagecapital.com. Each of these requests was for the stated purpose of continuing to fund the same Hong Kong-based business venture.

42. And for each request, SS&C followed the same practice, verifying that the signatures on the Wire Transfer Request Form matched those on file for the Fund and confirming that the Fund's bank account information was correct, before each wire was released.

43. At no point in reviewing and processing these requests did anyone at SS&C notice the additional "l" in the email domain name. Tillage's Management also failed to notice the additional "l" when it received an email that included the spoofed email domain.

44. Throughout this period, neither Funk nor McKay nor anyone else acting on behalf of Tillage and/or the Tillage Defendants alerted SS&C to any suspicious activity regarding Tillage, including any suspicious activity regarding the Tillage account.

D. SS&C Discovers the Fraud

45. On the morning of Thursday March 24, 2016, soon after SS&C had started to process an additional transfer request from the individual purporting to be Funk, SS&C called the real Funk to determine how the prior international transfers were to be recorded for month-end accounting purposes. SS&C sent Funk the wire transfer requests and their accompanying cover emails.

46. SS&C then learned for the first time that Funk had not been aware of the international transfers that had been made in the preceding weeks and had not himself sent the requests. Shockingly, despite the fact that the account contained the substantial majority of the Fund's assets, Funk had no idea that Tillage's balance had decreased by approximately \$5.9 million over the course of the month.

47. Upon learning this information, SS&C immediately and successfully halted the processing of the request received that day and began to investigate the March 2016 wire transfer requests.

48. In the course of its investigation, SS&C discovered that neither Funk nor McKay (nor anyone else acting on behalf of Tillage) had logged onto the First Republic portal to check the balance of or otherwise monitor Tillage's account from at the very least February 1, 2016 through March 23, 2016.

49. SS&C also discovered that the First Republic records reflected that Lennox, who had apparently departed the Fund in or around the third quarter of 2015, logged onto the First Republic portal to check Tillage's account balance multiple times on March 24, 2016, the very day that SS&C discovered the fraud.

50. Unaware of any of the circumstances surrounding the fraudulent wire transfer requests, including whether the requests were sent by someone then or formerly associated with Tillage, SS&C filed a fraud report that same day with the Hong Kong Police Force, which stated, in relevant part:

On each of March 3, 8, 9, 14, 16, 21, and 24 SS&C Technologies, Inc. received emails from known contacts at [Tillage] to wire monies from [Tillage's] bank account. Signed letters of authorization were provided with valid signatures on [SS&C's] standard form. It was subsequently discovered and confirmed with [Tillage] on March 24th that these payment requests were in fact not sent and authorized by [Tillage's] authorized representatives.

51. SS&C also provided the Hong Kong authorities with documentation concerning the wire transactions, noting that “[t]he proceeds of the March 3rd wire were returned to [SS&C] for unrelated reasons” and “[t]he March 24th wire was not sent” because SS&C “determined, after receipt of the payment request, that the request was fraudulent.”

52. At no point during the days after the discovery of the fraud did Funk or anyone else acting on behalf of the Tillage Defendants alert SS&C that the requests were sent from an email address containing three “l”s, rather than two “l”s, even though Funk had been provided with copies of the cover emails accompanying the fraudulent transfer requests.

E. Tillage's Management Tries To Extort Pre-Litigation Discovery

53. On Thursday March 24, 2016, the same day the fraudulent transfers were discovered, Funk contacted federal authorities and confirmed that a case had been opened with the Federal Bureau of Investigation. In the days that followed, Funk learned that, according to the authorities, there was likely no hope of recovering the stolen money, which had been transferred from the receiving account to accounts in other countries almost instantly.

54. Meanwhile, in the days that followed SS&C's discovery of the fraud, despite having conducted no meaningful investigation into the fraudulent transfer requests and

having no substantive knowledge of what had occurred, Tillage's former counsel, Cravath, Swaine & Moore LLP, repeatedly demanded that SS&C make the Fund whole, warning that the Fund would collapse by Monday morning and threatening to pursue claims against SS&C in court. SS&C agreed to fully assist and cooperate in investigations into the third-party fraud, but declined to make any such payments.

55. Over a month later—knowing that Tillage's funds could not be recovered and having threatened SS&C with litigation—Funk initiated repeated demands that SS&C produce all of its communications with the third-party fraudsters, asserting in bad faith that he was seeking this information in an effort to recover the stolen funds and was entitled to such information under the books-and-records provision of the Services Agreement.

56. But the books-and-records provision of the Services Agreement clearly did not apply to such communications, as they were completely unnecessary to document the transactions that SS&C recorded on behalf of Tillage.

57. In response to Funk's bad-faith attempt to seek pre-litigation discovery, SS&C provided some materials to Funk and assisted him in accessing such materials, even though he was not entitled to such documents under the clear language of the Services Agreement.

F. Tillage's Fiduciaries Cast Blame on SS&C

58. Rather than cooperate in the recovery of the funds, the Tillage Defendants proceeded to cast blame on SS&C by making baseless allegations suggesting that SS&C had been hacked, that SS&C (not the Tillage Defendants) was the source of the credentials used by the fraudsters, and that SS&C may even have been complicit in the fraud.

59. In its complaint in the first-party action, Tillage presents a blunderbuss of claims about SS&C's alleged gross negligence, willful misconduct, bad faith, and "plainly false and misleading statements to the marketplace." Tillage amplified its efforts to cast blame on SS&C through a press campaign orchestrated by its current counsel, Arkin Solbakken LLP.

60. Through their pleadings and press appeals, the Tillage Defendants have attempted to obfuscate the fact that their *own* actions were the direct and proximate cause of the fraud that allegedly cost Tillage millions of dollars. Indeed, the record evidence shows that Funk, Lennox, and/or McKay failed to take reasonable steps to adequately safeguard their confidential information and the confidential information of Tillage, and that it was this that enabled the fraud. Specifically:

(a) Funk and Lennox abandoned all sensible business practices by using their business email addresses to access the unsecure file storage service Dropbox.com.¹ The usernames and passwords used by Tillage, tfunk@tillagecapital.com and olennox@tillagecapital.com, were compromised in the course of a 2012 Dropbox hack.

(b) Additionally, Funk, Lennox, and/or McKay freely shared their usernames and passwords with one another and failed to disable Lennox's account at SS&C and First Republic after Lennox left Tillage in or around the

¹ Dropbox has been listed as one of the top applications banned in the workplace because of the risks it presents for businesses like Tillage. See Bernhard Warner, *Banned at Work: Employers Blacklist Apps From Facebook, Google*, Bloomberg Businessweek (June 12, 2013, 1:41 PM), <https://www.bloomberg.com/news/articles/2013-06-12/banned-at-work-employers-blacklist-apps-from-facebook-google>; see also Jason A. Scharfman, Hedge Fund Compliance: Risks, Regulation, and Management 171 (2016) ("It is important to note that employees should not use personal e-mail or public file sharing tools (i.e., Dropbox) for company business. These tools pose security risks and may violate company requirements around archiving, encryption, and protection of personal information.").

third quarter of 2015. On March 9, 2016, SS&C records indicate that someone with Lennox's credentials logged into SS&C's portal to view Tillage's information. Likewise, on March 24, 2016, records from First Republic indicate that someone with Lennox's credentials logged into First Republic's portal to check and/or otherwise access Tillage's account information multiple times.

(c) Funk and Lennox also conducted business on behalf of Tillage using their personal email accounts, including thomas.funk@verizon.net and oliverlennox@yahoo.com.

(d) Moreover, despite the fact that SS&C repeatedly requested that Funk, Lennox, and/or McKay send requests on behalf of Tillage on Tillage's letterhead, Tillage's Management frequently failed to do so, instead sending communications with no such identifying information. Accordingly, when the fraudsters submitted wire transfer requests via SS&C's standard form, SS&C justifiably assumed that the requests were on behalf of Tillage's Management, even though they were not on Tillage letterhead.

61. Through their reckless business practices, disregard for common sense and basic policies and procedures concerning confidential information, and abdication of any responsibility to the Fund, the Tillage Defendants enabled the fraudsters to obtain Tillage's information and allowed criminals to perpetrate a fraud that lasted multiple weeks and robbed its investors of their money.

62. In doing so, the Tillage Defendants breached the common law and fiduciary duties they owed to the Fund. Among other things, the Tillage Defendants owed Tillage and its investors the fiduciary duty of due care in the performance of their monitoring and

management of the Fund. As Tillage's general manager and investment manager, the Tillage Defendants were tasked with the responsibility of monitoring and managing the Fund and were entrusted with discretionary authority to manage Tillage's accounts. Such discretionary authority created a relationship of confidence and trust between the Tillage Defendants, on the one hand, and Tillage and its investors, on the other.

63. Moreover, through Tillage's governing documents and other communications, Funk, Lennox, and/or McKay represented that they were experienced and capable advisors to Tillage's investors who, in turn, relied on the expertise and competence of Funk, Lennox, and/or McKay.

64. Additionally, according to the plain terms of the Services Agreement, Tillage's Management had exclusive responsibility to manage and control the fund, including by making all decisions and performing all management functions.

65. The Tillage Defendants' failure to exercise due care in performing their duties as the Fund's managers constituted a breach of their fiduciary duties to Tillage, their principal, and caused SS&C substantial damages. Moreover, to the extent that SS&C is found liable for damages to Tillage, those damages would be the direct result of the Tillage Defendants' tortious breach of their fiduciary duties, for which the Tillage Defendants are responsible.

CAUSES OF ACTION

AS AND FOR A FIRST CAUSE OF ACTION (Breach of Contract against Tillage Commodities Management, LLC)

66. SS&C incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

67. Tillage's Management is a party to the Services Agreement, which is a valid and binding contract setting forth the rights and responsibilities of Tillage, Tillage's Management, and SS&C, including with respect to the responsibilities of Tillage's Management to exclusively manage and control the Fund.

68. Tillage's Management breached section 5 of the Services Agreement by failing to perform all management functions relating to the operation of the Fund, including by failing to adequately designate a member of Tillage's Management to oversee the services provided by SS&C.

69. Tillage's Management additionally breached section 5 of the Services Agreement because it failed to safeguard its confidential information and the confidential information of Tillage by failing to monitor Tillage's account balance for at least two consecutive weeks, if not more, by failing to oversee the services provided by SS&C, and/or by otherwise enabling third parties to access Tillage's information and submit fraudulent transfer requests on behalf of Tillage's Management.

70. As a direct and proximate result of the conduct of Tillage's Management, SS&C has suffered substantial damages, in an amount to be determined at trial.

**AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing against Tillage
Commodities Management, LLC)**

71. SS&C incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

72. Tillage's Management is a party to the Services Agreement, which is a valid and binding contract setting forth the rights and responsibilities of Tillage, Tillage's Management, and SS&C, including with respect to the responsibilities of Tillage's Management

to exclusively manage and control Tillage and oversee SS&C's back-office administrative services.

73. New York law implies a covenant of good faith and fair dealing in all contracts. The implied covenant is particularly important in contracts that endow one party with discretion.

74. Tillage's Management was aware that it was exclusively responsible for the management of Tillage and that it was contractually obligated under the Services Agreement and per the terms and provisions of Tillage's governing documents incorporated by reference into the Services Agreement to make all decisions and perform all management functions relating to the operation of the Fund. Yet, Tillage's Management consciously failed to perform these services, and acted in bad faith by disclaiming any responsibility for performing them.

75. Tillage's Management acted arbitrarily and irrationally in fulfilling its functions, as required under the Services Agreement, by failing to check the Fund's account balance for at least two consecutive weeks, if not more, failing to safeguard its own information and that of Tillage, failing to engage in reasonable measures to protect its data and Tillage's data, and/or enabling the fraud to take place by failing to safeguard such information.

76. Moreover, Tillage's Management acted in bad faith and in breach of the implied covenant of good faith and fair dealing by abusing the discretion provided under the books-and-records provision to extort pre-litigation discovery from SS&C. The demand of Tillage's Management that SS&C turn over all communications over one month after the fraudulent wire transfer requests had occurred when it knew there was likely no hope of recovering the stolen funds, and after Tillage's then-counsel had repeatedly threatened litigation, was motivated primarily by a bad-faith desire to obtain documents to which it was not entitled.

77. Through its conduct, Tillage's Management knowingly and in bad faith frustrated the intended purpose of the books-and-records provision.

78. As a direct and proximate result of the arbitrary, irrational, and/or bad-faith conduct of Tillage's Management, SS&C has suffered substantial damages, in an amount to be determined at trial.

**AS AND FOR A THIRD CAUSE OF ACTION
(Contribution Based on Breach of Fiduciary Duty of Due Care against Tillage
Commodities, LLC and Tillage Commodities Management, LLC)**

79. SS&C incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

80. At all times relevant to this Third-Party Complaint, Tillage's General Partner was tasked with responsibility for, management of, and control over Tillage, including its assets, and all of the conduct of Tillage's General Partner alleged herein fell within the scope of its duties as Tillage's manager.

81. At all times relevant to this Third-Party Complaint, Tillage's Management was Tillage's investment manager tasked with responsibility for, management of, and control over Tillage, including its investment decisions and assets, and all of the conduct of Tillage's Management alleged herein fell within the scope of its duties as Tillage's manager and agent.

82. At all times relevant to this Third-Party Complaint, Funk, Lennox, and/or McKay were the managing members of Tillage's General Partner and Tillage's Management and as such were the employees, agents, or control persons of them, and all of their conduct alleged herein fell within the scope of their duties as managing members of Tillage's General Partner and Tillage's Management and as agents of Tillage.

83. After being entrusted with the management of Tillage and to serve as Tillage's agents and/or representing that they had the expertise and competence to manage the Fund, the Tillage Defendants had the duties of a fiduciary to manage Tillage reasonably, skillfully, fairly, and carefully, with due diligence, including in connection with, among other things, managing Tillage's day-to-day operations; safeguarding Tillage's confidential information; and establishing adequate policies, procedures, guidelines, protocols, and controls to manage Tillage and its assets.

84. The Tillage Defendants breached their fiduciary duty to Tillage and its investors by failing to safeguard Tillage's confidential information, including without limitation information about Tillage's bank account and copies of the signatures of Funk and McKay, Tillage's authorized signatories for wire transfer requests on behalf of Tillage's Management.

85. The Tillage Defendants breached their fiduciary duty to Tillage and its investors by failing to implement reasonable policies, procedures, guidelines, and/or practices to store and access Tillage's confidential information, including without limitation by using business email addresses to access unsecured platforms such as Dropbox.com and sharing usernames and passwords to access Tillage's information.

86. The Tillage Defendants breached their fiduciary duty to Tillage and its investors by failing to check Tillage's bank account—which held the substantial majority of Tillage's assets—for at least two consecutive weeks.

87. To the extent that the Court finds that Tillage suffered any of the alleged damages in the first-party action, the Tillage Defendants' breach of their fiduciary duties to Tillage is the direct and proximate cause of such damages.

**AS AND FOR A FOURTH CAUSE OF ACTION
(Contribution Based on Gross Negligence against Tillage Commodities, LLC and Tillage
Commodities Management, LLC)**

88. SS&C incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

89. As Tillage's managers and agents, the Tillage Defendants had a duty to exercise reasonable care in the management of Tillage, including in connection with, among other things, managing Tillage's day-to-day operations; safeguarding Tillage's confidential information; and establishing adequate policies, procedures, guidelines, protocols, and controls to manage Tillage and its assets.

90. The Tillage Defendants breached that duty by acting with gross negligence. The Tillage Defendants failed to use even slight care in their conduct toward and on behalf of Tillage and engaged in conduct that was so careless as to show complete disregard for Tillage's rights and/or smacked of intentional wrongdoing.

91. The Tillage Defendants were grossly negligent in failing to safeguard Tillage's confidential information, including without limitation information about Tillage's bank account and copies of the signatures of Funk and McKay, Tillage's authorized signatories for wire transfer requests on behalf of Tillage's Management.

92. The Tillage Defendants were grossly negligent in failing to implement reasonable policies, procedures, guidelines, and/or practices to store and access Tillage's confidential information, including without limitation by using business email addresses to access unsecured platforms such as Dropbox.com and sharing usernames and passwords to access Tillage's information.

93. The Tillage Defendants were grossly negligent in failing to check Tillage's bank account—which held the substantial majority of Tillage's assets—for at least two consecutive weeks.

94. To the extent that the Court is to find that Tillage suffered any of the alleged damages in the first-party action, the Tillage Defendants' gross negligence in operating and managing Tillage is the direct and proximate cause of such damages.

**AS AND FOR A FIFTH CAUSE OF ACTION
(Contribution Based on Negligence against Tillage Commodities, LLC and Tillage
Commodities Management, LLC)**

95. SS&C incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

96. As Tillage's managers and its agents, the Tillage Defendants had a duty to exercise reasonable care in the management of Tillage, including in connection with, among other things, managing Tillage's day-to-day operations; safeguarding Tillage's confidential information; and establishing adequate policies, procedures, guidelines, protocols, and controls to manage Tillage and its assets.

97. The Tillage Defendants breached that duty by acting with negligence. The Tillage Defendants failed to use even slight care in their conduct toward and on behalf of Tillage and engaged in conduct that was so careless as to show complete disregard for Tillage's rights and/or smacked of intentional wrongdoing.

98. The Tillage Defendants were negligent in failing to safeguard Tillage's confidential information, including without limitation information about Tillage's bank account and copies of the signatures of Funk and McKay, Tillage's authorized signatories for wire transfer requests on behalf of Tillage's Management.

99. The Tillage Defendants were negligent in failing to implement reasonable policies, procedures, guidelines, and/or practices to store and access Tillage's confidential information, including without limitation by using business email addresses to access unsecured platforms such as Dropbox.com and sharing usernames and passwords to access Tillage's information.

100. The Tillage Defendants were negligent in failing to check Tillage's bank account—which held the substantial majority of Tillage's assets—for at least two consecutive weeks.

101. To the extent that the Court is to find that Tillage suffered any of the alleged damages in the first-party action, the Tillage Defendants' negligence in operating and managing Tillage is the direct and proximate cause of such damages.

PRAYER FOR RELIEF

WHEREFORE, Third-Party Plaintiff respectfully requests that this Court:

- (a) Award SS&C damages for breach of the Services Agreement by Tillage's Management;
- (b) Award SS&C damages for the arbitrary, irrational, and/or bad-faith conduct of Tillage's Management pursuant to the Services Agreement;
- (c) Enter a judgment for SS&C declaring that the Tillage Defendants are liable for all of the damages alleged by Tillage, and award SS&C contribution from the Tillage Defendants for any damages sustained by Tillage as a result of their conduct;
- (d) In the alternative, enter a judgment declaring the percentage of fault of each party and enter a judgment for SS&C declaring that any monetary award against SS&C on behalf of Tillage be reduced by the cumulative percentage of fault attributable to the

tortious conduct of the Tillage Defendants, and award SS&C contribution from the Tillage Defendants for any damages sustained by Tillage as a result of their conduct;

(e) Award SS&C its attorney's fees, court costs, investigative costs, and other reasonable expenses; and

(f) Award such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 5, 2017

Respectfully Submitted,

DAVIS POLK & WARDWELL LLP

By: /s/ Paul Spagnoletti
Paul Spagnoletti

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