



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

CONSENSYS INC. and
CONSENSYS GP I LLC,

Plaintiffs,

v.

KAVITA GUPTA,

Defendant.

C.A. No. 2022-

VERIFIED COMPLAINT

This Verified Complaint is brought by Plaintiffs ConsenSys Inc. and ConsenSys GP I LLC (“ConsenSys GP” or the “Company”) (collectively, “ConsenSys”), against Defendant Kavita Gupta (“Gupta”) concerning the rights of the parties with respect to the Amended and Restated Limited Liability Company Agreement of ConsenSys GP I LLC (the “GP LLC Agreement”) (attached as Exhibit 1), and alleges as follows:

INTRODUCTION

1. This action arises from an egregious case of resume fraud perpetrated by Defendant Gupta. In 2017, ConsenSys Inc. sought to hire a co-managing partner of venture capital to oversee a to-be-created fund (ConsenSys Fund I LP, or the “Fund”). In order to induce ConsenSys Inc. to hire her, Gupta claimed to have stellar qualifications, including credentials from Harvard Business School (“HBS”), the

Massachusetts Institute of Technology (“MIT”), McKinsey & Co. (“McKinsey”), and The World Bank.

2. Gupta, however, turned out to be a fraud. During her short tenure at ConsenSys, Gupta proved incapable of even basic tasks, much less of co-managing a venture capital fund. Gupta also proved to have a toxic and abusive personality that further called her claimed credentials into question, and which caused ConsenSys to (i) lose multiple employees, who chose to quit rather than work with Gupta; (ii) miss out on investing in several desirable companies because those companies’ founders refused to work with Gupta; (iii) lose valuable opportunities with potential investment targets, co-investors, and investors due to the reputational damage caused by Gupta’s behavior; and (iv) suffer reputational harm as a result of Gupta’s actions.

3. When ConsenSys finally confronted Gupta and asked her to verify her claimed credentials, Gupta resorted to lying—even going so far as to forge documents—to conceal her fraud. Ultimately, however, Gupta was unable to verify her claimed credentials.

4. ConsenSys allowed Gupta to resign (rather than be fired for her fraud), which she did in April 2019. In order to avoid a dispute, ConsenSys also offered to allow Gupta to keep the compensation paid and accrued during her short tenure.

5. Gupta, however, has since rejected ConsenSys's offer. Instead, Gupta now seeks to shake down ConsenSys for millions of dollars that she has no entitlement to by making false claims and unlawful threats. Among other things, in order to fabricate a claim for equity carry from ConsenSys GP to which she has no legal right, Gupta outlandishly claims that she *still* works for ConsenSys, so that she continues to enjoy equity vesting. Gupta also has demanded that ConsenSys pay her millions of dollars to buy out this purported equity interest in ConsenSys GP—and threatened that she publicly would make false and defamatory allegations about ConsenSys and its management if it refused to do so.

6. ConsenSys will not be shaken down by Gupta. Gupta fraudulently induced ConsenSys to hire her and give her membership in ConsenSys GP based on false claims about her credentials; spent little more than a year at the Fund, during which time she performed disastrously; resorted to using forged documents when she was confronted about her resume fraud; and is now entitled to nothing from ConsenSys GP or the Fund. ConsenSys brings this action to fully and finally resolve this dispute and put an end to Gupta's false claims. ConsenSys seeks a declaratory judgment that Gupta is not entitled to any equity or other compensation from ConsenSys GP or the Fund. ConsenSys also seeks an order directing Gupta to (i) disgorge all of the compensation that ConsenSys Inc. paid her based on her fraud, including her salary from October 2017 to April 2019; and (ii) compensate the Fund

for the damages caused by her dismal performance—damages which would not have occurred had ConsenSys hired a manager who actually had the qualifications Gupta falsely claimed to have.

PARTIES

7. ConsenSys Inc. is a Delaware corporation.

8. ConsenSys GP I LLC is a limited liability company organized under the laws of Delaware.

9. Gupta is an individual currently residing at 923 Folsom Street, Apartment 415, San Francisco, California.

JURISDICTION

10. Pursuant to 6 *Del. C.* § 18-111 and 10 *Del. C.* § 341, this Court has jurisdiction over the subject matter of this Complaint, which seeks a declaratory judgment regarding disputed provisions of the GP LLC Agreement.

11. This action is properly filed in this Court pursuant to Section 9.4 of the GP LLC Agreement, in which Gupta irrevocably agreed as follows:

To the fullest extent permitted by applicable law, any legal action or proceeding with respect to this [GP LLC] Agreement by any Member seeking any relief whatsoever against the Company or any other Member shall be brought only in the Chancery Court of the State of Delaware (or other appropriate state court in the State of Delaware), and not in any other court in the United States of America, or any court in any other country.

12. Further, Section 9.4 of the GP LLC Agreement provides that the GP LLC Agreement, “including its existence, validity, construction, and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflicts or choice of laws provisions....”

13. This Court has personal jurisdiction over Gupta because she consented to such in Section 9.4 of the GP LLC Agreement, which states as follows:

Each Member hereby further irrevocably waives any claim that any such courts lack personal jurisdiction over it, and agrees not to plead or claim, in any legal action proceeding with respect to this Agreement in any of the aforementioned courts, that such courts lack personal jurisdiction over it.

FACTUAL BACKGROUND

I. CONSENSYS HIRED GUPTA TO CO-MANAGE A NEW VENTURE CAPITAL FUND BASED ON HER CLAIMED CREDENTIALS.

A. In 2017, ConsenSys Sought A Highly-Qualified Candidate To Co-Manage Its Venture Capital Fund.

14. ConsenSys Inc. was formed in 2016 by Joseph Lubin, a founding architect of the Ethereum blockchain, and it plays an integral role in the Ethereum ecosystem.

15. In or about early 2017, ConsenSys was actively looking for a highly-qualified candidate to co-manage its venture capital strategy and oversee a fund focused on equity investments in early-stage blockchain companies.

16. As a co-head position, ConsenSys required that applicants have substantial academic and professional credentials and experience.

B. Gupta Induced ConsenSys To Hire Her By Falsely Claiming To Have Stellar Credentials.

17. In or about mid-2017, Lubin was introduced to Gupta. Gupta expressed a strong interest in ConsenSys and in the venture capital position.

18. From the outset, Gupta claimed to have stellar credentials to lead a venture capital fund focused on technology companies. Among other things, Gupta represented to Lubin and other members of ConsenSys's management that she had attended Harvard Business School ("HBS") and MIT; had worked at The World Bank where she had invented new financial products; had worked for McKinsey & Company ("McKinsey"); had managed multiple investment funds, including funds with over \$150 million under management; and had a wealth of valuable connections with founders and CEOs of major technology companies, including Facebook's Mark Zuckerberg and Google's Larry Page. As alleged in further detail below, these and other credentials Gupta claimed to have were false (collectively, the "False Claimed Credentials").

19. Based on Gupta's representations concerning her credentials, on or about August 17, 2017, ConsenSys extended Gupta a written offer to be a managing partner of venture capital at ConsenSys Inc. (the "Offer Letter"). Under the terms of the Offer Letter, Gupta would receive (i) an annual salary of \$250,000 plus a

guaranteed annual bonus of \$100,000 and a benefits package; and (ii) equity in a to-be-created venture capital fund, pursuant to agreements that would govern that fund.

20. It was only through Gupta's fraudulent inducement that ConsenSys offered any of the above.

II. GUPTA FAILED TO PERFORM HER DUTIES AND WAS UNABLE TO VERIFY HER FALSE CLAIMED CREDENTIALS.

A. ConsenSys Created ConsenSys GP To Manage The Fund And, In Reliance On Her False Claimed Credentials, Appointed Gupta As A Co-Managing Member.

21. As contemplated in the Offer Letter, in or about September 2017, a ConsenSys affiliate, ConsenSys AG, formed ConsenSys GP as a Delaware limited liability company, in order to manage the Fund.

22. In reliance on Gupta's false representations regarding her credentials, on October 1, 2017, ConsenSys AG and Joseph Lubin entered into the GP LLC Agreement with Gupta.

23. Pursuant to the GP LLC Agreement, Gupta was allotted a "Carry Percentage" of 20% of ConsenSys GP's net profits. This Carry Percentage is subject to the terms and conditions set forth in the GP LLC Agreement, including certain vesting requirements.

24. For example, among other things, Article 3.6.3(a)(i) of the GP LLC Agreement sets forth a four-year vesting schedule for a Member's Carry Percentage, and provides that

...25% of such Member's Carry Percentage shall vest on each of the one-year, two-year, three-year and four-year anniversaries of such Member's Start Date.... For the avoidance of doubt, if an Adjustment Event occurs prior to the end of a 12-month anniversary of a Member's Start Date, there will be no prorated or partial vesting for such year (i.e., a Member must remain a member of the Company and an employee of the ConsenSys Organization for the entire annual period (through and including the last day of such annual period) in order to accumulate his, her or its vested year).

25. Pursuant to Article 3.6.1 of the GP LLC Agreement, if a Member resigns from ConsenSys, the resignation is deemed an "Adjustment Event," and results in the following consequences on the resigning Member's Carry Percentage:

If an "Adjustment Event" (as defined below) occurs with respect to any Member (each, an "Affected Member"), then (a) such Member's Capital Percentage shall be subject to adjustment in accordance with Section 3.6.2, **(b) the portion of such Member's Carry Percentage that has not vested as of such date in accordance with Section 3.6.3 or an applicable Vesting Agreement shall be reduced to zero, and (c) such Member shall be removed as, and shall cease to be, a Member (and a Managing Member, as applicable), and shall hold its Interest (as adjusted hereunder) as an Economic Interest only.**

(emphasis added).

26. If a Member is terminated for cause or breaches any non-compete, non-solicit, or other restrictive covenant, Article 3.6.3(a)(ii)(3) of the GP LLC Agreement provides that:

...[A]s of such termination date or date of breach, all of such Member's Carry Percentage will be deemed not vested and will be forfeited, and such member's Carry Percentage will be reduced to zero...

B. Gupta Performed Disastrously Given Her Complete Lack of Qualifications.

27. Unfortunately for ConsenSys, Gupta falsified the sterling credentials and experience that induced ConsenSys to hire her. And, after Gupta fraudulently induced ConsenSys to hire her, it became evident that she (i) lacked a basic understanding of fundamental venture capital concepts and (ii) did not have the competence or knowledge to carry out her duties.

28. ConsenSys also consistently received negative feedback about Gupta from virtually everyone who interacted with her.

29. Multiple ConsenSys employees refused to work with Gupta, and many complained about her unprofessional conduct, including abusive comments she made towards them. For example, Gupta taunted one fellow employee and senior manager about his weight, including lambasting him to “move his fat ass up the stairs.” Several ConsenSys employees resigned expressly because of Gupta.

30. Key people at multiple potential investment targets of the Fund refused to work with Gupta, thereby depriving ConsenSys of valuable investment opportunities.

31. Multiple other people from outside ConsenSys, including journalists covering the crypto space, contacted ConsenSys to express concern that ConsenSys was associated in any way with Gupta.

32. Leaders in the crypto ecosystem likewise expressed concern that ConsenSys was associated with Gupta and specifically asked not to have any association or contact with her.

33. During her short tenure with the Fund, Gupta failed to perform her duties, failed to make the milestones she was expected to make, and caused more harm than good to ConsenSys and the Fund. In fact, while the Fund grew during the short time Gupta was at ConsenSys, that growth occurred because of the contributions made by other ConsenSys employees, and not as a result of any contributions by Gupta. Instead, the reputational and other harm Gupta caused only hindered the Fund's performance.

C. ConsenSys Confronted Gupta About Her Credentials And Gupta Was Unable To Verify Them—And Instead Provided Clearly Fabricated Documents In An Effort To Conceal And Perpetuate Her Fraud.

34. In light of Gupta's poor performance and the growing complaints it received, ConsenSys began to question the authenticity of Gupta's claimed credentials.

35. In or about late 2018, ConsenSys asked Gupta to provide documentation verifying her claimed credentials, including her purported time at HBS, MIT, and McKinsey. Gupta failed to provide any confirmation of her False Claimed Credentials. And many of the explanations and documents she provided in an effort to conceal her fraud appeared to be fabricated and/or clearly inconsistent

with what was in the CV she provided to ConsenSys in 2017 (the “CV,” attached as Exhibit 2).

36. For example, Gupta was unable to provide any documentation verifying that she ever attended or had been accepted to HBS, other than a purported *email* from HBS. And instead of confirming her time at HBS, the email only raised further questions about the veracity of Gupta’s claim: the purported HBS email congratulating Gupta on her acceptance is dated April 2010, but Gupta’s CV states that she was part of the “2014 batch of students.”¹

37. In fact, Harvard has no record of Gupta ever attending HBS.

38. With respect to McKinsey, the only documentation Gupta was able to provide confirming she had worked there was a purported offer letter (the “McKinsey Offer Letter”).² But this purported McKinsey Offer Letter appeared to be a fake. Among other things: (i) the signature appeared to be cut and pasted from another document; (ii) the office location in the letter (Brussels) conflicted with the office locations in the CV (Boston and DC); and (iii) the title (“2nd year Junior Associate”) and McKinsey division (“India practice”) referenced in the letter conflicted with the title (“Analyst”) and McKinsey division (“Financial Strategy

¹ In addition, the email purports to invite Gupta to attend a reception for admitted students in “Kenya,” whereas Gupta’s CV states that, at that same time, she was living and working in “Washington D.C.,” not Kenya.

² A copy of the McKinsey Offer Letter is attached as Exhibit 3.

Department”) in the CV. What is more, the dates made no sense: the letter is dated “October 27, 2003” and purports to offer Gupta a position as a “2nd year Junior Associate.” But Gupta claimed in her CV that she did not receive her undergraduate degree until May 2005—so that McKinsey would have been making a junior in college a “2nd year Junior Associate.”

39. Moreover, if Gupta’s claims about her various degrees and her purported tenure at McKinsey were true, she would have had to be obtaining two different degrees while simultaneously working full time at McKinsey:

- a. Gupta’s CV states that she obtained (i) a “Bachelors of Technology (Engineering)-Information Technology” in “May 2005” from “Indraprastha University, Delhi/ MIT Media Lab Fellow – Boston” and (ii) a “Masters in International Trade and Economics” in “April 2007” from “The George Washington University, Elliott School of International Affairs,” which is located in Washington, D.C.
- b. At the same time, Gupta claims to have been working at McKinsey, starting either in August 2004 (according to her CV) or in October 2003 (according to the McKinsey Offer Letter) and continuing until May 2006. And, according to the McKinsey Offer Letter, she was “stationed out of Brussels, Belgium.”

40. In fact, contrary to Gupta’s false statements, McKinsey has no record of Gupta ever working there.

41. With respect to MIT, Gupta was unable to provide any confirmation of her claimed credentials other than a highly suspicious purported letter of recommendation (the “MIT Letter”).³ This MIT Letter, which is purportedly signed by L. Rafael Reif (the President of MIT), also appeared to be fabricated because, among other things:

- a. It was riddled with typos.
- b. It was written in multiple different typefaces that appeared to have been cut and pasted from different sources.
- c. It referred to Gupta as “HRH” (*i.e.*, “Her Royal Highness”), whereas Gupta does not actually have any royal titles, much less the title of HRH.
- d. It claimed that, while she was a teenager, Gupta purportedly “developed an effective wireless communication tool currently being used by ISRO [*i.e.*, the Indian Space Research Organization] and various other international space agencies and decided to donate her patent to ISRO in 2003 which has been used effectively over 14 successful space journeys.” Yet, based on a search of standard patent databases, there is

³ A copy of the MIT Letter is attached as Exhibit 4.

no patent issued to Gupta for any wireless communication tools, nor any record of Gupta ever donating any patent or invention to the ISRO.

- e. It claimed that Gupta “took 2 years off in middle of her schooling to work on research at NASA, California.” Yet Gupta’s CV does not reflect any purported work at NASA.
- f. It claimed that Gupta “attended MIT Media lab and studied at the School of Computer Science from 1998 to 2003,” starting at the “age of 15,” and continued to take classes at MIT while also attending undergraduate studies at Indraprastha University in Delhi, India. The letter praises Gupta for her “average GPA of 3.94” at MIT while, according to her resume, Gupta simultaneously obtained a “3.87 GPA” at Indraprastha University. Yet Gupta’s actual undergraduate transcripts indicate that her GPA was far lower, and they further show that she failed each of the following classes:

- Applied Mathematics I
- Applied Physics I
- Applied Physics II
- Analog Electronics I
- Theory of Automation & Computation
- Communication Systems & Circuits

42. Gupta also was unable to verify that she developed new financial products such as carbon swaps and green bonds while she was at The World Bank, or that she managed funds with assets under management as high as \$150 million.

43. The fraudulent assertions that Gupta made to ConsenSys about her credentials are extensive and raise serious questions regarding the validity of many, if not all, of the qualifications that she claimed to possess.

44. Had ConsenSys known that Gupta did not possess the credentials she claimed to have, ConsenSys would not have extended an offer of employment to Gupta, much less allowed Gupta to become unjustly enriched through her compensation as an employee of ConsenSys Inc. or future income as a Member of ConsenSys GP.

45. Moreover, not only did Gupta fraudulently induce ConsenSys to hire her, she resorted to forgery to cover up her resume fraud, which was itself a further act of malfeasance that breached multiple duties to ConsenSys. Furthermore, had ConsenSys known that Gupta was willing to resort to the use of fabricated documents, it likewise (for that additional reason) never would have extended an offer of employment to her.

III. CONSENSYS ALLOWED GUPTA TO RESIGN IN THE WAKE OF HER FRAUD.

46. In light of Gupta's massive fraud, ConsenSys had no choice but to terminate her employment for cause. At Gupta's request, in order to allow her to

“exit gracefully,” ConsenSys allowed Gupta to resign in lieu of being terminated for her fraud. In addition, in an effort to avoid having to publicly fight with Gupta about her resume fraud, ConsenSys offered to allow Gupta to keep the equity that had then accrued through her resignation date (the “Offer”).

47. Gupta resigned from ConsenSys on April 30, 2019. Her tenure at ConsenSys lasted roughly 1.5 years. During her short tenure, Gupta’s fraud and her consequent disastrous failure to perform her duties caused ConsenSys millions of dollars in damages, including in the form of lost employees (who quit rather than work with Gupta), lost investment opportunities with promising companies (who refused to work with Gupta or for whom the ConsenSys brand was tainted), and injury to ConsenSys’s reputation.

48. Since her resignation, Gupta has had no affiliation with ConsenSys. Gupta has not performed any work for ConsenSys since her resignation, nor has ConsenSys asked her to do so. In fact, without any prior notice to ConsenSys or approval from ConsenSys’s management, Gupta sent a company-wide email in April 2019 falsely claiming that, while she was leaving ConsenSys, she would remain on as an “advisor” (the “Resignation Email”).⁴ While the parties had at one time discussed the possibility of Gupta staying on as an advisor, ConsenSys did not agree

⁴ Gupta also falsely claimed in her Resignation Email that she would be “teaching a class” at Stanford University after her departure, when in fact she was only a guest speaker in a single Stanford class and did not have any regular teaching position.

to her doing so, particularly in light of her fraudulent conduct. Moreover, ConsenSys specifically told Gupta that, in light of her fraud, she could not be affiliated with ConsenSys in any way after her resignation.

IV. GUPTA CONTINUES HER RESUME FRAUD AND SEEKS TO EXTORT CONSENSYS.

49. In an unlawful effort to further unjustly enrich herself, Gupta has continued her pattern of resume fraud and repeatedly attempted to extract millions of dollars from ConsenSys based on patently false claims and threats of publicly making false allegations about ConsenSys's management.

50. For example, in an effort to fabricate a claim for a higher percentage of the Fund's carry, Gupta repeatedly has blatantly and falsely claimed that she continues to remain an "advisor" to the Fund. Gupta also has threatened to publicize her false claim that she remains affiliated with the Fund.

51. To the contrary, Gupta is not an advisor to the Fund, and she has had no affiliation with the Fund or with any ConsenSys entity after she was allowed to resign in April 2019 in the wake of her fraud. Moreover, far from remaining on in any capacity at the Fund, Gupta is currently trying to start her own competing fund, which she has named the "Delta Blockchain Fund." Consistent with her pattern of resume fraud at ConsenSys, Gupta recently claimed in a CoinDesk article, in what appears to be an improper solicitation for investments, that she purportedly "managed a number of \$50 million-plus funds for ConsenSys Ventures in 2018."

Contrary to that false claim, Ms. Gupta was only one of several managing partners at ConsenSys overseeing a single fund that had invested capital of just \$13.75 million—and she was asked to resign after little more than a year due to her egregious resume fraud.

52. Notwithstanding the fact that Gupta has had no affiliation with ConsenSys since April 2019, Gupta repeatedly has falsely claimed—and continues to falsely claim—that she is a Member of ConsenSys GP and entitled to a distribution from the Fund. Gupta has falsely claimed that her purported Carried Percentage continues to vest to this day (the “Vesting Claim”). Based on her frivolous Vesting Claim, Gupta contends that she is entitled to millions of dollars from ConsenSys, as well as to an “accounting.”

53. Gupta repeatedly has threatened ConsenSys, including through her counsel, that if ConsenSys does not pay her millions of dollars, she publicly will make false and defamatory allegations about ConsenSys and its management.⁵

⁵ Gupta’s threatened false and defamatory allegations are not only unrelated to the present dispute, they also stand in stark contrast to Gupta’s own statements in her Resignation Email about her time at ConsenSys. In that email, Gupta stated that her time at ConsenSys has “been a very inspiring and satisfying journey for me,” and further stated: “I am very thankful to Joe [Lubin] for giving me this adventurous and amazing opportunity in life. Time spent here will always remain very close to my heart, helping me grow as a person and adding lots of friends for life globally.”

54. Thus, rather than accept the Offer, Gupta has rejected it and instead seeks to extract millions of dollars from ConsenSys through additional false claims and unlawful demands.

V. GUPTA FILES SUIT AGAINST CONSENSYS IN NEW YORK STATE COURT.

55. Most recently, in November and December 2021, Gupta once again demanded millions of dollars from ConsenSys and threatened to publicly make false and defamatory claims if ConsenSys did not pay up. In response, ConsenSys pointed out that Gupta had perpetrated egregious resume fraud, including presenting ConsenSys with False Claimed Credentials from HBS, MIT, NASA, McKinsey, and The World Bank.

56. Gupta replied by continuing her unlawful threats. Tellingly, in her reply, Gupta did not mention, much less address, any of the extensive facts establishing her rampant resume fraud.

57. After ConsenSys refused to give in to her demand, Gupta filed a Notice with Summons in New York state court (the “New York State Court Action”). This filing clearly violates Article 9.4 of the GP LLC Agreement, which requires litigation exclusively in the Court of Chancery of the State of Delaware, and certainly does not permit litigation of those claims in New York state court.

CAUSES OF ACTION

COUNT I:

DECLARATORY JUDGMENT THAT GUPTA IS REQUIRED TO RETURN ALL COMPENSATION TO CONSENSYS AS A RESULT OF HER FRAUDULENT INDUCEMENT

58. ConsenSys repeats and restates the allegations above as if fully set forth herein.

59. There is an actual controversy between ConsenSys and Gupta over whether Gupta may enforce the GP LLC Agreement and/or the Offer Letter against ConsenSys. As set forth above, Gupta claims that she is entitled to millions of dollars in compensation, including in the form of a distribution that Gupta claims continues to increase through vesting of Carry Percentage to this day.

60. Contrary to Gupta's claims, ConsenSys does not owe Gupta any compensation, and is entitled to have Gupta disgorge all compensation already paid, as a result of Gupta's fraudulent inducement, repeated acts of malfeasance, prior material breaches, and unclean hands—each of which is independently sufficient to forfeit all of Gupta's claimed entitlement to any compensation. Among other things, Gupta fraudulently induced ConsenSys to hire her by presenting ConsenSys with false credentials and numerous false statements about her qualifications. ConsenSys reasonably relied on Gupta's false statements, and made her an offer only as a result of Gupta's fraud. When confronted, Gupta used fabricated documents in an effort to further perpetuate her fraud.

61. As a result of Gupta's fraudulent inducement, malfeasance, prior breaches and unclean hands, this Court should declare that:

- a. Gupta is barred from enforcing the Offer Letter and/or the GP LLC Agreement against ConsenSys.
- b. Gupta is required to disgorge all of the compensation ConsenSys already has paid Gupta, including over \$600,000 in salary and bonuses, to ConsenSys.

**COUNT II:
DECLARATORY JUDGMENT THAT GUPTA HAS FORFEITED ALL OF HER CARRY
PERCENTAGE PURSUANT TO GP LLC AGREEMENT ARTICLE 3.6.3(a)(ii)(3)**

62. ConsenSys repeats and restates the allegations above as if fully set forth herein.

63. In addition to her fraudulent inducement, malfeasance, prior breaches and unclean hands, Gupta also is barred from obtaining any additional compensation from ConsenSys, including in particular any of her Carry Percentage, pursuant to Article 3.6.3(a)(ii)(3) of the GP LLC Agreement.

64. Pursuant to Article 3.6.3(a)(ii)(3) of the GP LLC Agreement, Gupta has forfeited all of her Carry Percentage because she was terminated for cause (even though she was allowed to exit gracefully by resigning), which cause included her egregious resume fraud and use of fabricated documents.

65. Moreover, even if Gupta remained an “advisor” of ConsenSys (which she is not), ConsenSys continues to have cause to terminate Gupta to this day, such that Gupta would once again have no right to any Carry Percentage.

66. Pursuant to Article 3.6.3(a)(ii)(3) of the GP LLC Agreement, this Court should declare that Gupta has no right to any Carry Percentage from the Fund.

**COUNT III:
DECLARATORY JUDGMENT IN THE ALTERNATIVE THAT GUPTA IS LIMITED TO A
DISTRIBUTION OF NO MORE THAN 1% OF THE FUND’S CARRY**

67. ConsenSys repeats and restates the allegations above as if fully set forth herein.

68. Alternatively, should the Court find that Gupta is entitled to enforce the GP LLC Agreement against ConsenSys (though she clearly is not), then pursuant to Article 3.6.1 of the GP LLC Agreement, Gupta is limited to a distribution of no more than 1% of the Fund’s carry because: there was only one (1) anniversary of Gupta’s October 1, 2017 Start Date (as defined in the GP LLC Agreement), given that her April 30, 2019 resignation constituted an “Adjustment Event.” As such, pursuant to Article 3.6.3(a) of the GP LLC Agreement, Gupta only vested, if anything, 25% of her 20% Carry Percentage in ConsenSys GP, which is itself 20% of the Fund’s total “Carried Interest.”

**COUNT IV:
DECLARATORY JUDGMENT THAT GUPTA IS NOT ENTITLED TO ANY
DISTRIBUTION OR ACCOUNTING**

69. ConsenSys repeats and restates the allegations above as if fully set forth herein.

70. Even apart from her fraudulent inducement, malfeasance, prior breaches, unclean hands, and her termination for cause, Gupta is not entitled to any distributions at this time based on the plain terms of the Fund's Amended and Restated Limited Partnership Agreement (the "LPA"),⁶ which provides ConsenSys GP with "sole discretion" over when (and in what amounts) the Fund will pay "Distributable Proceeds," including "Carried Interest," to ConsenSys GP, and Article 4.1 of the GP LLC Agreement, which provides ConsenSys GP's current Members (Lubin and ConsenSys AG) with "sole discretion" over when and in what amounts ConsenSys AG will pay distributions to current or former members.

71. Notwithstanding those plain contractual terms, Gupta repeatedly has demanded distributions now, and has even filed suit in New York state court seeking millions of dollars in distributions.

72. Accordingly, there is a live controversy between the parties concerning Gupta's entitlement to distributions from the Fund at this time.

⁶ The LPA is an agreement between ConsenSys GP and the Fund's limited partners for ConsenSys GP to serve as the "general partner" of the Fund.

73. ConsenSys respectfully requests that, in addition to her fraudulent inducement and her termination for cause, the Court enter a declaratory judgment clarifying that Gupta is, in any case, not entitled to any distributions at this time pursuant to Sections 4.1 of the LPA and 4.1 of the GP LLC Agreement.

74. Likewise, Gupta repeatedly has demanded “an accounting” from the Fund, and has even filed suit in New York state court seeking “an accounting.” But as Gupta is no longer a Managing Member of ConsenSys GP, she is not entitled to any accounting. Gupta further has no right to any accounting because, even if Gupta was still a Member of ConsenSys GP (which she clearly is not), she has at most an “Economic Interest” in ConsenSys GP, which “does not include ... any right to information concerning the business and affairs” of ConsenSys GP or the Fund. *See* GP LLC Agreement, Art. 2 Definitions.

75. Accordingly, there is a live controversy between the parties concerning Gupta’s entitlement to an accounting from the Fund.

76. ConsenSys respectfully requests that the Court enter a declaratory judgment clarifying that Gupta is, in any case, not entitled to any accounting from the Fund, and restraining her from attempting to use the New York State Court Action or any other action to obtain such an accounting.

**COUNT V:
FRAUDULENT INDUCEMENT**

77. ConsenSys repeats and restates the allegations above as if fully set forth herein.

78. Gupta fraudulently induced ConsenSys to hire her by presenting ConsenSys with false credentials and numerous false statements about her qualifications. Gupta intended for ConsenSys to rely on these false statements in deciding to hire her. ConsenSys reasonably relied on Gupta's false statements, and made her an offer only as a result of Gupta's fraud. And Gupta perpetuated that fraud through further fraudulent concealment.

79. As a result of hiring Gupta in reliance on her false statements, ConsenSys has suffered millions of dollars in damages, including as a result of lost employees (who refused to work with Gupta), lost investment opportunities in promising companies (which refused to work with Gupta), reputational harm (which resulted in, among other things, further lost investment opportunities), and substantial compensation paid to Gupta that she was not entitled to.

**COUNT VI:
BREACH OF CONTRACT**

80. ConsenSys repeats and restates the allegations above as if fully set forth herein.

81. Gupta repeatedly breached her agreement to work as the manager of the Fund, including by failing to perform her duties, repeatedly engaging in unprofessional conduct towards her colleagues, and repeatedly engaging in unprofessional conduct towards others outside of ConsenSys.

82. Gupta also repeatedly breached her obligations as a result of her ongoing resume fraud. Such conduct clearly constitutes Malfeasance as defined in the GP LLC Agreement.

83. Gupta further has breached the GP LLC Agreement by filing suit in New York state court, notwithstanding the contract's clear provision requiring litigation only in Delaware. Gupta has attempted to excuse this breach by falsely claiming that ConsenSys has declared that the GP LLC Agreement is "voidable" and "unenforceable" at large, whereas—as Gupta well knows—ConsenSys has done no such thing. Instead, ConsenSys contends and has contended only that Gupta, as a result of her fraudulent inducement and other misconduct, (including due to her prior material breach of the GP LLC Agreement) is not entitled to any compensation from ConsenSys GP or the Fund, including by enforcing any of the compensation provisions of the parties' agreements against ConsenSys.

84. As a result of Gupta's breaches, ConsenSys suffered millions of dollars in damages, including as a result of (a) lost employees (who refused to work with Gupta), (b) lost investment opportunities in promising companies (which refused to

work with Gupta), (c) substantial compensation paid to Gupta that she was not entitled to, (d) reputational harm to ConsenSys; and (e) attorneys' fees and other expenses ConsenSys has been forced to incur to obtain dismissal of the New York State Court Action.

COUNT VII:

BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

85. ConsenSys repeats and restates the allegations above as if fully set forth herein.

86. Though Gupta's conduct plainly breaches her agreements with ConsenSys, alternatively as to any breach of contract claim found not to be based on a specific provision of contract, Gupta's conduct amounts to a breach of the implied covenant of good faith and fair dealing, inherent in those agreements, to refrain from fraud in the discharge of her duties and performance of her roles, as further alleged above.

87. As a result of Gupta's breaches, ConsenSys suffered millions of dollars in damages, including as a result of (a) lost employees (who refused to work with Gupta), (b) lost investment opportunities in promising companies (which refused to work with Gupta), (c) substantial compensation paid to Gupta that she was not entitled to, (d) reputational harm to ConsenSys; and (e) attorneys' fees and other expenses ConsenSys has been forced to incur to obtain dismissal of the New York State Court Action.

**COUNT VIII:
UNJUST ENRICHMENT**

88. ConsenSys repeats and restates the allegations above as if fully set forth herein.

89. In the alternative to the foregoing claims, Gupta's conduct in procuring compensation from ConsenSys through fraud, malfeasance, and other inequitable conduct has resulted in her being unjustly enriched. Gupta accordingly ought to be ordered to disgorge her ill-gotten gains, including any claim to additional compensation from the Fund in the form of any Carry Percentage.

PRAYER FOR RELIEF

WHEREFORE, ConsenSys prays that this Court enter judgment in favor of ConsenSys and against Gupta as follows:

- (1) declaring that: (a) Gupta is barred from enforcing the Offer Letter and/or the GP LLC Agreement against ConsenSys; (b) Gupta has no right to any Carry Percentage from the Fund or, in the alternative should the Court not rule for the primary requested relief, Gupta only vested, if anything, 25% of her 20% Carry Percentage in ConsenSys GP (which is itself 20% of the Fund's Carried Interest, so that Gupta's total is no more than 1%); (c) Gupta is not entitled to any distributions at this time; and (d) Gupta is not entitled to any accounting;
- (2) enjoining Gupta from (a) making any statements suggesting that she continues to be affiliated with ConsenSys in any way; or (b) misrepresenting her role at ConsenSys, including misrepresenting the number of funds and amount of money under her management;
- (3) requiring Gupta to disgorge all of the compensation ConsenSys already has paid Gupta, including over \$600,000 in salary and bonuses, to ConsenSys;

- (4) awarding ConsenSys all damages to which the Company is entitled, including as caused by Gupta's fraud, breach of contract, and/or unjust enrichment, in an amount to be determined at trial;
- (5) awarding ConsenSys an anti-suit injunction prohibiting Gupta from bringing any claim directly or indirectly pertaining to the GP LLC Agreement in any court other than this Court;
- (6) awarding ConsenSys attorneys' fees and costs, including those incurred in procuring dismissal or other relief with respect to any action outside of this Court, including the New York State Court Action;
- (7) awarding ConsenSys prejudgment and post-judgment interest as allowed by law; and
- (8) awarding ConsenSys such other and further relief as this Court deems equitable, just and proper.

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Respectfully submitted,

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