ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

KSV RESTRUCTURING INC. in its capacity as court-appointed receiver and manager of PRODUCTIVITY MEDIA INC. and PRODUCTIVITY MEDIA INCOME FUND I LP, and not in its personal capacity

Plaintiff

and

MNP LLP

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date ____________________ Issued by ____________________________________
Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue, 8th Floor
Toronto ON M5G 1R7

TO: **MNP LLP**
1 Adelaide St E Suite 1900
Toronto, ON, M5C 2V9

CLAIM

1. The Plaintiff claims against the Defendant for the following relief:

(i) damages for negligence and/or breach of contract in the amount of $280,000,000 or such other amount as may be particularized prior to trial;

(ii) the disgorgement of all fees paid by the Fund (as defined below) to the Defendant in connection with the services described herein;

(iii) pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. c.C-3 as amended;

(iv) costs of the action on a substantial indemnity scale, together with the applicable H.S.T.; and

(v) such further and other relief as counsel may advise and this Honourable Court may deem just.

A. The Parties

2. Productivity Media Inc. ("**PMI GP**") is an Ontario corporation. PMI is the general partner of Productivity Media Income Fund I LP ("**PMI LP**" or the "**Fund**" and, together with PMI GP, "**Productivity Media**").

3. Productivity Media had three co-founders who at all material times were PMI GP's only shareholders and directors: William Gregory Santor ("**Santor**", 50%), Andrew David Chang-Sang ("**Chang-Sang**", 25%), and John Hills ("**Hills**", 25%).

4. Productivity Media carried on business as an entertainment industry lender, specializing in secured debt financing for independent film and television productions in Canada, the United States, the United Kingdom, the Cayman Islands, and other locations around the world.

5. KSV Restructuring Inc., is the court-appointed receiver and manager of PMI GMP and the Fund and brings this claim in this capacity.

6. The Defendant, MNP LLP ("**MNP**"), is a full-service chartered professional accountancy and business advisory firm. MNP's head office is in Calgary, Alberta, and has 127 offices across all 10 provinces in Canada.

7. At all material times, MNP was the auditor of the Fund's annual financial statements.

B. Overview: MNP's Gross Negligence and its Role in the Collapse of Productivity Media

8. Santor perpetrated a years-long **"Fraudulent Scheme**" against Productivity Media, whereby he misappropriated at least $44,448,871. The Fraudulent Scheme continues to be investigated.

9. In addition to the Fraudulent Scheme, Productivity Media was effectively a Ponzi scheme. Its sole business was making loans, but few if any loans were serviced in accordance with their terms, leaving Productivity Media entirely dependent on ongoing injections of investor capital in order to continue operating, and in order to allow for investor redemptions or distributions.

10. MNP was Productivity Media's auditor from 2016 until 2024. MNP provided clean audit opinions on Productivity Media's financial statements for its fiscal years ending December 31, 2016 to 2023.

11. MNP was grossly negligent in providing clean audit opinions in that, among other things, MNP:

(a) carelessly overlooked significant red flags inherent in the structure, governance, and operation of Productivity Media which should have resulted in the detection of the Fraudulent Scheme;

(b) inexplicably ceded control over the audit confirmation process to its client, despite the riskiness of the audit, and missed obvious discrepancies that emerged during the loan receivable confirmation process;

(c) failed entirely to exercise appropriate care in auditing Productivity Media's loan assets more generally – not just the fraudulent loans – which fundamentally amounted to a Ponzi scheme. Substantially all of Productivity Media's loans were not performing, were plainly not collectible, and remained outstanding several years past their maturity date; and

(d) failed to require the inclusion of appropriate notes, reserves, or impairments in relation to Productivity Media's loan assets, which had a book value of approximately $286 million in Productivity Media's December 31, 2023 financial statements (being the most recent financial statements audited by MNP), despite only actually being worth a tiny fraction of that amount.

12. Productivity Media's financial statements did not fairly represent the true, and catastrophic, state of its financial affairs.

13. Productivity Media was a fraud and its assets (namely, its loan portfolio) were almost worthless.

14. MNP's breaches of duty artificially lengthened Productivity Media's lifespan as a going concern, enabling it to continue raising investor funds that would never have been advanced had Productivity Media's financial statements accurately reflected the real value of its assets.

15. MNP's gross negligence and breaches of duty caused a massive increase to the losses suffered by Productivity Media.

16. The Plaintiff holds MNP responsible for these losses.

C. Productivity Media's Business

17. Productivity Media was founded in around 2012 by Santor, Hills, and Chang-Sang.

18. Productivity Media offered production financing, which involves loans to production companies that are secured against (i) government tax credits, and (ii) pre-sales and/or minimum guarantees from sales agents and/or other amounts owing from distributors.

19. Productivity Media also offered loans to sales agents and distribution companies for the purpose of allowing them to provide minimum guarantees to film production companies (the "**MG Loans**").

20. A minimum guarantee is a commitment by the sales agent or distributor to pay a certain minimum amount to the production company for a given film or television asset (a "**Media Project**").

21. MG Loans are secured against all the sales agent's or distributor's assets.

22. From 2016 to 2023, Productivity Media dealt with several legitimate and reputable sales agents and distributors who were involved in Media Projects where Productivity Media provided financing to the production company, including Radiant Films International LLC, Dark Star Pictures, LLC, Concourse Media LLC, and Joker Films.

23. As set out below, part of the Fraudulent Scheme involved Santor mimicking these entities through the creation of the Impostor Corporations (as defined below).

24. Substantially all of the capital for Productivity Media's business was financed by third-party investors (the "**Investors**") for the purpose of enabling the Fund to advance loans to its media productions, sales agents and distributors.

25. Generally, these third-party investors received limited partnership units in PMI LP in exchange for their investments.

26. The Investors had limited insight into Productivity Media's business and financial affairs. Their investment decisions were substantially reliant on, among other things, Productivity Media's audited financial statements.

27. In this regard, section 10.2 of the limited partnership agreement between PMI GP and its limited partners (i.e., the Investors) provides that PMI GP will appoint an auditor

for the Fund, who will report “to the Limited Partners” regarding the financial statements of the Fund.

28. MNP fulfilled this obligation; the audit reports it prepared which accompanied each of Productivity Media’s annual financial statements were addressed “To the Unitholders of Productivity Media Income Fund I LP [i.e. the Fund].”

D. Productivity Media’s Governance and Management

1. The structure of the business

29. Productivity Media’s three co-founders – Santor, Hills, and Chang-Sang – were the only shareholders, directors, and officers of PMI GP.

30. At all material times, Santor was Chief Executive Officer of PMI GP, Hills was its Chief Operating Officer, and Chang-Sang was its President and Chief Financial Officer.

31. Notwithstanding that Productivity Media raised nearly $300 million from investors, these same three individuals, without any additional independent members, also comprised Productivity Media’s Investment Committee, the body with authority over Productivity Media’s investment strategy and over proposed new loans on behalf of Productivity Media.

32. Productivity Media’s Investment Committee never exercised any meaningful degree of oversight or scrutiny into new transactions proposed by Santor. Instead, Santor controlled the Investment Committee and caused it to function as a “rubber stamp” on prospective loans he had originated, many of which were fraudulent (i.e., made to the entities known as the Impostor Corporations) and to related parties.

33. No other individuals held any material role in the management or governance of PMI GP or the Fund at any material time other than one individual who joined Productivity Media as general counsel in late 2021 and had no governance role.

34. As set out below, in performing Productivity Media's audit, MNP wholly failed to identify the significance of the complete or near-complete absence of any independent members of the board, management or Investment Committee, and Productivity Media's lack of appropriate internal controls. MNP also failed to take appropriate steps to incorporate these risks into its audit planning.

2. Productivity Media's cash collection cycle

35. Loan servicing on the non-fraudulent portion of the Loan Portfolio was managed by independent, arm's-length collections management firms known as Freeway Entertainment and Fintage House (the **"Collections Managers"**) pursuant to industry-standard arrangements known as Collection Account Management Agreements.

36. All cash paid to Productivity Media on account of its non-fraudulent loans was received in the first instance by one of the Collections Managers, each of which operated one or more bank accounts (each a "**CAMA Account**") into which cash receipts owing to Productivity Media were deposited.

37. Following the deposit of monies in a CAMA Account, the relevant Collections Manager would then disburse those funds to various parties in accordance with a predefined "waterfall" structure, including to Productivity Media on account of principal and/or interest repayments owing under the applicable loan.

38. As set out below, MNP wholly failed to appreciate that:

(a) certain repayments of loans occurred directly from an Impostor Corporation to Productivity Media – sometimes on account of loans in which the relevant Impostor Corporation was entirely uninvolved – rather than through a CAMA Account;

(b) the standard of care required MNP to take steps to obtain independent audit evidence, such as external confirmations (which was readily available by reviewing the CAMA account), regarding the collection and distribution of monies through each CAMA Account – which audit evidence would have indicated loan collection discrepancies requiring further investigation by MNP.

E. MNP's Retainer

39. Productivity Media retained MNP to conduct audits of its financial statements for the financial years 2016-2023 pursuant to a series of written retainer agreements (the "**Agreements**").

40. The engagement of MNP was for the purpose of, among other things, fulfilling PMI GP's statutory audit requirements under section 153 of the Ontario *Business Corporations Act.*

41. In the context of a limited partnership, the purpose of the audit was not just to allow PMI GP's shareholders to exercise oversight of the general partner's management.

42. Rather, and more broadly, at all times it was understood by MNP that PMI LP's limited partners were the primary users of MNP's audit reports. MNP was aware of the provisions of the Limited Partnership Agreement referenced above and expressly addressed its audit reports to the unitholders of the Fund.

43. As auditor, MNP undertook to produce an annual audit report of the financial statements of the Fund with a view to obtaining reasonable assurance that the financial statements, as a whole, are free of material misstatement.

44. MNP knew and represented as part of its retainer that one of its key functions was to detect fraud or any appearance that may suggest fraud. For example, in its retainer agreements with Productivity Media, MNP acknowledged each year that its responsibilities included the following:

> Our audit will be planned and performed to obtain reasonable assurance that the financial statements taken as a whole are free of material misstatement, whether caused by fraud or error. If any of the following matters are identified, they will be communicated to the appropriate level of management:
>
> - Misstatements, resulting from error, other than immaterial misstatements;
> - Fraud or any information obtained that indicates that a fraud may exist;
> - Material uncertainties related to events or conditions that may cast significant doubt on the Partnership's ability to continue as a going concern;
> - Any evidence obtained that indicates non-compliance or possible non-compliance with laws and regulations has occurred;
> - Significant deficiencies in the design or implementation of controls to prevent and detect fraud or misstatements; and
> - Related party transactions identified that are not in the normal course of operations and that involve significant judgments made by management concerning measurement or disclosure.

F. The Purported Limitations on Liability

45. Each of the Agreements between Productivity Media and MNP contains provisions which purport to limit MNP's potential liability in certain circumstances (the "**Limitation Clauses**").

46. The Limitation Clauses have no application or relevance to the subject matter of this claim because:

(a) they are inapplicable to the circumstances set out herein;

(b) in the alternative, MNP was grossly negligent in the performance of its duties pursuant to the Agreements;

(c) in the further alternative, the Limitation Clauses are unconscionable and unenforceable in these circumstances;

(d) no part of this claim arises from or is based on information supplied by "any officer or member of the Board of Directors of the Partnership" [i.e. PMI LP] as contemplated by certain of the Limitation Clauses given that PMI LP is a limited partnership which has no "officers or members of the Board of Directors"; and

(e) those Limitations Clauses which purport to relieve MNP of any joint liability are void as an impermissible attempt to contract out of the *Negligence Act*, which is public policy legislation designed to protect plaintiffs.

G. The Fraudulent Scheme

47. The Fraudulent Scheme involved the MG Loans.

48. Santor selected Radiant Films International LLC, Dark Star Pictures, LLC, Concourse Media LLC, and Joker Films (each a "**Target Corporation**") as targets to mimic because they each had legitimate business dealings with the Fund and they would plausibly require MG Loans on new Media Projects.

49. In connection with the Fraudulent Scheme, Santor incorporated a new corporation (the **"Impostor Corporation"**) with a similar name as the Target Corporation; for example, Santor incorporated Radiant Films International **Inc.**, an Impostor Corporation designed to mimic the legitimate entity Radiant Films International **LLC**.

50. In some instances, rather than use an Impostor Corporation, Santor arranged loans to his own company, 8397830 Canada Inc. ("**839 Canada**"), on the basis of his false representation that 839 Canada was operating as "Joker Media," a reference to one of the legitimate Target Corporations.

51. Santor opened bank accounts at National Bank of Canada in the name of each of the Impostor Corporations and 839 Canada, over which he had sole control.

52. For each Impostor Corporation except Joker Media, Santor registered a fake internet domain name (an "**Impostor Domain Name**") similar to the legitimate domain name of its corresponding Target Corporation.

53. Santor then used the Impostor Domain Names to create fake email accounts ("**Impostor Email Accounts**") similar to the legitimate email accounts used by the principals of the Target Corporations; for example, mimi@radiant-ent.com, designed to mimic the real account mimi@radiant-films.com belonging to the principal of a legitimate media company that had previous dealt with the Fund.

54. Santor also prepared and presented deal memos to the Investment Committee of the Fund -- comprised of Santor himself, Hills, and Chang-Sang – which set out the rationale and terms for a proposed MG Loan to an Impostor Corporation or 839 Canada.

55. Once the MG Loan was approved by the Investment Committee, Santor, Chang-Sang or Hills directed Apex Group Ltd. ("**Apex**"), the Fund's administrator, to wire funds to bank accounts in the names of the Impostor Corporations or 839 Canada, which were all controlled by Santor.

56. In this manner, from March 2016 to November 2021, Santor caused approximately $98,214,094 CAD to be diverted improperly from the Fund to accounts at National Bank held by the Impostor Corporations and 839 Canada.

57. From 2017 to 2023, Santor arranged for occasional partial repayments to the Fund of earlier MG Loans using money from later MG Loans (or other sources) in an apparent attempt to conceal the Fraudulent Scheme. These repayments totalled $53,765,223.

58. Accordingly, based on information available to date, the Fund has incurred a net loss of approximately $44,448,870 arising out of the Fraudulent Scheme, which is one

component of the loss at issue in this claim. Investigations continue in respect of the above amounts.

H. The Fund's Non-Performing Loan Portfolio

59. The main business of the Fund was to make loans. By the time the Fund's operations halted in 2024, it held purported loan receivables with a face value of approximately $288 million (the "**Loan Portfolio**").

60. An extract of the Fund's December 31, 2023 balance sheet from its audited 2023 financial statements reflects that the Fund essentially had two assets, being cash and loans receivable.

Productivity Media Income Fund I LP
Statements of Financial Position
(Expressed in Canadian Dollars)

As at December 31, 2023

		2023		2022
Assets				
Cash	$	**7,665,442**	$	10,524,999
Loans receivable, net (note 9)		**286,042,794**		246,970,089
Other receivables		**-**		16,386
Total Assets		**293,708,236**		257,511,474

61. The same financial statements reflect that investments from the limited partners approximate the book value of the loans receivable.

Partners' Equity				
Limited Partners (notes 6 and 7)		**276,294,024**		230,749,154
General Partner (notes 6 and 7)		**4,266,279**		2,090,018
	$	**280,560,303**	$	232,839,172

62. At that point in time, the loans comprising the Loan Portfolio included at least one loan originated as far back as 2018. Almost all loans which had originated before 2019 had been repaid, largely from proceeds from subsequent investor capital.

63. In fact, notwithstanding that the value of the loans advanced as of December 31, 2023 was approximately $263 million, the balance owing on these loans as of that date had increased to approximately $286 million.

64. In all but a few instances, the balance owing on each loan as of December 31, 2023 exceeded the amount advanced.

65. Despite this, Productivity Media provided only nominal provisions for bad debts at each of its year-ends. The table below reflects the number of loans outstanding by year of issuance, the amount funded and the book value as of December 31, 2023.

Loan	**Year of Issue**	**Number of Loans Outstanding as at 12/31/23**	**Principal Amount of Loan**	**Total Amount Outstanding (Including Accrued Interest)**
Master Loan Agreement I	2020 to 2021	3	$11,403,245	$15,431,522
Master Loan Agreement II	2019 to 2022	6	$48,398,633	$53,538,017
Master Loan Agreement III	2019 to 2020	5	$15,207,500	$20,266,075
Master Loan Agreement IV	2020	5	$17,005,416	$24,438,458
Master Loan Agreement V	2023	3	$4,923,535	$4,811,016
Master Loan Agreement VI	2023	4	$16,980,552	$14,200,412
Individual Production Loans	2018 to 2023	22	$149,442,576	$158,412,024
Total		**48**	**$263,361,457**	**$291,097,524**

66. The overwhelming majority of the loans making up the Loan Portfolio had significant red flags associated with them, including that the principal had not been repaid on the maturity date, and/or the maturity date had been extended materially, and/or that the interest owing on the loans was not being serviced in whole or in part.

67. Nonetheless, Productivity Media's management included in its financial statements only nominal provisions for bad debt, which MNP accepted uncritically despite the significant red flags noted above.

68. Similarly, beginning in 2018 or earlier, Productivity Media's management maintained credit risk ratings applicable to each loan in the Loan Portfolio, purportedly for the purpose of ensuring appropriate risk management in its ongoing investment activities.

69. As set out in Productivity Media's financial statements, under its internal risk classification system, each loan was categorized as one of:

(a) Low risk, meaning "loans receivable that exceed the credit risk profile standard of the [Fund] with a below average probability of default";

(b) Moderate risk, meaning "loans receivable that are typical for the [Fund's] risk appetite, credit standards and retain a below average probability of default";

(c) High risk, meaning "loans receivable within the [Fund's] risk appetite and credit standards that have an additional element of credit risk that could result in an above average probability of default. These loans receivable are expected to represent a small percentage of the Partnership's total loans receivable"; or

(d) Impaired, meaning "loans receivable on which the [Fund] commenced enforcement proceedings available to it under its contractual agreements and/or where there is objective evidence that there has been a deterioration in credit quality to the extent that the [Fund] no longer has reasonable assurance as to the timely collection of the full amount of principal and interest."

70. Based on objective indicators of distress and non-performance within the Loan Portfolio – which included, but were not limited to, loans being well past maturity – Productivity Media reasonably ought to have categorized the vast majority of its Loan Portfolio as either "high risk" or "impaired".

71. However, had Productivity Media properly categorized the loans in the Loan Portfolio, then it would not have been able to continue attracting new investments on an ongoing basis. Moreover, it would have been readily apparent to any prospective investor that the Fund was insolvent or near insolvent and could not reliably generate annual returns of approximately 10%, as advertised to investors.

72. Instead, during fiscal year 2023, Productivity Media characterized just 1.2% of its Loan Portfolio as "high risk" and 0% as "impaired." During fiscal year 2022, the Fund characterized just 0.02% of its Loan Portfolio as "high risk" and 0% as "impaired." Similar classifications were made for prior years.

73. These characterizations were fraudulent (albeit easily detectable) misrepresentations designed to create the appearance of profitability and viability in order to attract ongoing investment into the Fund.

74. In reality, Productivity Media was a Ponzi scheme. Absent a properly performing book of loans, it had no ability to continue operating, or to facilitate investor redemptions or distributions, without an ongoing ability to attract new investor capital in order to repay older obligations.

75. Given that (i) Productivity Media's business was lending; (ii) its most material asset, by far, was its Loan Portfolio, and (iii) the underperformance of most if not all of the Loan Portfolio, any reasonable auditor would have undertaken audit procedures to consider the collectability of the loans.

76. As set out in detail below, MNP was grossly negligent in failing to detect these uncollectible loans and, instead, issued clean audit opinions in respect of Productivity Media's financial statements.

I. MNP breached the standard of care

77. MNP owed a duty of care to Productivity Media.

78. In the circumstances, the standard of care applicable to MNP included at least the following obligations:

(a) to conduct its work in accordance with all applicable professional standards including Generally Accepted Auditing Standards ("**GAAS**"), including but not limited to Canadian Auditing Standard 505, the relevant auditing standard applicable to external confirmations; the applicable Code of Professional Conduct; and to ensure that Productivity Media's annual financial statements were fairly presented in accordance with Generally Accepted Accounting Principles;

(b) to properly plan the audit engagements and identify audit risks so as to reduce to an appropriately low level the risk of overlooking material misstatements;

(c) to perform its audit engagements with due care and objectivity;

(d) to exercise a reasonable level of professional skepticism in evaluating the sufficiency and appropriateness of audit evidence obtained and being alert to suspicious circumstances indicating the existence of potential fraud;

(e) to identify weaknesses in internal controls;

(f) to appropriately perform adequate substantive testing designed to obtain sufficient and appropriate audit evidence, and to critically analyze and follow-up on the results of their testing;

(g) to avoid inappropriate reliance upon management's assertions, especially as a primary or sole source of audit evidence;

(h) to conduct reasonable audit investigations and to probe suspicious circumstances or information that should have caused MNP to suspect that the Fund's financial statements may be materially misstated; and

(i) to exercise reasonable audit diligence and scrutiny regarding information received from its client and any third parties involved in the audit process.

79. MNP owed the same or similar contractual duties to Productivity Media pursuant to the Agreements.

80. MNP's work as Productivity Media's auditor was grossly negligent and fell well below the applicable standard of care.

1. Negligence in relation to the Fraudulent Scheme

81. MNP was careless and breached the standard of care in its audit work relating to transactions that formed part of the Fraudulent Scheme.

(a) Audit confirmations: background

82. Direct communications with third parties, known as audit confirmations, are a crucial part of the auditor's verification of the legitimacy of assertions made by management and, in turn, obtaining appropriate audit evidence in respect of the financial statements being audited.

83. Audit confirmations are a particularly salient component of the audit process where, as here, the entire business is based on lending. As evidenced above, substantially all of MNP's audit client's assets consisted of loans.

84. In any case, a critical element of an appropriate audit confirmation is that the auditor – and not management – retains control over the audit confirmation process.

85. An auditor can only achieve the critical objective of validating the authenticity of the third-party respondent if the auditor exercises appropriate control over the confirmation process.

86. Where third party confirmations are issued under the control of the client, the auditor is required to exercise appropriate professional skepticism and audit scrutiny to verify that the confirmation was in fact received and completed by the independent third-party.

(b) MNP's careless audit confirmation process

87. MNP's audit confirmation process was grossly negligent and led directly to its failure to detect the Fraudulent Scheme.

88. Contrary to GAAS, MNP effectively ceded control over the audit confirmation process to Santor, and once MNP obtained ostensible third-party confirmation of a loan, it did nothing more to corroborate, scrutinize, or critically evaluate such representations in light of factors that raised doubt as to their reliability.

89. In respect of the Fraudulent Scheme, a typical MNP audit confirmation process went as follows:

(a) Santor, with MNP personnel copied, wrote to the Impostor Corporation at an Impostor Email Account, requesting that the third-party review and execute a document confirming the existence of a loan;

(b) Santor had complete control over the selection of the recipient of these emails. MNP generally did not ask that a particular person at the Target Corporation be contacted, nor did MNP take any steps to validate that the person purportedly being contacted was in fact that person;

(c) Santor on occasion followed up on audit confirmation inquiries that had received no response;

(d) Santor (or others acting on his behalf) then caused the Impostor Email Account to send back a signed audit confirmation;

(e) MNP usually took no further steps to verify the third-party, and in many cases MNP did not have further communication with the Impostor Email Account to seek any additional information whatsoever; and

(f) Instead, MNP accepted the audit confirmation as-is, and proceeded with finalizing their audit.

90. MNP's carelessness resulted in the negligent disregard of suspicious information on multiple occasions.

91. For example, in several instances, the underlying source documents (which supposedly corroborated the fraudulent loans) were riddled with errors and/or mismatches, and certain loans were repaid from entities unrelated to the borrower.

92. In other instances, MNP received or was copied on correspondence from and to supposed third parties using both their real email addresses and the Impostor Email Accounts, without ever noticing the inconsistencies.

93. For example, during the 2021 audit:

(a) On March 21, 2022, Mr. Santor sent an audit confirmation request seeking confirmation of loans totalling approximately $19.9 million to the genuine coordinates for the principal of the Concourse Media LLC borrower, seemingly in error, at felts@concourse-media.com (the **"Real Concourse Email"**). MNP was copied;

(b) Less than half an hour later, Mr. Santor realized his mistake and sent another email to the Real Concourse Email, without copying MNP, writing: "Please disregard – we have had a security breach of our email systems…the below was a fraudulent email";

(c) Within two hours of his initial email, Mr. Santor sent the same audit confirmation request to the Impostor Email Account associated with Concourse, at felts@concoursemedia.media, requesting confirmation of multiple fraudulent loans. MNP was again copied on this email;

(d) After a follow up by Mr. Santor on April 10, 2022, the Impostor Email Account returned the completed audit confirmations as requested later that day;

(e) The confirmations returned by the Impostor Email Account contained further red flags:

(i) one of the signatures from the purported borrower was dated March 31, 2022 even though it was sent back to Mr. Santor and MNP on April 10, 2022; and

(ii) the 'audit trail' appended to the electronically-signed document received by MNP revealed that (i) one of the two confirmations had been sent for signature on March 31, 2022 – even though Mr. Santor had not sent any email to the Impostor Email Account on that date, and (ii) the purported borrower had signed both confirmation requests in each case within exactly one second of receiving them, suggesting that the sender and recipient of the electronic signature request were the same person.

94. MNP never noticed or took any steps to address these discrepancies, nor did it question why Mr. Santor sent the same audit confirmation request twice, and to two different email addresses.

95. Further, had MNP not inappropriately ceded control over the audit confirmation process to its client, it would have replied to the initial Real Concourse Email to follow up

on Mr. Santor's initial, erroneous confirmation request. This likely would have triggered a response from the real Concourse principal, unravelling the Fraudulent Scheme.

96. Finally, in relation to a confirmation sent to Tim Brown of the real Joker Films Media, Santor manipulated the audit confirmation process in a particularly blatant manner, setting up an Impostor Email Account using a publicly-available Gmail address (tbrownjoker@gmail.com) designed to mimic Mr. Brown's real email address, being tim@jokerfilms.com.

97. It should have been obvious to MNP that Mr. Brown's real email address should correspond to his company's internet domain name, and that there would be no legitimate reason for him to be using a Gmail account for business purposes.

98. In the case of this Impostor Email Account, as in so many other instances, Santor (not MNP) communicated directly with "tbrownjoker@gmail.com" and then caused that email account to send signed audit confirmations back to MNP during at least four annual audit processes.

99. During these four audits, MNP either failed to notice that they were communicating with a Gmail address or failed to take any steps to inquire into this obvious red flag, including by making any effort to contact the company or Mr. Brown directly.

(c) MNP breached the standard of care

100. MNP's conduct was grossly negligent in that it:

(a) failed to appreciate the significance of the lack of independent members within its client's board of directors, management or Investment Committee, a fact which ought to have led MNP to treat this as a high-risk audit in its planning process;

(b) ceded control over the confirmation process to management without justification, allowing Santor to be the person to communicate directly with third parties and to determine the information to be confirmed, in circumstances where MNP should have been exercising heightened care and control in view of the riskiness of the audit;

(c) failed to test the validity of some or all of the addresses to which the loan confirmation requests were sent or to conduct other appropriate procedures to ensure the integrity of the confirmation process;

(d) took no steps, or alternatively grossly inadequate steps, to inquire into why management was insistent upon controlling the confirmation process;

(e) took no steps whatsoever, or alternatively grossly inadequate steps, to validate the information it received from its client, including in relation to ensuring the confirmation was actually received and completed by the real third parties;

(f) wholly failed to detect the clear red flags outlined above (and others);

(g) failed to obtain audit confirmations from some recipients, and exercised no professional skepticism or scrutiny about why those confirmations were not returned;

(h) failed to obtain audit evidence commensurate to the degree of audit risk present in the engagement;

(i) used "alternative procedures" in lieu of actual audit confirmations in circumstances where MNP knew or ought to have known that this lower standard of audit evidence would not result in sufficient assurance; and

(j) entirely failed to identify certain repayment transactions in which Santor arranged for an Impostor Corporation to make direct payments to Productivity Media, ostensibly on account of legitimate outstanding obligations owing from unrelated, legitimate parties – despite that these payments would ordinarily flow through the Collections Manager, and in some cases where the payor was unrelated to the transaction in question.

101. But for MNP's audit deficiencies, including in respect of the external confirmations, MNP would have identified the Fraudulent Scheme.

2. MNP Negligently Failed to Properly Audit the Fund's Loan Portfolio

102. MNP was grossly negligent in its assessment of the Fund's Loan Portfolio, specifically by ignoring or giving inappropriate consideration to the poor performance of the loans and by exercising insufficient skepticism of management's assertions that the loans were all collectible and of "low" or "moderate" risk.

103. As noted above, the Fund's self assessment of the risk profile of the Loan Portfolio was, in essence, a fraudulent misrepresentation, but one that should have been detected easily.

104. Indeed, it ought to have been apparent to MNP by 2020 or earlier that there were serious risks associated with the Loan Portfolio in light of significant and ongoing problems with collections and interest service, and that Productivity Media was dependent on attracting new investor capital in order to repay prior obligations.

105. Moreover, it ought to have been apparent to MNP that the loan provisions and other qualifications in Productivity Media's financial statements were grossly inadequate and resulted in a significant overstatement of Productivity Media's financial position. Despite all of this, MNP negligently issued a clean opinion for each audit.

106. MNP would have identified these issues, which would have led to the discovery of the broader problems in Productivity Media's business, had they met the standard of care including by exhibiting a basic grasp of the structure of Productivity Media's cash collection cycle and by taking reasonable steps to obtain audit evidence in respect of the Collections Managers and the CAMA Accounts.

107. In the circumstances, no reasonable auditor could have opined that the Fund's financial statements fairly presented its financial position without requiring management to amend its financial statements to add reserves, impairments, notes, or other qualifications that would result in a fair presentation of the Fund's financial position. Had MNP done so, Productivity Media would not have continued to raise investor capital.

J. The Fund's Insolvency and Liquidation Deficit

108. In 2024, as a result of an anonymous complaint, details of the Fraudulent Scheme first came to light and triggered various investigations and legal proceedings.

109. Around that time, the Fund suspended the acceptance of new investments and the distribution of funds to its limited partners.

110. Subsequently, the plaintiff was appointed as receiver over all of the assets, undertakings and properties of Productivity Media and certain of its affiliates by way of court order dated November 19, 2024.

111. Through the receivership and other proceedings, it has become clear that substantially all of the Fund's loans receivable are uncollectible, the real value of Productivity Media's assets are an insignificant fraction of what had previously been represented, and the net asset value of the Fund was overstated by approximately $280,000,000.

K. Remedies

112. MNP's negligent audits preserved a false financial picture upon which the Fund relied to continue to solicit new investments which were the lifeblood of its business and which ultimately became worthless.

113. But for the various breaches of duty by MNP set out above, the Fraudulent Scheme would have been detected almost immediately, Productivity Media's true financial situation would have been apparent both to Productivity Media itself and to its investors, and Productivity Media would not have been able to continue soliciting new investments.

114. In all the circumstances, MNP's gross misconduct and mismanagement of annual audits exposed Productivity Media to reasonably foreseeable risks, which materialized in the catastrophic losses that Productivity Media has now suffered.

115. MNP is liable to the plaintiff in tort and contract.

116. MNP is liable for damages of $280,000,000, being the extent of the increase to the liquidation deficit that occurred during the period that the improprieties set out above should have been discovered, but for MNP's breaches of duty.

117. Additionally, MNP must disgorge all fees it received in connection with the improper audits. There is no juristic reason for the enrichment and the corresponding deprivation in the circumstances.

118. The plaintiff proposes that the action be tried in Toronto, Ontario on the Commercial List.

May ___, 2025

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Lawyers for the Plaintiff

KSV RESTRUCTURING INC. in its capacity as court-appointed receiver and manager of PRODUCTIVITY MEDIA INC. and PRODUCTIVITY MEDIA INCOME FUND I LP, and not in its personal capacity

-and-

MNP LLP

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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