

**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 and APEX FUND SERVICES (CANADA) LTD.

Defendants

**CASE CONFERENCE BRIEF OF THE PLAINTIFF
(Case conference – May 25, 2026)**

May 19, 2026

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West
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Toronto ON M5V 3H1

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Lawyers for the Plaintiff

A. Overview

1. This is a 90-minute continuation of the case conference held before Justice Kimmel on January 15, 2026 (see endorsement at **Appendix A**). The Receiver seeks a variety of procedural directions, as detailed below. The action was commenced in May 2025 and there is no discovery timetable in place yet.

B. Status of proceeding

2. The action initially named only MNP LLP (“**MNP**” and the “**Main Action**”). Apex Fund Services Canada Ltd. (“**Apex**”) was added as a defendant on January 15, 2026. Both MNP and Apex provided professional services to the receivership companies.

3. MNP and Apex have asserted third party claims, principally against the individual members of the receivership companies’ management. The Receiver has claimed against those individuals in separate proceedings which have not advanced beyond pleadings and which are also the subject of this case management conference (the “**Management Actions**”). The Management Actions raise the same general themes as the third party claims as well as impugning certain specific transactions which are not at issue in the third party claims.

4. The Receiver seeks to add new parties, Radiant Films International LLC and its principal, Mimi Steinbauer (together, the “**Radiant Parties**”) as defendants in the Main Action. The Radiant Parties are represented by counsel who will be attending this case conference. The Radiant Parties are already defendants in a third party claim issued by MNP.

C. Prior attendances

5. There have been two case management conferences before Justice Kimmel in this matter, most recently on January 15, 2026 to address timetabling and procedural issues. At that case conference, Justice Kimmel’s endorsement indicated:

It is expected that by the next case conference, the parties will be much further advanced in their discussions about the discovery plan and will have only a focused list of issues about which they may still require assistance from the court regarding the timetabling and conduct of the documentary and oral examinations for discovery. The request for the court to schedule a motion for security for costs and any other issues that arise over the course of the intervening months may also be raised at this case conference for the court's consideration and directions, if time permits.

6. Since the case conference of January 15: **(i)** the Receiver delivered an initial, pre-discovery tranche of productions to all parties at Apex's request; **(ii)** MNP and Apex filed statements of defence and third party claims against the Estate of William Santor, Andrew Chang-Sang, John Hills, and (in MNP's case) the Radiant Parties; **(iii)** Mr. Hills' third party defence is due; **(iv)** the Receiver has circulated a single draft discovery plan applicable to the Main Action and the Management Actions, and has received limited comments in response; and **(v)** the Receiver has taken steps against the Radiant Parties as described below.

7. The current outstanding issues are addressed below.

D. Pleadings

8. On April 7, 2026, the Receiver commenced an action (the "**Radiant Action**") against the Radiant Parties. The Radiant Action was initiated as a separate proceeding to preserve a possible limitation period.

9. The Receiver now seeks to add the Radiant Parties into the Main Action by consolidating the Radiant Action into the Main Action and then amending the statement of claim in the Main Action in accordance with the proposed draft enclosed as **Appendix B** (and see a redline to the existing pleading at **Appendix C**). A draft order will be filed prior to the case conference.

10. Apex consents to the amendment. MNP does not oppose except that it seeks costs, apparently on the basis that it incurred costs attempting to serve its third-party claim personally on the Radiant Parties before the Receiver sought to add them as defendants.

11. MNP's request for costs should be denied. First, MNP has still not provided any costs outline or any other particularization of the claim, despite repeated requests for this information since April 17 and a number of warnings from the Receiver that it would seek to have this issue dealt with at this case conference. Second, the claim for costs is baseless in any event. The Receiver initially chose not to include the Radiant Parties in the action but later asserted direct claims against them after they were added as third party defendants. This was a legitimate choice, made without undue delay, and does not give rise to costs.

E. Coordination amongst the proceedings

12. A threshold issue for the discovery plan is whether discovery in the Main Action will be coordinated with the Management Actions (specifically, the Management Actions against Messrs. Chang-Sang and Hills). The Receiver has settled with the Estate of William Santor and is not pursuing that claim.

13. In the Receiver's view, all proceedings, including any third-party claims or crossclaims, should proceed in a single coordinated discovery with one affidavit of documents per party, streamlined examinations, and a combined deemed undertaking. The Receiver has not received any party's position on this issue, except for Apex who agrees with the Receiver's position.

F. Discovery plan

14. The parties have had the Receiver's draft discovery plan for months and most parties have provided some comments. While the categories of producible documents may expand very modestly based on the third-party defences and the Radiant Parties' forthcoming pleadings, all other known issues can be addressed now such that a discovery plan and timetable can be finalized.

1. Rule 30.10 examinations

15. MNP and Apex advise that they wish to conduct examinations for discovery of Krista

Mooney, Shara Lerman, and “possibly others.” Ms. Mooney is a representative of PwC who swore an affidavit in the receivership proceedings regarding her review of the file. Ms. Lerman is the former in-house counsel of one or more receivership companies.

16. It is unknown whether either person consents to be examined, and the Receiver is unaware of any steps taken by MNP or Apex to pursue those witnesses. In the Receiver’s view, neither examination appears to meet the stringent test for non-party discovery, and Ms. Lerman’s evidence may raise privilege issues. In any case, MNP and Apex should take prompt steps either to secure the witnesses’ agreement to be examined or to schedule a prompt rule 31.10 motion. All of this should proceed in parallel with the balance of the discovery steps.

2. Length of examinations for discovery

17. Counsel for MNP and Apex have requested to examine Mr. Chang-Sang and Mr. Hills for “at least” 12 hours each; neither individual’s counsel has responded.

3. Detailed Schedule B

18. Counsel for Apex has requested that the Receiver provide a detailed Schedule B to its affidavit of documents. Apex has not provided a reason why a detailed Schedule B would be appropriate or proportionate in this case apart from the fact that the Receiver has raised serious allegations and is a court-appointed officer. Subject to additional information from Apex regarding its position, the Receiver opposes this request as unnecessary and unwieldy.

4. Preliminary motions

19. Since the January 15 case conference, no party has confirmed their intention to pursue a motion for security for costs. If any party seeks to do so, it should be scheduled now and should proceed in parallel with discovery, not prior. As set out in prior case conference briefs, there is no real need for security for costs: the Receiver holds approximately \$5 million in cash and has

committed not to make distributions in the receivership without court approval. The Receiver is also expecting further cash receipts of approximately \$3 million by the end of Q3 2026 by way of ongoing recoveries on tax credit receivables, revenue generated from the sales of films, and other sundry collections.

5. Timetable

20. The Receiver seeks the following timetable:

- (a) Radiant Parties to deliver their statement of defence (with any crossclaims and third party claims) by July 6, being forty days from the case conference and almost two months from when counsel first advised of their retainer;
- (b) any further pleadings or amendments arising out of (a) within a further ten days;
- (c) affidavits of documents and Schedule A productions to be exchanged by August 14, 2026 in each of the actions; and
- (d) all examinations for discovery to be completed by December 18, 2026;
- (e) answers to undertakings to be delivered within 90 days of being given, excluding the period from December 21, 2026 to January 3, 2027.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19th day of May, 2026.



Jeff Larry / Dan Rosenbluth / Grace Bryson
Lawyers for the Receiver

Appendix A



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-25-00743761-00CL

DATE: Jan 15, 2026

NO. ON LIST: 03

TITLE OF PROCEEDING: 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 v. MNP LLP

BEFORE: JUSTICE JESSICA KIMMEL

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Dan Rosenbluth Jeff Larry Grace Bryson	KSV Restructuring Inc.	Daniel.rosenbluth@paliarerland.com Jeff.larry@paliarerland.com Grace.bryson@paliarerland.com
Bobby Kofman	Receiver: KSV	Bkofman@ksvadvisory.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Nadia Champion Amethyst Haighton	Proposed Defendant: Apex Fund Services (Canada) Ltd	Nchampion@lolg.ca Ahaughton@lolg.ca
Ken Dekker	MNP LLP	Kdekker@agmlawyers.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Justin Necpal	Non-Party; John Hills	Justin@necpal.com,

David Levangie	Non-party: Estate of William Santor	Dlevangie@foglers.com
Chris Hunter	Non-Party: Andrew Chang-Sang	Ckhunter@torys.com

ENDORSEMENT OF JUSTICE JESSICA KIMMELC

- [1] Order to go in the form signed by me today granting leave to the plaintiff to amend its Statement of Claim.
- [2] Any party who wishes to make a demand for particulars or request to inspect documents in respect of the amendments to the Statement of Claim shall do so by January 23, 2026 and the plaintiff will respond in a timely manner.
- [3] Statements of Defence (including any cross-claims or counterclaims) in response to the Amended Statement of Claim, shall be delivered by March 12, 2026. Defendants who wish to make Third Party Claims shall deliver those by March 23, 2026. Counsel for the intended third party, Mr. Chang-Sang shall be provided with a copy of any Third Party Claims against him, although it is expected that he will insist on proper service upon him in Spain pursuant to the *Hague Convention*.
- [4] Defences (including any cross-claims or counterclaims) and any Fourth Party Claims shall be delivered by the Third parties by May 18, 2026 (or, in the case of Mr. Chang-Sang, within one week of him being served in accordance with the *Hague Convention*).
- [5] Any remaining pleadings following from these Third (and any Fourth) Party Claims shall be delivered in accordance with the *Rules of Civil Procedure*.
- [6] In the meantime, the plaintiff will advise the other parties by next week of:
- a. the date by which it proposes to deliver its draft discovery plan; and
 - b. the date by which it intends to produce its initial tranche of productions, which it has agreed to do in advance of the close of pleadings and in advance of the delivery of a formal affidavit of documents, on the understanding that the delivery of these productions will not be relied upon by the defendants or third parties as a basis for delaying the delivery of their remaining pleadings.
- [7] A further case conference has been scheduled in this matter on May 25, 2026 for 90 minutes commencing at 10:00 a.m. by zoom.
- [8] It is expected that by the next case conference, the parties will be much further advanced in their discussions about the discovery plan and will have only a focused list of issues about which they may still require assistance from the court regarding the timetabling and conduct of the documentary and oral examinations for discovery. The request for the court to schedule a motion for security for costs and any other issues that arise over the course of the intervening months may also be raised at this case conference for the court's consideration and directions, if time permits.

[9] Aide Memoires for the May 25, 2026 case conference (maximum 5 pages double spaced) shall be served and filed by no later than May 20, 2026. Counsel are responsible for ensuring that the material for this case conference has been uploaded into the appropriate hearing bundle in case center by no later than 2:30 p.m. on May 22, 2026.

A handwritten signature in cursive script that reads "Kimmel J.".

Date: Jan 15, 2026

JESSICA KIMMEL

Appendix B

Court File No. CV-25-00743761-00CL

**ONTARIO
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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, APEX FUND SERVICES (CANADA) LTD., RADIANT FILMS
INTERNATIONAL LLC and MIMI STEINBAUER, also known as
KATHLEEN STEINBAUR**

Defendants

SECOND FRESH AS AMENDED 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

AND TO: APEX FUND SERVICES (CANADA) LTD.
333 Bay Street Suite 1130
Toronto, ON M5H 2R2

AND TO: RADIANT FILMS INTERNATIONAL LLC
303 N. Glenoaks Blvd, Suit 200
Burbank, California 91502
United States of America

AND TO: MIMI STEINBAUER also known as KATHLEEN STEINBAUER
c/o Radiant Films International LLC
303 N. Glenoaks Blvd, Suite 200
Burbank, California 91502
United States of America

CLAIM

1. The Plaintiff claims:

- (a) as against all Defendants, jointly and severally, for the following relief:
 - (i) damages for negligence and/or breach of contract (or, in the case of the Radiant Defendants, as defined below, for fraudulent misrepresentation and/or negligent misrepresentation) in the amount of \$280,000,000 or such other amount as may be particularized prior to trial;
 - (ii) pre-judgment interest and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. c.C-3 as amended;
 - (iii) costs of the action on a substantial indemnity scale, together with the applicable H.S.T.; and
 - (iv) such further and other relief as counsel may advise and this Honourable Court may deem just;
- (b) as against MNP LLP, the disgorgement of all fees paid by the Fund (as defined below) to MNP LLP in connection with the services described herein; and
- (c) as against Apex Fund Services (Canada) Ltd., the disgorgement of all fees paid by the Fund (as defined below) to Apex Fund Services (Canada) Ltd. in connection with the services described herein.

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.

8. The Defendant, Apex Fund Services (Canada) Ltd. ("**Apex**" and, together with MNP, the "**Professional Defendants**"), is a professional services firm which provides,

among other things, fund administration services. Apex's head office is located in Toronto, Ontario.

9. The Defendant, Radiant Films International, LLC ("**Radiant**"), is a California limited liability company carrying on business in the entertainment industry as a sales agent and film distributor.

10. The Defendant, Mimi Steinbauer, also known as Kathleen Steinbauer ("**Steinbauer**" and, together with Radiant, the "**Radiant Defendants**") is the founder and principal representative of Radiant.

11. At some or all material times, Radiant acted as sales agent and/or distributor for certain of the film or television productions funded by the Fund.

B. Overview: the Defendants' Misconduct and Their Role in the Collapse of Productivity Media

12. 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.

13. In addition to the Fraudulent Scheme, Productivity Media was effectively a Ponzi scheme. Its sole business was making loans, but only a few were serviced and/or repaid 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.

14. 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.

15. Apex was Productivity Media's fund administrator from 2016 to 2025.

16. 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, overstated, uncollectible, and remained outstanding several years past their maturity date;
- (d) failed to understand and appreciate the structure of Productivity Media's business, including the control accounts and the CAMA accounts described

below. This failure prevented MNP from using audit procedures that would have identified the problems inherent in Productivity Media's business;

- (e) 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 a tiny fraction of that amount being collectible; and
- (f) MNP permitted management, primarily Santor, to control the loan receivable confirmation process, providing him the opportunity to provide incomplete, inaccurate and false information relating to the valuation and existence of the loan portfolio, and MNP failed to identify and/or perform audit procedures to address the numerous red flags that resulted from the loan receivable confirmation process.

17. Apex was grossly negligent in its fund administration services and materially breached the Administration Agreement with Productivity Media, in that, among other things, Apex:

- (a) failed to identify that none, or almost none, of the loans reflected on Productivity Media's December 31, 2023 balance sheet were being collected and that all, or substantially all, were aged well past maturity;

- (b) failed to identify substantial discrepancies in the loan documentation submitted to Apex by Productivity Media relating to the fraudulent MG Loans (described further below);
- (c) failed to review, or adequately review, documentation for purported loans and other transactions;
- (d) prepared annual and semi-annual financial statements for the Fund and calculated the net asset value (“**NAV**”) of the Fund, without performing adequate due diligence or considering the validity, collectability and actual performance of the loan portfolio;
- (e) failed to exercise the professional skill and care that would be reasonably expected of a prudent and professional fund administrator; and
- (f) failed to provide oversight of the Fund that would be reasonably expected of a prudent and professional fund administrator.

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

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

20. The Professional Defendants’ 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 performance of its business and real value of its assets.

21. The Professional Defendants' gross negligence and breaches of duty caused a massive increase to the losses suffered by Productivity Media.

22. The Plaintiff holds the Professional Defendants jointly responsible for these losses.

C. Productivity Media's Business

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

24. 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.

25. 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**").

26. 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**").

27. The MG Loans were purportedly secured against all the sales agent's or distributor's assets.

28. Further, Productivity Media maintained and/or entered into Grid Promissory Notes and General Security Agreements for the Fraudulent Loans which described “control accounts” into which any amounts advanced to the borrower under the relevant loan agreements would be deposited, and that such accounts would be held in the name of Productivity Media. Santor represented that the principal amount of the loan would be held in a control account until the project was completed and the funds were required. Neither Professional Defendants took any steps to confirm the existence of any “control accounts” relating to the Fraudulent Loans.

29. 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, Dark Star Pictures, LLC, Concourse Media LLC, and Joker Films.

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

31. Substantially all 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.

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

33. 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, which were prepared by Apex, apparently in accordance with International Financial Reporting Standards ("IFRS"), audited by MNP, and then included in the Fund's annual reports.

34. 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.

35. 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

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

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

38. Notwithstanding that Productivity Media raised nearly \$300 million from investors, these same three individuals 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. The Investment Committee did not have any independent members.

39. 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.

40. 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.

41. As set out below, in performing their respective duties, the Professional Defendants 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. The Professional Defendants also failed to take appropriate steps to incorporate these risks into their planning of their respective engagements.

2. Productivity Media's cash collection cycle

42. Loan collections on the non-fraudulent portion of the Loan Portfolio were deposited into bank accounts 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 (a "**CAMA**" and a "**CAMA Account**").

43. 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.

44. As set out below, the Professional Defendants 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) substantially all of Productivity Media’s loans as of December 31, 2023 were aged past their due date, non-performing and should have previously been written down, which would have been apparent had the Professional Defendants assessed and verified the collection and distribution of monies through each CAMA Account;
- (c) 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. The standard of care required Apex to take similar steps.

E. MNP's Retainer

45. 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**").

46. 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*.

47. 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.

48. 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.

49. 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.

50. 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. Apex's engagement

1. Overview

51. Productivity Media engaged Apex pursuant to an Administration Agreement dated May 1, 2012 (the "**Administration Agreement**").

52. The Administration Agreement executed between Productivity Media and Apex is a generic document which reflects that Apex made little or no effort at the outset of the engagement, or at all, to understand Productivity Media's business and how it operated. Apex therefore failed to properly plan and put in place procedures to address the risks in Productivity Media's business that were relevant to Apex's obligations as fund administrator. This failure prevented (or, alternatively, substantially impaired) Apex's ability from the outset to discharge its duties.

53. This includes that Apex took no steps (or, alternatively, grossly inadequate steps) to ensure that a valuation policy was in place and being complied with, in order to ensure that Apex's valuations of the Fund would reflect an accurate understanding of the nature

of the Fund's business and how to confirm the value and existence of the Fund's loan portfolio.

54. Further, although Apex had a valuation/pricing policy of its own, it took no or inadequate steps to ensure that this policy was being complied with, and the policy itself contained no or inadequate provisions as to how to price loans, which was the only material asset of the Fund's business.

55. More generally, Apex took no steps to put in place processes or policies with a view to customizing its services to the nature of its client's business and/or to address risk factors inherent in Productivity Media's business.

2. Apex's obligations under the Administration Agreement

56. Pursuant to the Administration Agreement, Apex agreed to exercise "the professional skill and care that would reasonably be expected of a prudent and professional administrator" (Section 2.2). Apex further agreed, "[i]n all respects [to] observe and comply with the Limited Partnership Agreement" (Section 2.3). The Administration Agreement provided that Apex would "comply with and conform to all reasonable and proper orders, directions and requirements" of Productivity Media, and as necessary or advisable, would consult with Productivity Media (Section 2.3).

57. In reliance upon the Administration Agreement, Productivity Media issued an Offering Memorandum dated March 20, 2016, which was provided to prospective investors in the Fund. Among other things, the Offering Memorandum described the role of Apex as providing "oversight" of the Fund, providing "its services with professional skill

and care that would reasonably be expected of a prudent and professional administrator”. Apex reviewed drafts of the Offering Memorandum provided by PMI and did not raise any concerns with this description of its roles and responsibilities.

58. Apex understood and agreed that one of its key functions was to provide accurate financial reporting and to offer oversight in respect of the activities of the Fund. In particular, the First Schedule of the Administration Agreement detailed, among other things, the following administrative services to be provided by Apex:

- (a) Calculating the net asset value (“**NAV**”) of the Fund in accordance with the Limited Partnership Agreement (Section 1.1);
- (b) Keeping the books and records of the Fund for the proper recording of the financial affairs of the Fund in compliance with International Financial Reporting Standards (“**IFRS**”) (Section 1.2);
- (c) Liaising with the Fund’s auditors, MNP LLP, with respect to the audit of the financial statements for each financial year of the Fund so as to enable the auditors to complete the annual audit of the Fund such that the audited financial statements can be included in the Fund’s annual report (Section 1.3);
- (d) Providing a detailed schedule showing each partner’s share of taxable income, expenses, gains and losses of all types, as categorized on a T5013 form (Section 1.10);

- (e) Maintaining the records and accounts of the Fund in such manner as to enable Apex to carry out its duties (Section 1.13);
- (f) Preparing financial statements for inclusion in the Fund's annual report, having regard to applicable accounting standards (Section 1.14); and
- (g) Paying to or depositing with the Fund's bankers to an account in the name of the Fund all funds received by it on behalf of the Fund, and, if authorized, to make payments from accounts of the Fund (Section 1.15).

59. Importantly, the Administration Agreement specifically allowed Apex to decline to accept or act upon the instructions of Productivity Media, if such instructions were not feasible or would be in breach of the Administration Agreement or Limited Partnership Agreement, among other things. Apex thereby acknowledged that it could act independently of Productivity Media, recognizing its important role in providing "oversight" of the Fund.

60. Consistent with these representations in the Administration Agreement and Offering Memorandum, APEX's website described that, "a fund administrator is an outsourced third party service provider that protects the interests of investors by independently verifying the assets and valuation of the fund" (see: <https://www.apexgroup.com/insights/what-is-fund-administration-the-evolution-of-the-fund-administrator/>).

61. In exchange for these services, Apex charged fees to Productivity Media (which Productivity Media paid) totalling at least CAD \$1,029,570 as follows (which amounts remains subject to ongoing review):

Year	Fees (\$CAD)
2015	\$20,330
2016	\$32,719
2017	\$46,279
2018	\$50,451
2019	\$78,319
2020	\$107,955
2021	\$131,237
2022	\$197,674
2023	\$207,833
2024	\$156,773

G. Apex as a Director of the Jersey Fund

62. In 2020, Productivity Media launched the Productivity Media Lending Fund Limited (“**PMLF**”), a Jersey Private Fund, authorized and regulated by the Jersey Financial Services Commission. PMLF was created to allow non-Canadian investors the opportunity to participate in Productivity Media.

63. Through various participation agreements, PMLF co-invested with Productivity Media in several loans, including some of the Fraudulent Loans.

64. The directors of PMLF included two representatives of Apex Fund and Corporate Services (Jersey) Limited (“**Apex Jersey**”) (as at 2024, being Zia Robertson (Director, Fund Services) and Viane Koetsier (Director, Private Equity)) and three representatives from Productivity Media (namely Santor, Chang-Sang and Hills).

65. The Apex Jersey directors owed fiduciary obligations to PMLF and in accordance with such duties, ought to have made inquiries within Apex to ascertain the financial status of PMLF and the projects in which it co-participated with Productivity Media.

66. In addition to charging administrative fees, hedge administration fees, and tax preparation fees, Apex Jersey also charged fees to PMLF for director fees, company secretarial fees, "CDD/KYC" (being customer due diligence and know your client) fees, and a compliance officer fee.

67. Based upon the duties and responsibilities of Apex Jersey in connection with PMLF, Apex Jersey (and by extension, Apex) had, or ought to have had, knowledge of the financial affairs of PMLF, and by extension, Productivity Media (certainly in respect of those loans where they co-participated with Productivity Media). Had the Apex directors performed the due diligence required of a prudent and diligent director, they would have identified that Productivity Media's loan portfolio was non-performing.

H. The Purported Limitations on Liability

68. Each of the Agreements between Productivity Media and MNP contains provisions which purport to limit MNP's potential liability in certain circumstances. The Administration Agreement with Apex contains similar provisions (collectively, the "**Limitation Clauses**").

69. 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, the Professional Defendants were grossly negligent in the performance of their duties;
- (c) in the further alternative, the Professional Defendants materially breached the applicable agreements;
- (d) in the further alternative, the Limitation Clauses are unconscionable and unenforceable in these circumstances;
- (e) 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
- (f) 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.

I. The Fraudulent Scheme

70. The Fraudulent Scheme involved the MG Loans.

71. Santor selected Radiant, 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.

72. 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**.

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

74. 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.

75. 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.

76. 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.

77. In certain instances, 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.

78. Once the MG Loan was approved by the Investment Committee, Santor, Chang-Sang or Hills directed Apex to wire funds to bank accounts in the names of the Impostor Corporations or 839 Canada, which were all controlled by Santor.

79. In this manner, from March 2016 to November 2021, Santor, through Apex, 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.

80. This was contrary to Productivity Media's obligations under applicable loan agreements to hold such monies in a specified control account.

81. From 2017 to 2023, Santor arranged for 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.

82. 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.

J. Apex's involvement in the fraudulent MG Loans

83. Each and every fraudulent MG Loan was facilitated through Apex. In each case, a PMI representative would email an Apex representative to request the advance relating

to the MG Loan. In each instance, the PMI representative would include various loan documentation in support of the loan, including but not limited to a General Security Agreement, a Grid Promissory Note, a Deal Memo, a Loan Calculation, an Advance Request Certificate/Borrowing Certificate, and a sales agency agreement/short form term sheet (supporting the underlying minimum guarantee).

84. Apex processed all MG Loans for the Fund, without review or consideration of the documentation provided. Had Apex reviewed this documentation, it would have identified numerous discrepancies which should have elicited further inquiry and concern, including but not limited to the following:

- (a) The sales agent or distributor named on the sales agency agreement/short form term sheet did not consistently match the name of the borrower on the Advance Request Certificate/Borrowing Certificate. For example, on May 18, 2020, Santor sent a bundle of documents to a senior executive at Apex in support of his request for Apex to release of advances totalling \$5.5 million to two borrowers. One of the Advance Request Certificates supporting this request listed "Radiant Films International" as the beneficiary, with a Toronto address. However, the corresponding Exclusive Sales Agent Agreement which was also enclosed listed the agent as "Radiant Films International, LLC, a limited liability company duly incorporated under the laws of California";

- (b) The description of the borrower in the Deal Memo/Term Sheet did not always match the name of the borrow on the Advance Request Certificate/Borrowing Certificate. For example, materials sent to Apex on February 28, 2019 in support of an advance request included an Advance Request Certificate referencing the beneficiary as “Dark Star Pictures,” with a Vancouver address. However, the corresponding Term Sheet refers to “Dark Star Pictures, LLC” with a California address;
- (c) The description of the borrower was often inconsistent between the documents, identifying the place of incorporation in some documents to be a different jurisdiction, for example as noted in subparagraph (a) above;
- (d) In many instances, there were obvious errors in the documents, such as a stated loan amount of “\$5,000,000 CAD (**Two Million Five Hundred Thousand** Canadian Dollars)”;
- (e) While Mr. Santor represented that the funds advanced by Productivity Media were to be paid to a “control account”, no confirmation was provided from the recipient bank to verify that PMI or the Fund had any such control. Further, the Grid Promissory Note and General Security Agreements for the Fraudulent Loans each described “control accounts” whereby any amounts advanced to the borrower under sales agreements would be paid, and that such accounts would be held in the name of Productivity Media. Apex took

no steps to assess the existence of any “control accounts” relating to the Fraudulent Loans.

85. Further, Apex did not make any efforts to verify that the funds advanced under the MG Loans were in fact paid to the referenced sales agents identified in the documentation. As a result of such failure, the advances were paid to the Imposter Corporations, being entities owned and controlled by Santor.

86. Repayments made for the MG Loans were sometimes made by entities unrelated to the MG Loans. For example, in 2020, 839 Canada made a payment of \$3,887,260.27 to repay amounts owing by Concourse Canada, an apparently unrelated company.

87. Each of the above transactions was material and required Apex to investigate the bona fides of the transactions, particularly given the sums involved, which often totalled several million dollars.

88. Apex failed to exercise sufficient due diligence to determine whether the transactions were legitimate and undertaken in accordance with the relevant agreements.

K. The Fund's Non-Performing Loan Portfolio

89. 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").

90. 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

91. 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

92. 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.

93. In fact, notwithstanding that the principal amount 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.

94. In all but a few instances, the balance owing on each loan as of December 31, 2023 exceeded the amount advanced, reflecting that those loans were not being serviced.

95. 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
Total (net of allowance for losses)				\$286,042,794

96. The overwhelming majority of the loans making up the Loan Portfolio had significant red flags associated with them, including that the loans had not been repaid on the maturity date, and/or the maturity date had been extended materially.

97. Notwithstanding the significant aging of the Loan Portfolio, Productivity Media's management included in its financial statements (which were prepared by Apex) only nominal provisions for bad debt, which the Professional Defendants accepted uncritically despite the significant red flags noted above.

98. In particular, in most or all relevant years, Productivity Media's management applied a loan loss provision of 0.7% across its entire portfolio of loans without any individualized analysis of the actual performance of each loan.

99. This approach was inadequate on its face. Apex accepted the loan loss provision without any analysis whatsoever (or, alternatively, grossly inadequate analysis) despite the importance of proper loss provisioning to Apex's own obligations with respect to the calculation of the Fund's NAV.

100. 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.

101. 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.”

102. 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”.

103. In preparing/auditing Productivity Media's financial statements, the Professional Defendants ought to have scrutinized the lack of collections on the Productivity Media loan portfolio and considered whether the lack of provisions was appropriate in the circumstances. In addition, the Professional Defendants ought to have considered the distressed state of the media industry relating to the Covid-19 pandemic and film industry labour action, and the negative impact of these factors on the ability of each production to repay its loans owing to Productivity Media.

104. Based on the non-performance of the Loan Portfolio, the Professional Defendants should have caused Productivity Media to make proper provisions for potentially uncollectible loans, or to write-off non-performing loans.

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

106. 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.

107. 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.

108. In reality, Productivity Media was a Ponzi scheme. Absent a properly performing Loan Portfolio, 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.

109. 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 the Loan Portfolio, any reasonable auditor would have undertaken audit procedures to consider the collectability of the loans.

110. As set out in detail below, both Professional Defendants were grossly negligent and in material breach of their respective agreements in failing to detect and/or report these uncollectible loans. Instead, Apex prepared financial statements which, contrary to Apex's own obligations including to prepare such statements in accordance with IFRS, did not include proper provisions or disclosures respecting these uncollectible loans. Apex's monthly calculation of the NAV failed to consider the impairment of Loan Portfolio. MNP then wrongfully issued clean audit opinions in respect of Productivity Media's financial statements.

L. MNP breached the standard of care

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

112. 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.

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

114. 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

115. 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

116. 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.

117. Audit confirmations are the most salient component of the audit process where, as here, the entire business is based on lending and the only material asset on the balance sheet is the Loan Portfolio.

118. A critical element of an appropriate audit confirmation is that the auditor – and not management – retains control over the audit confirmation process.

119. 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.

120. 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

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

122. Contrary to GAAS, MNP ceded control over the loan 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 numerous red flags that raised doubt as to their reliability.

123. 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.

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

125. 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.

126. 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.

127. 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.

128. 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. MNP did not contact a representative of Concourse to independently confirm the existence of the receivable.

129. If MNP had 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.

130. 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.

131. 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.

132. 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.

133. 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

134. 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, and the lack of an appropriate division of duties within the company, facts 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, including considering the large amounts commonly transferred from Productivity Media to other parties;
- (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 legitimate repayments would ordinarily flow through the Collections Manager.

135. 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

136. 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.

137. 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.

138. 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 that Productivity Media was dependent on attracting new investor capital in order to repay prior obligations.

139. 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.

140. 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.

141. 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.

M. Apex breached the standard of care

142. Apex owed a duty of care to Productivity Media.

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

- (a) To implement reasonable policies or practices tailored to the specific nature of Productivity Media's business including the risks inherent therein;
- (b) To take reasonable care to identify substantial discrepancies in the loan documentation submitted to Apex by Productivity Media;
- (c) To refuse to process advances for purported loans based upon documentation which had inconsistencies;
- (d) To investigate and/or inquire into large value transactions in the context of its ordinary course cash management activities;
- (e) To prepare annual and semi-annual financial statements for the Fund and calculate the NAV of the Fund, with appropriate consideration and evaluation in preparing each as to the validity or collectability of the loan portfolio;
- (f) To exercise the professional skill and care that would be reasonably expected of a prudent and professional fund administrator; and

- (g) To provide oversight of the Fund that would be reasonably expected of a prudent and professional fund administrator.

144. Apex's work as Productivity Media's fund administrator was grossly negligent and fell well below the applicable standard of care.

N. Apex Materially Breached the Administration Agreement

145. Apex owed contractual duties to Productivity Media pursuant to the Administration Agreement which were the same or similar to the duties owed in tort.

146. Apex's work as Productivity Media's fund administrator materially breached its duties under the Administration Agreement.

O. Apex's Negligence in relation to the Fraudulent Scheme

147. Apex was careless and breached the standard of care in its fund administration work relating to transactions that formed part of the Fraudulent Scheme.

1. Apex breached the standard of care

148. Apex's conduct was grossly negligent and materially breached the Administration Agreement.

149. But for Apex's deficiencies, the Fraudulent Scheme would have been identified.

2. Apex Negligently Failed to Properly Report on the Fund's Loan Portfolio

150. Apex was grossly negligent and in material breach of the Administration Agreement in its assessment of the Fund's Loan Portfolio, particularly its reporting of NAV and its preparation of the Fund's financial statements, 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.

151. Apex was blinded by its personal relationships with management of Productivity Media which caused it to perform well below the level of due diligence required of a fund administrator, including in respect of the cash management function. Apex failed to consider that the risks of an investment company managed by three individuals who had all control over investment decisions and cash management decisions. Apex did not consider that there were no independent members of the Board of Directors or the Investment Committee.

152. All of the foregoing should have resulted in Apex more closely scrutinizing the movement of money and the accuracy and reliability of financial information provided by Productivity Media.

153. The facts set out above in paragraphs 136-138 apply equally to Apex.

154. Despite all the red flags as set out above, Apex prepared financial statements and the NAV calculation without any appropriate provision for these loans, in material breach of its obligations under the Administration Agreement and in breach of its standard of care as fund administrator.

155. Apex would have identified these issues, which would have led to the discovery of the broader problems in Productivity Media's business (including loans to the Imposter Companies), had they met the standard of care particularized in their own Administration

Agreement and described further in the Offering Memorandum and the Apex website, including by exhibiting a basic grasp of Productivity Media's business, including its cash collection cycle, and by taking reasonable steps to obtain properly supporting documentation in respect of the Collections Managers and the CAMA Accounts.

156. In the circumstances, no reasonable fund administrator would have prepared financial statements, or NAV calculations, that purported to present the financial position of the Fund without requiring reserves, impairments, notes, or other qualifications in respect of the Loan Portfolio that would result in a fair presentation of the Fund's financial position. Had Apex done so, Productivity Media would not have continued to raise investor capital.

P. Radiant's Fraudulent and/or Negligent Misrepresentations

157. Radiant was one of the Fund's borrowers which was involved in MNP's external loan confirmation process as described above. Santor was able to procure an audit confirmation signed by Steinbauer on Radiant's behalf, which falsely represented the existence and value of loans which did not actually exist.

158. In particular, Steinbauer signed an audit confirmation in March 2022 (the "2022 Confirmation") by which she confirmed on Radiant's behalf the existence of five loans owing from Radiant to the Fund totalling \$17,583,333.

159. In reality, none of these loans existed. In fact, there was not any amount owing at the time from Radiant to the Fund.

160. Steinbauer signed the 2022 Confirmation with actual (or, alternatively, constructive) knowledge that it was false. Santor had specifically advised Steinbauer that he needed her to sign something which was not true, and convinced her to go along with his scheme.

161. Additionally, Steinbauer signed the 2022 Confirmation with actual (or, alternatively, constructive) knowledge that it would be relied upon by the Fund and MNP, and that the result of her signing the 2022 Confirmation would be to mislead the Fund and MNP and/or to prevent the Fund and MNP from uncovering the Fraudulent Scheme.

162. Approximately a year later, in March 2023, Steinbauer and Radiant received another loan confirmation request in connection with the subsequent year's audit. This time, Steinbauer, on behalf of Radiant, chose not to respond to this confirmation request, but took no steps to correct the misrepresentations in the 2022 Confirmation.

163. Steinbauer's conduct was fraudulent or, alternatively, grossly negligent and/or reckless and is one of the causes of the losses suffered by Productivity Media.

164. All of Steinbauer's conduct and knowledge is imputed to Radiant.

165. Steinbauer is also personally liable for her own conduct, which amounted to fraudulent misrepresentations or, alternatively, negligence misrepresentations.

Q. *The Fund's Insolvency and Liquidation Deficit*

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

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

168. 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.

169. 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. The Company will suffer losses equivalent to or greater than the amount of investor capital it raised.

R. Remedies

170. The Defendants' misconduct 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.

171. But for the various breaches of duty by the Defendants 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.

172. In all the circumstances, the Defendants' gross misconduct and mismanagement of the professional services provided by the applicable Professional Defendants exposed Productivity Media to reasonably foreseeable risks, which materialized in the catastrophic losses that Productivity Media has now suffered.

173. The damages suffered by Productivity Media are entirely – or, alternatively, substantially – attributable to the very misconduct which the Professional Defendants should have detected.

174. Given the scale and seriousness of the fraud, there are no intervening acts – whether by Productivity Media's management or otherwise – which sever or mitigate the causal link between the Defendants' misconduct and the damages sustained by Productivity Media. Management's ongoing ability to continue operating the business was precisely the harm occasioned by the Defendants' misconduct.

175. The Defendants are liable to the plaintiff in tort and contract.

176. The Defendants are jointly 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 the Defendants' breaches of duty.

177. Additionally, the Professional Defendants must disgorge all fees they received in connection with the improper professional services. There is no juristic reason for the enrichments and the corresponding deprivations in the circumstances.

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

_____, 2026

Paliare Roland Rosenberg Rothstein LLP

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Toronto ON M5V 3H1

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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 et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**SECOND FRESH AS AMENDED STATEMENT OF
CLAIM**

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Lawyers for the Plaintiff

Appendix C

Court File No. CV-25-00743761-00CL

**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 ~~and~~, APEX FUND SERVICES (CANADA) LTD., RADIANT FILMS INTERNATIONAL LLC and MIMI STEINBAUER, also known as KATHLEEN STEINBAUR

Defendants

SECOND FRESH AS AMENDED 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

AND TO: APEX FUND SERVICES (CANADA) LTD.
333 Bay Street Suite 1130
Toronto, ON M5H 2R2

AND TO: RADIANT FILMS INTERNATIONAL LLC
303 N. Glenoaks Blvd, Suit 200
Burbank, California 91502
United States of America

AND TO: MIMI STEINBAUER also known as KATHLEEN STEINBAUER
c/o Radiant Films International LLC
303 N. Glenoaks Blvd, Suite 200
Burbank, California 91502
United States of America

CLAIM

1. The Plaintiff claims:

(a) ~~as~~ against ~~the all~~ Defendants, jointly and severally, for the following relief:

(i) damages for negligence and/or breach of contract (or, in the case of the Radiant Defendants, as defined below, for fraudulent misrepresentation and/or negligent misrepresentation) 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 Defendants in connection with the services described herein;~~

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

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

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

(b) as against MNP LLP, the disgorgement of all fees paid by the Fund (as defined below) to MNP LLP in connection with the services described herein; and

(v)(c) as against Apex Fund Services (Canada) Ltd., the disgorgement of all fees paid by the Fund (as defined below) to Apex Fund Services (Canada) Ltd. in connection with the services described herein.

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.

8. The Defendant, Apex Fund Services (Canada) Ltd. ("**Apex**" and, together with MNP, the "**Professional Defendants**"), is a professional services firm which provides, among other things, fund administration services.— Apex's head office is located in Toronto, Ontario.

9. The Defendant, Radiant Films International, LLC ("**Radiant**"), is a California limited liability company carrying on business in the entertainment industry as a sales agent and film distributor.

10. The Defendant, Mimi Steinbauer, also known as Kathleen Steinbauer ("**Steinbauer**" and, together with Radiant, the "**Radiant Defendants**") is the founder and principal representative of Radiant.

8.—At some or all material times, Radiant acted as sales agent and/or distributor for certain of the film or television productions funded by the Fund.

11.

B. Overview: the Defendants' ~~Gross Negligence~~ Misconduct and Their Role in the Collapse of Productivity Media

9.12. 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.

~~10.13.~~ In addition to the Fraudulent Scheme, Productivity Media was effectively a Ponzi scheme. Its sole business was making loans, but only a few were serviced and/or repaid 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.

~~11.14.~~ 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.

~~12.15.~~ Apex was Productivity Media's fund administrator from 2016 to 2025.

~~13.16.~~ 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, overstated, uncollectible, and remained outstanding several years past their maturity date;

- (d) failed to understand and appreciate the structure of Productivity Media's business, including the control accounts and the CAMA accounts described below. This failure prevented MNP from using audit procedures that would have identified the problems inherent in Productivity Media's business;
- (e) 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 a tiny fraction of that amount being collectible; and
- (f) MNP permitted management, primarily Santor, to control the loan receivable confirmation process, providing him the opportunity to provide incomplete, inaccurate and false information relating to the valuation and existence of the loan portfolio, and MNP failed to identify and/or perform audit procedures to address the numerous red flags that resulted from the loan receivable confirmation process.

44.17. Apex was grossly negligent in its fund administration services and materially breached the Administration Agreement with Productivity Media, in that, among other things, Apex:

- (a) failed to identify that none, or almost none, of the loans reflected on Productivity Media's December 31, 2023 balance sheet were being collected and that all, or substantially all, were aged well past maturity;
- (b) failed to identify substantial discrepancies in the loan documentation submitted to Apex by Productivity Media relating to the fraudulent MG Loans (described further below);
- (c) failed to review, or adequately review, documentation for purported loans and other transactions;
- (d) prepared annual and semi-annual financial statements for the Fund and calculated the net asset value ("**NAV**") of the Fund, without performing adequate due diligence or considering the validity, collectability and actual performance of the loan portfolio;
- (e) failed to exercise the professional skill and care that would be reasonably expected of a prudent and professional fund administrator; and
- (f) failed to provide oversight of the Fund that would be reasonably expected of a prudent and professional fund administrator.

~~15-18.~~ Productivity Media's financial statements did not fairly represent the true, and catastrophic, state of its financial affairs.

~~16-19.~~ Productivity Media was a fraud and its assets (namely, its loan portfolio) are almost worthless.

~~17-20.~~ The Professional Dedefendants' 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 performance of its business and real value of its assets.

~~18-21.~~ The Professional Dedefendants' gross negligence and breaches of duty caused a massive increase to the losses suffered by Productivity Media.

~~19-22.~~ The Plaintiff holds the Professional Dedefendants jointly responsible for these losses.

C. Productivity Media's Business

~~20-23.~~ Productivity Media was founded in around 2012 by Santor, Hills, and Chang-Sang.

~~21-24.~~ 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.

~~22-25.~~ 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**").

~~23-26.~~ 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**").

~~24-27.~~ The MG Loans were purportedly secured against all the sales agent's or distributor's assets.

~~25-28.~~ Further, Productivity Media maintained and/or entered into Grid Promissory Notes and General Security Agreements for the Fraudulent Loans which described "control accounts" into which any amounts advanced to the borrower under the relevant loan agreements would be deposited, and that such accounts would be held in the name of Productivity Media. Santor represented that the principal amount of the loan would be held in a control account until the project was completed and the funds were required. Neither Professional Defendants took any steps to confirm the existence of any "control accounts" relating to the Fraudulent Loans.

~~26-29.~~ 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.

~~27-30.~~ As set out below, part of the Fraudulent Scheme involved Santor mimicking these entities through the creation of the Impostor Corporations (as defined below).

~~28-31.~~ Substantially all 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.

~~29-32.~~ Generally, these third-party investors received limited partnership units in PMI LP in exchange for their investments.

30-33. 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, which were prepared by Apex, apparently in accordance with International Financial Reporting Standards (“**IFRS**”), audited by MNP, and then included in the Fund’s annual reports.

31-34. 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.

32-35. 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

33-36. Productivity Media’s three co-founders – Santor, Hills, and Chang-Sang – were the only shareholders, directors, and officers of PMI GP.

34-37. At all material times, Santor was the Chief Executive Officer of PMI GP, Hills was its Chief Operating Officer, and Chang-Sang was its President and Chief Financial Officer.

35-38. Notwithstanding that Productivity Media raised nearly \$300 million from investors, these same three individuals 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.- The Investment Committee did not have any independent members.

~~36-39.~~ 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.

~~37-40.~~ 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.

~~38-41.~~ As set out below, in performing their respective duties, the Professional ~~d~~Defendants 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. The Professional ~~d~~Defendants also failed to take appropriate steps to incorporate these risks into their planning of their respective engagements.

2. Productivity Media's cash collection cycle

~~39-42.~~ Loan collections on the non-fraudulent portion of the Loan Portfolio were deposited into bank accounts 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 (a “**CAMA**” and a “**CAMA Account**”).

40.43. 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.

41.44. As set out below, the Professional dDefendants 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) substantially all of Productivity Media’s loans as of December 31, 2023 were aged past their due date, non-performing and should have previously been written down, which would have been apparent had the Professional dDefendants assessed and verified the collection and distribution of monies through each CAMA Account;
- (c) 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. The standard of care required Apex to take similar steps.

E. MNP's Retainer

42-45. 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").

43-46. 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*.

44-47. 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.

45-48. 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.

46-49. 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.

47-50. 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. Apex's engagement

1. Overview

~~48-51.~~ Productivity Media engaged Apex pursuant to an Administration Agreement dated May 1, 2012 (the "**Administration Agreement**").

~~49-52.~~ The Administration Agreement executed between Productivity Media and Apex is a generic document which reflects that Apex made little or no effort at the outset of the engagement, or at all, to understand Productivity Media's business and how it operated. Apex therefore failed to properly plan and put in place procedures to address the risks in Productivity Media's business that were relevant to Apex's obligations as fund administrator. This failure prevented (or, alternatively, substantially impaired) Apex's ability from the outset to discharge its duties.

~~50-53.~~ This includes that Apex took no steps (or, alternatively, grossly inadequate steps) to ensure that a valuation policy was in place and being complied with, in order to ensure that Apex's valuations of the Fund would reflect an accurate understanding of the nature of the Fund's business and how to confirm the value and existence of the Fund's loan portfolio.

~~51-54.~~ Further, although Apex had a valuation/pricing policy of its own, it took no or inadequate steps to ensure that this policy was being complied with, and the policy itself contained no or inadequate provisions as to how to price loans, which was the only material asset of the Fund's business.

~~52-55.~~ More generally, Apex took no steps to put in place processes or policies with a view to customizing its services to the nature of its client's business and/or to address risk factors inherent in Productivity Media's business.

2. Apex's obligations under the Administration Agreement

~~53-56.~~ Pursuant to the Administration Agreement, Apex agreed to exercise "the professional skill and care that would reasonably be expected of a prudent and professional administrator" (Section 2.2). Apex further agreed, "[i]n all respects [to] observe and comply with the Limited Partnership Agreement" (Section 2.3). The Administration Agreement provided that Apex would "comply with and conform to all reasonable and proper orders, directions and requirements" of Productivity Media, and as necessary or advisable, would consult with Productivity Media (Section 2.3).

~~54-57.~~ In reliance upon the Administration Agreement, Productivity Media issued an Offering Memorandum dated March 20, 2016, which was provided to prospective investors in the Fund. Among other things, the Offering Memorandum described the role of Apex as providing “oversight” of the Fund, providing “its services with professional skill and care that would reasonably be expected of a prudent and professional administrator”. Apex reviewed drafts of the Offering Memorandum provided by PMI and did not raise any concerns with this description of its roles and responsibilities.

~~55-58.~~ Apex understood and agreed that one of its key functions was to provide accurate financial reporting and to offer oversight in respect of the activities of the Fund. In particular, the First Schedule of the Administration Agreement detailed, among other things, the following administrative services to be provided by Apex:

- (a) Calculating the net asset value (“**NAV**”) of the Fund in accordance with the Limited Partnership Agreement (Section 1.1);
- (b) Keeping the books and records of the Fund for the proper recording of the financial affairs of the Fund in compliance with International Financial Reporting Standards (“**IFRS**”) (Section 1.2);
- (c) Liaising with the Fund’s auditors, MNP LLP, with respect to the audit of the financial statements for each financial year of the Fund so as to enable the auditors to complete the annual audit of the Fund such that the audited financial statements can be included in the Fund’s annual report (Section 1.3);

- (d) Providing a detailed schedule showing each partner's share of taxable income, expenses, gains and losses of all types, as categorized on a T5013 form (Section 1.10);
- (e) Maintaining the records and accounts of the Fund in such manner as to enable Apex to carry out its duties (Section 1.13);
- (f) Preparing financial statements for inclusion in the Fund's annual report, having regard to applicable accounting standards (Section 1.14); and
- (g) Paying to or depositing with the Fund's bankers to an account in the name of the Fund all funds received by it on behalf of the Fund, and, if authorized, to make payments from accounts of the Fund (Section 1.15).

56-59. Importantly, the Administration Agreement specifically allowed Apex to decline to accept or act upon the instructions of Productivity Media, if such instructions were not feasible or would be in breach of the Administration Agreement or Limited Partnership Agreement, among other things. Apex thereby acknowledged that it could act independently of Productivity Media, recognizing its important role in providing "oversight" of the Fund.

57-60. Consistent with these representations in the Administration Agreement and Offering Memorandum, APEX's website described that, "a fund administrator is an outsourced third party service provider that protects the interests of investors by independently verifying the assets and valuation of the fund" (see:

<https://www.apexgroup.com/insights/what-is-fund-administration-the-evolution-of-the-fund-administrator/>).

58-61. In exchange for these services, Apex charged fees to Productivity Media (which Productivity Media paid) totalling at least CAD \$1,029,570 as follows (which amounts remains subject to ongoing review):

Year	Fees (\$CAD)
2015	\$20,330
2016	\$32,719
2017	\$46,279
2018	\$50,451
2019	\$78,319
2020	\$107,955
2021	\$131,237
2022	\$197,674
2023	\$207,833
2024	\$156,773

G. Apex as a Director of the Jersey Fund

59-62. In 2020, Productivity Media launched the Productivity Media Lending Fund Limited (“**PMLF**”), a Jersey Private Fund, authorized and regulated by the Jersey Financial Services Commission. PMLF was created to allow non-Canadian investors the opportunity to participate in Productivity Media.

60-63. Through various participation agreements, PMLF co-invested with Productivity Media in several loans, including some of the Fraudulent Loans.

~~61-64.~~ The directors of PMLF included two representatives of Apex Fund and Corporate Services (Jersey) Limited (“**Apex Jersey**”) (as at 2024, being Zia Robertson (Director, Fund Services) and Viane Koetsier (Director, Private Equity)) and three representatives from Productivity Media (namely Santor, Chang-Sang and Hills).

~~62-65.~~ The Apex Jersey directors owed fiduciary obligations to PMLF and in accordance with such duties, ought to have made inquiries within Apex to ascertain the financial status of PMLF and the projects in which it co-participated with Productivity Media.

~~63-66.~~ In addition to charging administrative fees, hedge administration fees, and tax preparation fees, Apex Jersey also charged fees to PMLF for director fees, company secretarial fees, “CDD/KYC” (being customer due diligence and know your client) fees, and a compliance officer fee.

~~64-67.~~ Based upon the duties and responsibilities of Apex Jersey in connection with PMLF, Apex Jersey (and by extension, Apex) had, or ought to have had, knowledge of the financial affairs of PMLF, and by extension, Productivity Media (certainly in respect of those loans where they co-participated with Productivity Media). Had the Apex ~~Directors~~ directors performed the due diligence required of a prudent and diligent director, they would have identified that Productivity Media’s loan portfolio was non-performing.

H. The Purported Limitations on Liability

~~65-68.~~ Each of the Agreements between Productivity Media and MNP contains provisions which purport to limit MNP’s potential liability in certain circumstances. The Administration Agreement with Apex contains similar provisions (collectively, the “**Limitation Clauses**”).

~~66-69.~~ 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, the Professional Defendants were grossly negligent in the performance of their duties;
- (c) in the further alternative, the Professional Defendants materially breached the applicable agreements;
- (d) in the further alternative, the Limitation Clauses are unconscionable and unenforceable in these circumstances;
- (e) 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
- (f) 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.

I. The Fraudulent Scheme

~~67-70.~~ The Fraudulent Scheme involved the MG Loans.

68-71. 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.

69-72. 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.

70-73. In some instances, rather than use an Impostor Corporation, Santor arranged loans to his own company, 8397830 Canada Inc. (“**839 Canada**”), based on his false representation that 839 Canada was operating as “Joker Media,” a reference to one of the legitimate Target Corporations.

71-74. 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.

72-75. 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.

73-76. 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.

74-77. In certain instances, 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.

75-78. Once the MG Loan was approved by the Investment Committee, Santor, Chang-Sang or Hills directed Apex to wire funds to bank accounts in the names of the Impostor Corporations or 839 Canada, which were all controlled by Santor.

76-79. In this manner, from March 2016 to November 2021, Santor, through Apex, 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.

77-80. This was contrary to Productivity Media's obligations under applicable loan agreements to hold such monies in a specified control account.

78-81. From 2017 to 2023, Santor arranged for 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.

79-82. 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.

J. Apex's involvement in the fraudulent MG Loans

~~80-83.~~ Each and every fraudulent MG Loan was facilitated through Apex. In each case, a PMI representative would email an Apex representative to request the advance relating to the MG Loan. In each instance, the PMI representative would include various loan documentation in support of the loan, including but not limited to a General Security Agreement, a Grid Promissory Note, a Deal Memo, a Loan Calculation, an Advance Request Certificate/Borrowing Certificate, and a sales agency agreement/short form term sheet (supporting the underlying minimum guarantee).

~~81-84.~~ Apex processed all MG Loans for the Fund, without review or consideration of the documentation provided. Had Apex reviewed this documentation, it would have identified numerous discrepancies which should have elicited further inquiry and concern, including but not limited to the following:

- (a) The sales agent or distributor named on the sales agency agreement/short form term sheet did not consistently match the name of the borrower on the Advance Request Certificate/Borrowing Certificate. For example, on May 18, 2020, Santor sent a bundle of documents to a senior executive at Apex in support of his request for Apex to release of advances totalling \$5.5 million to two borrowers. One of the Advance Request Certificates supporting this request listed "Radiant Films International" as the beneficiary, with a Toronto address. However, the corresponding Exclusive

Sales Agent Agreement which was also enclosed listed the agent as “Radiant Films International, LLC, a limited liability company duly incorporated under the laws of California”;

- (b) The description of the borrower in the Deal Memo/Term Sheet did not always match the name of the borrow on the Advance Request Certificate/Borrowing Certificate. For example, materials sent to Apex on February 28, 2019 in support of an advance request included an Advance Request Certificate referencing the beneficiary as “Dark Star Pictures,” with a Vancouver address. However, the corresponding Term Sheet refers to “Dark Star Pictures, LLC” with a California address;
- (c) The description of the borrower was often inconsistent between the documents, identifying the place of incorporation in some documents to be a different jurisdiction, for example as noted in subparagraph (a) above;
- (d) In many instances, there were obvious errors in the documents, such as a stated loan amount of “\$5,000,000 CAD (**Two Million Five Hundred Thousand** Canadian Dollars)”;
- (e) While Mr. Santor represented that the funds advanced by Productivity Media were to be paid to a “control account”, no confirmation was provided from the recipient bank to verify that PMI or the Fund had any such control. Further, the Grid Promissory Note and General Security Agreements for the Fraudulent Loans each described “control accounts” whereby any amounts

advanced to the borrower under sales agreements would be paid, and that such accounts would be held in the name of Productivity Media. Apex took no steps to assess the existence of any “control accounts” relating to the Fraudulent Loans.

~~82-85~~. Further, Apex did not make any efforts to verify that the funds advanced under the MG Loans were in fact paid to the referenced sales agents identified in the documentation. As a result of such failure, the advances were paid to the Imposter Corporations, being entities owned and controlled by Santor.

~~83-86~~. Repayments made for the MG Loans were sometimes made by entities unrelated to the MG Loans. For example, in 2020, 839 Canada made a payment of \$3,887,260.27 to repay amounts owing by Concourse Canada, an apparently unrelated company.

~~84-87~~. Each of the above transactions was material and required Apex to investigate the bona fides of the transactions, particularly given the sums involved, which often totalled several million dollars.

~~85-88~~. Apex failed to exercise sufficient due diligence to determine whether the transactions were legitimate and undertaken in accordance with the relevant agreements.

K. The Fund’s Non-Performing Loan Portfolio

~~86-89~~. 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**”).

~~87-90~~. 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

~~88-91~~. 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

89-92. 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.

90-93. In fact, notwithstanding that the principal amount 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.

91-94. In all but a few instances, the balance owing on each loan as of December 31, 2023 exceeded the amount advanced, reflecting that those loans were not being serviced.

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.

95.

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
Total (net of allowance for losses)				\$286,042,794

93-96. The overwhelming majority of the loans making up the Loan Portfolio had significant red flags associated with them, including that the loans had not been repaid on the maturity date, and/or the maturity date had been extended materially.

94-97. Notwithstanding the significant aging of the Loan Portfolio, Productivity Media's management included in its financial statements (which were prepared by Apex) only nominal provisions for bad debt, which the Professional eD Defendants accepted uncritically despite the significant red flags noted above.

95-98. In particular, in most or all relevant years, Productivity Media's management applied a loan loss provision of 0.7% across its entire portfolio of loans without any individualized analysis of the actual performance of each loan.

96-99. This approach was inadequate on its face. Apex accepted the loan loss provision without any analysis whatsoever (or, alternatively, grossly inadequate analysis) despite the importance of proper loss provisioning to Apex's own obligations with respect to the calculation of the Fund's NAV.

97-100. 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.

98-101. 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."

~~99-102.~~ 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”.

~~100-103.~~ In preparing/auditing Productivity Media’s financial statements, the Professional Defendants ought to have scrutinized the lack of collections on the Productivity Media loan portfolio and considered whether the lack of provisions was appropriate in the circumstances. In addition, the Professional Defendants ought to have considered the distressed state of the media industry relating to the Covid-19 pandemic and film industry labour action, and the negative impact of these factors on the ability of each production to repay its loans owing to Productivity Media.

~~101-104.~~ Based on the non-performance of the Loan Portfolio, the Professional Defendants should have caused Productivity Media to make proper provisions for potentially uncollectible loans, or to write-off non-performing loans.

~~102-105.~~ However, had Productivity Media properly assessed the existence and collectability of the loans in the Loan Portfolio, then it would not have been able to continue attracting new investments. Moreover, it would have been readily apparent to any prospective investor that the Loan Portfolio was overvalued, the Fund was insolvent, or near insolvent, and that it could not reliably generate annual returns of approximately 10%, as advertised to investors.

~~403-106.~~ 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.

~~404-107.~~ 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.

~~405-108.~~ In reality, Productivity Media was a Ponzi scheme. Absent a properly performing Loan Portfolio, 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.

~~406-109.~~ 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 the Loan Portfolio, any reasonable auditor would have undertaken audit procedures to consider the collectability of the loans.

~~407-110.~~ As set out in detail below, both Professional Defendants were grossly negligent and in material breach of their respective agreements in failing to detect and/or report these uncollectible loans. Instead, Apex prepared financial statements which, contrary to Apex’s own obligations including to prepare such statements in accordance with IFRS, did not include proper provisions or disclosures respecting these uncollectible loans. Apex’s monthly calculation of the NAV failed to consider the impairment of Loan

Portfolio. MNP then wrongfully issued clean audit opinions in respect of Productivity Media's financial statements.

L. MNP breached the standard of care

~~408.111.~~ MNP owed a duty of care to Productivity Media.

~~409.112.~~ 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.

~~410-113.~~ MNP owed the same or similar contractual duties to Productivity Media pursuant to the Agreements.

~~411-114.~~ 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

~~412-115.~~ 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

~~413-116.~~ 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.

~~414-117.~~ Audit confirmations are the most salient component of the audit process where, as here, the entire business is based on lending and the only material asset on the balance sheet is the Loan Portfolio.

~~415-118.~~ A critical element of an appropriate audit confirmation is that the auditor – and not management – retains control over the audit confirmation process.

~~416-119.~~ 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.

~~417-120.~~ 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

~~418-121.~~ MNP's audit confirmation process was grossly negligent and led directly to its failure to detect the Fraudulent Scheme.

119-122. Contrary to GAAS, MNP ceded control over the loan 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 numerous red flags that raised doubt as to their reliability.

120-123. 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.

~~421-124.~~ MNP's carelessness resulted in the negligent disregard of suspicious information on multiple occasions.

~~422-125.~~ 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.

~~423-126.~~ 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.

~~424-127.~~ 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.

~~425-128.~~ 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.— MNP did not contact a representative of Concourse to independently confirm the existence of the receivable.

~~426-129.~~ If MNP had 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.

~~427-130.~~ 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.

~~428-131.~~ 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.

~~429-132.~~ 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.

~~130-133.~~ 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

~~131-134.~~ 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, and the lack of an appropriate division of duties within the company, facts 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, including considering the large amounts commonly transferred from Productivity Media to other parties;
- (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 legitimate repayments would ordinarily flow through the Collections Manager.

~~132-135.~~ 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

~~133-136.~~ 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.

~~134-137.~~ 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.

~~135-138.~~ 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 that Productivity Media was dependent on attracting new investor capital in order to repay prior obligations.

~~136-139.~~ 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.

~~137-140.~~ 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.

~~138-141.~~ 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.

M. Apex breached the standard of care

~~139-142.~~ Apex owed a duty of care to Productivity Media.

~~140-143.~~ In the circumstances, the standard of care applicable to Apex included at least the following obligations:

- (a) To implement reasonable policies or practices tailored to the specific nature of Productivity Media's business including the risks inherent therein;
- (b) To take reasonable care to identify substantial discrepancies in the loan documentation submitted to Apex by Productivity Media;
- (c) To refuse to process advances for purported loans based upon documentation which had inconsistencies;
- (d) To investigate and/or inquire into large value transactions in the context of its ordinary course cash management activities;

- (e) To prepare annual and semi-annual financial statements for the Fund and calculate the NAV of the Fund, with appropriate consideration and evaluation in preparing each as to the validity or collectability of the loan portfolio;
- (f) To exercise the professional skill and care that would be reasonably expected of a prudent and professional fund administrator; and
- (g) To provide oversight of the Fund that would be reasonably expected of a prudent and professional fund administrator.

~~141-144.~~ Apex's work as Productivity Media's fund administrator was grossly negligent and fell well below the applicable standard of care.

N. Apex Materially Breached the Administration Agreement

~~142-145.~~ Apex owed contractual duties to Productivity Media pursuant to the Administration Agreement which were the same or similar to the duties owed in tort.

~~143-146.~~ Apex's work as Productivity Media's fund administrator materially breached its duties under the Administration Agreement.

O. Apex's Negligence in relation to the Fraudulent Scheme

~~144-147.~~ Apex was careless and breached the standard of care in its fund administration work relating to transactions that formed part of the Fraudulent Scheme.

1. Apex breached the standard of care

~~145-148.~~ Apex's conduct was grossly negligent and materially breached the Administration Agreement.

~~146-149.~~ But for Apex's deficiencies, the Fraudulent Scheme would have been identified.

2. Apex Negligently Failed to Properly Report on the Fund's Loan Portfolio

~~147-150.~~ Apex was grossly negligent and in material breach of the Administration Agreement in its assessment of the Fund's Loan Portfolio, particularly its reporting of NAV and its preparation of the Fund's financial statements, 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.

~~148-151.~~ Apex was blinded by its personal relationships with management of Productivity Media which caused it to perform well below the level of due diligence required of a fund administrator, including in respect of the cash management function. Apex failed to consider that the risks of an investment company managed by three individuals who had all control over investment decisions and cash management decisions. Apex did not consider that there were no independent members of the Board of Directors or the Investment Committee.

~~149-152.~~ All of the foregoing should have resulted in Apex more closely scrutinizing the movement of money and the accuracy and reliability of financial information provided by Productivity Media.

~~150-153.~~ The facts set out above in paragraphs ~~133-136-135-138~~ apply equally to Apex.

~~151-154.~~ Despite all the red flags as set out above, Apex prepared financial statements and the NAV calculation without any appropriate provision for these loans, in material breach of its obligations under the Administration Agreement and in breach of its standard of care as fund administrator.

~~152-155.~~ Apex would have identified these issues, which would have led to the discovery of the broader problems in Productivity Media's business (including loans to the Imposter Companies), had they met the standard of care particularized in their own Administration Agreement and described further in the Offering Memorandum and the Apex website, including by exhibiting a basic grasp of Productivity Media's business, including its cash collection cycle, and by taking reasonable steps to obtain properly supporting documentation in respect of the Collections Managers and the CAMA Accounts.

~~153-156.~~ In the circumstances, no reasonable fund administrator would have prepared financial statements, or NAV calculations, that purported to present the financial position of the Fund without requiring reserves, impairments, notes, or other qualifications in respect of the Loan Portfolio that would result in a fair presentation of the Fund's

financial position. Had Apex done so, Productivity Media would not have continued to raise investor capital.

P. Radiant's Fraudulent and/or Negligent Misrepresentations

157. Radiant was one of the Fund's borrowers which was involved in MNP's external loan confirmation process as described above. Santor was able to procure an audit confirmation signed by Steinbauer on Radiant's behalf, which falsely represented the existence and value of loans which did not actually exist.

158. In particular, Steinbauer signed an audit confirmation in March 2022 (the "2022 Confirmation") by which she confirmed on Radiant's behalf the existence of five loans owing from Radiant to the Fund totalling \$17,583,333.

159. In reality, none of these loans existed. In fact, there was not any amount owing at the time from Radiant to the Fund.

160. Steinbauer signed the 2022 Confirmation with actual (or, alternatively, constructive) knowledge that it was false. Santor had specifically advised Steinbauer that he needed her to sign something which was not true, and convinced her to go along with his scheme.

161. Additionally, Steinbauer signed the 2022 Confirmation with actual (or, alternatively, constructive) knowledge that it would be relied upon by the Fund and MNP, and that the result of her signing the 2022 Confirmation would be to mislead the Fund and MNP and/or to prevent the Fund and MNP from uncovering the Fraudulent Scheme.

162. Approximately a year later, in March 2023, Steinbauer and Radiant received another loan confirmation request in connection with the subsequent year's audit. This time, Steinbauer, on behalf of Radiant, chose not to respond to this confirmation request, but took no steps to correct the misrepresentations in the 2022 Confirmation.

163. Steinbauer's conduct was fraudulent or, alternatively, grossly negligent and/or reckless and is one of the causes of the losses suffered by Productivity Media.

164. All of Steinbauer's conduct and knowledge is imputed to Radiant.

165. Steinbauer is also personally liable for her own conduct, which amounted to fraudulent misrepresentations or, alternatively, negligence misrepresentations.

P.Q. *The Fund's Insolvency and Liquidation Deficit*

~~154.~~166. In August, 2024, as a result of an anonymous complaint, details of the Fraudulent Scheme first came to light and triggered various investigations and legal proceedings.

~~155.~~167. Around that time, the Fund suspended the acceptance of new investments and the distribution of funds to its limited partners.

~~156.~~168. 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.

~~157.~~169. 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. The Company will suffer losses equivalent to or greater than the amount of investor capital it raised.

Q.R. Remedies

~~158-170.~~ The Defendants' misconduct 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.

~~159-171.~~ But for the various breaches of duty by the Defendants 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.

~~160-172.~~ In all the circumstances, the Defendants' gross misconduct and mismanagement of the professional services provided by them applicable Professional Defendants exposed Productivity Media to reasonably foreseeable risks, which materialized in the catastrophic losses that Productivity Media has now suffered.

~~161-173.~~ The damages suffered by Productivity Media are entirely – or, alternatively, substantially – attributable to the very misconduct which the Professional Defendants should have detected.

~~162-174.~~ Given the scale and seriousness of the fraud, there are no intervening acts – whether by Productivity Media’s management or otherwise – which sever or mitigate the causal link between the Defendants’ misconduct and the damages sustained by Productivity Media. Management’s ongoing ability to continue operating the business was precisely the harm occasioned by the Defendants’ misconduct.

~~163-175.~~ The Defendants are liable to the plaintiff in tort and contract.

~~164-176.~~ The Defendants are jointly 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 the Defendants’ breaches of duty.

~~165-177.~~ Additionally, the Professional Defendants must disgorge all fees they received in connection with the improper professional services. There is no juristic reason for the enrichments and the corresponding deprivations in the circumstances.

~~166-178.~~ The plaintiff proposes that the action be tried in Toronto, Ontario on the Commercial List.

| January 21, 2026

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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 et al.

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**SECOND FRESH AS AMENDED STATEMENT OF
CLAIM**

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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 and APEX FUND SERVICES (CANADA) LTD.**

Plaintiff

Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

CASE CONFERENCE BRIEF OF THE PLAINTIFF
(CASE CONFERENCE – MAY 25, 2026)

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