

**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 (Defendant by Counterclaim)

and

MNP LLP and APEX FUND SERVICES (CANADA) LTD.

Defendants (Plaintiff by Counterclaim)

**STATEMENT OF DEFENCE, COUNTERCLAIM AND CROSSCLAIM  
OF MNP LLP**

1. Except as hereinafter expressly admitted, the defendant, MNP LLP, denies all of the allegations in the Fresh as Amended Statement of Claim (the “**Claim**”) and specifically denies any entitlement to the relief claimed in paragraph 1.

**A. Overview:**

2. In this action, KSV Restructuring Inc. (“**KSV**”), sues on behalf of the Plaintiffs, Productivity Media Income Fund I LP (the “**PMI Fund**”) and its general partner and manager, Productivity Media Inc. (“**PMI GP**”). These parties seek to hold MNP and fund services administrator, Apex Fund Services (Canada) Inc. (“**Apex**”), responsible for losses that they claim were caused by fraud and mismanagement perpetrated by the Plaintiffs, themselves. MNP is not responsible for these losses.

3. The frauds alleged in the Claim were perpetrated by management of the Plaintiffs and involved sophisticated and carefully organized schemes designed to conceal management's wrongdoing, including intentional misrepresentations calculated to mislead MNP and others and the solicitation of third parties to lie to MNP.

4. In other separate proceedings, in Court File Numbers CV-24-00731806-00CL (the "**Santor Action**"), CV-25-00736688-0000 (the "**Chang-Sang Action**") and CV25-00741604-00CL (the "**Hills Action**"), (collectively, the "**PMI Litigation**") the Plaintiffs seek damages and other relief against the Plaintiffs' co-founders and former management, namely the Estate of the Plaintiffs' former President and CEO, William Gregory Santor, deceased, ("**Santor**") and former officers and directors, Andrew David Chang-Sang ("**Chang-Sang**") and John Hills ("**Hills**"). The Plaintiffs also name corporations affiliated with Santor and Chang-Sang alleged to have improperly received funds from PMI GP and the PMI Fund.

5. In the PMI Litigation, the Plaintiffs allege that the former members of their management masterminded, knew about and failed to stop the fraud alleged within the Claim. In particular, the Plaintiffs claim that Santor was the mastermind behind the Plaintiffs' alleged fraud and mismanagement, and that Chang-Sang received funds that "he knew or ought to have known were the fruits of fraud or alternatively, took those benefits while either reckless or willfully blind with respect to the source of the funds, or alternatively, with constructive knowledge of their fraudulent nature."

6. Further, the Plaintiffs allege that as a key member of management Hills had actual or constructive knowledge of the fraud, knew or ought to have known that the Plaintiffs had

overstated the assets of the PMI Fund and that he benefitted from the fraud and overstatements through increases in his compensation totaling at least \$1.2 million USD.

7. In the PMI Litigation, Plaintiffs seek more than \$47,000,000 in total damages and other relief against Santor's Estate, Chang-Sang, Hills and their affiliated entities – damages that wholly or partially overlap with those claimed in this Action.

8. At all material times, primary responsibility for financial record-keeping, fraud prevention, and the accuracy of the financial statements of the PMI Fund lay with the Plaintiffs and their management.

9. Further, as pleaded in the Claim and set out below, at all times Apex, as fund services administrator, was the primary party engaged to assist with, and carry out, the financial reporting, banking activities, and record-keeping for the Plaintiffs.

10. To the extent that there were errors or misstatements in relation to those tasks or fraud occurred and was not discovered, this was within the scope of management's and Apex's responsibilities and was not the responsibility of MNP, in its limited role as auditor of the PMI Fund's annual financial statements.

11. In any event, at all times each of MNP's audits were planned, designed and conducted in a manner that complied with all relevant professional standards, including Generally Accepted Auditing Standards ("GAAS"), as well as the terms of the Engagement Letters between MNP and the PMI Fund (as particularized and defined below).

12. Further, under the terms of the Engagement Letters the PMI Fund agreed to limit MNP's liability as detailed herein.

13. The balance of the allegations against MNP fundamentally misconstrue and mischaracterize the nature and conduct of the annual audit of an entity such as the PMI Fund.

**B. The Parties:**

14. As pleaded in the Claim, the Plaintiff, PMI GP, is an Ontario corporation that is the general partner of the Plaintiff, PMI Fund, which is a limited partnership. PMI GP and the PMI Fund had three co-founders, Santor, Chang-Sang, and Hills. At all material times Santor, Chang-Sang, and Hills were PMI GP's only shareholders and directors. PMI GP's officers were Santor, Chang-Sang, Hills, the Plaintiffs' General Counsel, Shara Lerman ("**Lerman**"), and Scott Mednick.

15. At all times, the PMI Fund 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.

16. PMI GP was responsible for the operations of the PMI Fund, with the assistance of Apex.

17. As disclosed in the PMI Fund's Confidential Offering Memorandum to potential investors, dated July 15, 2013 (the "**2013 Offering Memorandum**"), and in subsequent Offering Memoranda, including a memorandum dated June 15, 2015 (collectively, the "**Offering Memoranda**"), PMI GP had delegated to Apex certain of its duties and powers in relation to the management of the PMI Fund under an Administration Agreement with Apex dated May 1, 2012 (the "**Apex Agreement**"). Duties delegated to Apex included valuing PMI Fund assets and other administrative and financial record-keeping tasks central to the operations and financial reporting of the Plaintiffs.

18. In August 2024, an anonymous whistleblower report triggered an extensive investigation by PricewaterhouseCoopers (“PwC”) to expose the fraud alleged in the Claim. Thereafter, on November 19, 2024, on an application by a creditor, Two Shores Capital Corp., the Ontario Superior Court of Justice (Commercial List) issued an order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, appointing KSV as Receiver, without security, of all of the Plaintiffs’ assets, undertakings and properties acquired for, or used in relation to the Plaintiffs’ business, including all proceeds thereof.

19. The defendant, MNP LLP, is an Alberta limited liability partnership, extra-provincially registered in the Province of Ontario, carrying on business across Canada as a professional services firm providing accounting and audit services, among others.

**C. The PMI Fund and its investors:**

20. As described in the Offering Memoranda, the PMI Fund was at all material times in the business of arranging for late-stage unique capital participation to fund a portion of the production costs to complete various motion pictures and television series that it referred to as New Media Projects.

21. This funding offered to New Media Projects by the PMI Fund was comprised of a combination of collateral-based loans, senior loans, tax liens, letters of credit, and corporate guarantees of completion.

22. The PMI Fund raised capital to fund these loans by issuing limited partnership units to third party investors, primarily through two registered exempt market dealers, Westfield Partners

Limited (“Westfield”) and Qwest Investment Fund Management Ltd. (“Qwest”). During the relevant period, a significant proportion of the issued and outstanding units in the PMI Fund were purchased and held by clients of Westfield and Qwest.

23. Units in the PMI Fund were marketed and sold primarily to institutional investors and other persons that were able to qualify as Accredited Investors under the relevant regulatory requirements, including National Instrument NI 45-106. These investors were sophisticated investors with access to their own investment advice and who were able and willing to assess and assume the risks of their investments in the PMI Fund. In that regard, the Offering Memorandum expressly warned prospective investors, among other things, that:

- (a) Investments in the PMI Fund were speculative, involved a high degree of risk, and were suitable only for persons able to assume the risk of losing their entire investment;
- (b) PMI GP, as manager of the PMI Fund, believed that investors with long investment horizons or a substantial net worth were best suited to invest in the PMI Fund;
- (c) The PMI Fund did not intend to make cash distributions to investors other than in connection with the redemption of Units, there was no formal market for Units of the PMI Fund, nor was there ever expected to be such a market;
- (d) The PMI Fund had a limited operating history upon which to base projections of its expected performance; and
- (e) The underlying investments held by the PMI Fund were illiquid and subject to the significant and unique risks inherent in the film production industry including the

risk that particular productions would lose money or not be completed due to factors unique to the industry.

24. At all times, Westfield and Qwest owed regulatory and common law obligations to the individuals and entities who invested through them to, among other things, know their product by conducting their own due diligence on the PMI Fund and on the risks associated with the investments in the PMI Fund. The majority of the PMI Fund units were sold and held through Westfield and Qwest, and at all times these dealers had knowledge of the operations and financial status of the PMI Fund. It was Westfield and Qwest, and not MNP, that were the primary parties upon which the unitholders relied in relation to their investments in the PMI Fund.

25. Similarly, at all material times a significant proportion of the PMI Fund units were purchased and held by pension funds, which in turn were managed by professionals with regulatory and fiduciary duties to ensure that the pension funds' investments, including those in the PMI Fund, were appropriate, suitable and consistent with the pension funds' objectives.

26. As such, at all times the primary stakeholders in the PMI Fund and the persons to whom any losses to the PMI Fund flowed – the investors in its limited partnership units – were able and willing to conduct their own assessment of the risks and status of the PMI Fund, and they retained their own experts to assist them in that regard. At no time did any of these persons rely upon MNP or its audit reports in relation to their investments in the PMI Fund.

**D. The business, operations and management of PMI GP and the PMI Fund:**

27. At all times during the relevant period, PMI GP's management and control of the business of the PMI Fund was governed by a Limited Partnership Agreement dated June 15, 2015 (the "**LP Agreement**").

28. Under the LP Agreement, the PMI GP was responsible for investing the PMI Fund's assets in a prudent manner and in accordance with the PMI Fund's stated investment objectives. PMI GP had full power and authority to manage the PMI Fund, including the authority to take any steps it deemed necessary or desirable in relation to the offering and sale of PMI Fund units and to take any steps to carry on the business of the PMI Fund.

29. At all times, PMI GP and its management agreed under the LP Agreement to exercise their duties honestly, in good faith and with a view to the best interests of the PMI Fund and with a degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

30. In particular, the LP Agreement expressly provided that the assets of the PMI Fund were not to be commingled with the funds or assets of any other Person, including PMI GP, other than in connection with the ownership of property jointly or in common with others.

31. At all times, the officers, directors and employees of PMI GP, including but not limited to Santor, Chang-Sang, and Hills, bore the primary responsibility for managing the PMI Fund.

32. Contrary to the allegations in the Claim, while Santor, Chang-Sang, and Hills were senior management at both PMI GP and the PMI Fund, at all material times there were several additional

persons and entities charged with running the businesses of the PMI Fund and its manager, PMI GP, such that the operations of the PMI Fund were not entirely under the control of Santor.

33. This included the participation of additional members of senior management of the Plaintiffs in the approval of loans made by the PMI Fund, including Chang-Sang, and Hills, as well as Lerman, Kyle Leydier and Navid Mcilhargy.

34. At all times, all of these persons owed fiduciary duties and duties of care in their management roles with the Plaintiffs. Further, Lerman, as a qualified attorney in the State of California, owed professional duties to ensure that the Plaintiffs' operations were conducted in a manner that was legal, consistent with good business practices and the stated objectives of the PMI Fund under the Offering Memoranda, and not in a manner that was fraudulent or otherwise illegal.

35. The members of management of the Plaintiffs and the other individuals pleaded herein were, unlike MNP, involved in and responsible for the Plaintiffs' day-to-day operations, and were ideally situated to ensure that the Plaintiffs' operations were consistent with good business practices and not vulnerable to fraud.

**E. Apex:**

36. Additionally, at all relevant times the Plaintiffs engaged the defendant, Apex, as the fund administrator of the PMI Fund. The Plaintiffs delegated to Apex significant management responsibilities in relation to the Plaintiffs' operations, including bookkeeping, accounting, record keeping, banking and financial reporting.

37. In particular, Apex's role included, among other things, assisting management with: (a) maintenance of financial records regarding the PMI Fund's operations, including the schedules of

payees for dealer payments, accrued expenses and amortization, (b) calculating the PMI Fund's Net Asset Value on the last day of each calendar month in accordance with the LP Agreement; (c) assisting the Plaintiffs with their banking, including depositing monies, bills and notes received by the PMI Fund and performing bank reconciliations; (d) processing distributions to partners of the PMI Fund; and (e) preparing the financial statements for the PMI Fund.

38. Apex also handled all receipts and disbursements of funds to and from borrowers under loans advanced by the PMI Fund and at all times undertook to ensure that such receipts and disbursements were properly recorded and verified, and were appropriate and consistent with internal approval processes and the best interests of the PMI Fund and its investors.

39. In particular, Apex, together with the Plaintiffs' management, bore the responsibility for monitoring, verifying and recording funds paid out of the PMI Fund and for ensuring that such funds were paid in respect of legitimate loans or other legitimate payables, and not to Santor, Imposter Corporations (as defined in the Claim), or to any other person or entity not entitled to receive those funds.

40. Similarly, it was at all times the responsibility of Apex and the Plaintiffs' management to monitor, verify, and record payments made to the PMI Fund, including verifying the source of such payments to ensure that they were made in respect of, and credited to, legitimate obligations owed by the PMI Fund's borrowers.

41. Under the terms of the Apex Agreement, Apex expressly agreed to be responsible for liaising with the auditors of the PMI Fund and at all times Apex shared responsibility with the Plaintiffs and their management for ensuring the PMI Funds' auditors, including MNP, received

accurate and reliable information and documentation needed to conduct their audits, and that the PMI Fund's financial statements accurately presented the PMI Fund's financial status and affairs.

42. Apex staff providing services to the PMI Fund included persons who were qualified as Chartered Public Accountants ("CPAs") and who had professional expertise in accounting and financial reporting in accordance with International Financial Reporting Standards ("IFRS") – especially in relation to entities like the PMI Fund.

43. At all times, Apex owed professional and contractual duties and duties of care to the Plaintiffs to monitor, verify and accurately record on a day-to-day basis all relevant transactions. These are the very day-to-day tasks that the Plaintiffs now claim, inaccurately, were somehow the responsibility of MNP as auditor of the PMI Fund's annual financial statements.

44. At all material times, MNP was entitled to rely upon, and did rely upon, the involvement and work product of Apex as an independent party that had expertise in the management of funds such as the PMI Fund, and that was actively and intimately involved in the PMI Fund's day-to-day management, operations, record keeping, and financial reporting.

**F. MNP's engagements as auditor:**

45. MNP was first engaged on May 27, 2016 to audit the PMI Fund's annual financial statements for the years ended December 31, 2014 and December 31, 2015. MNP was thereafter engaged each year to audit PMI Fund's annual financial statements for the years ended December 31, 2016 through December 31, 2023, inclusive.

46. Each of MNP's audits was conducted in accordance with all relevant professional standards, including GAAS, and with the terms of the Engagement Agreements (as defined below),

including the Plaintiffs' acknowledgement and agreement that MNP's audits were not a guarantee against fraud, error, or deficiencies in the PMI Fund's internal controls.

47. The Engagement Agreement for the 2016 annual audit, dated June 7, 2017, (the "**2016 Engagement Agreement**") was agreed to by Santor on behalf of the PMI Fund and included the following provisions governing the nature of MNP's engagement:

- (a) The audit would be conducted in accordance with Canadian GAAS;
- (b) The audit would be planned and performed to obtain reasonable, but not absolute, assurance that the financial statements taken as a whole were free of material misstatement, whether caused by fraud or error;
- (c) The operations of the PMI Fund were under the control of management, which had responsibility for the accurate recording of transactions and the preparation and fair presentation of the financial statements in accordance with International Financial Reporting Standards, including the design, implementation and maintenance of internal control relating to the preparation and presentation of the financial statements.
- (d) The audits are not for the purpose of individual investor decisions and, as such, no shareholder or investor should make any personal decisions based solely on the audited financial statements;
- (e) MNP's responsibilities, objective, scope, independence and the inherent limitations of an audit conducted in accordance with Canadian GAAS would, among other

things, be subject to the terms set out in Appendix A thereto, including the following:

### **Our responsibilities, objective and scope**

Our audit will be planned and performed to obtain reasonable assurance that the consolidated 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;
- Events or conditions identified that may cast significant doubt on the entity'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.

The matters communicated will be those that we identify during the course of our audit. **Audits do not usually identify all matters that may be of interest to management in discharging its responsibilities.** The type and significance of the matter to be communicated will determine the level of management to which the communication is directed.

Furthermore, we will consider the Partnership's controls over financial reporting for the purpose of identifying types of potential misstatement, considering factors that affect the risks of material misstatement, and determining the nature, timing and extent of auditing procedures necessary for expressing our opinion on the consolidated financial statements.

**This consideration will not be sufficient to enable us to render an opinion on the effectiveness of controls over financial reporting nor to identify all significant deficiencies in the Partnership's system of financial controls.**

[...]

### **Audit limitations**

An audit involves performing procedures to obtain audit evidence regarding the amounts and disclosures in the consolidated financial statements. This includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

**It is important to recognize that an auditor cannot obtain absolute assurance that material misstatements in the consolidated financial statements will be detected because of factors such as the use of judgment, selective testing of data, inherent limitations of controls, and the fact that much of the audit evidence available is persuasive rather than conclusive in nature.**

**Furthermore, because of the nature of fraud, including attempts at concealment through collusion and forgery, an audit designed and executed in accordance with Canadian generally accepted auditing standards may not detect a material misstatement due to fraud.**

**While effective controls reduce the likelihood that misstatements will occur and remain undetected, they do not eliminate that possibility. Therefore, we cannot guarantee that fraud, misstatements and non-compliance with laws and regulations, if present, will be detected when conducting an audit in accordance with Canadian generally accepted auditing standards. [Emphasis added]**

- (f) The responsibilities of the PMI Fund's management in connection with the audit would include those set out at Appendix B, including:

During the course of our audit, you will be required to provide and make available complete information that is relevant to the preparation and presentation of the consolidated financial statements, including:

- Financial records and related data;
- Copies of all minutes of meetings of shareholders, directors and committees of directors;
- Access to personnel to whom we may direct our inquiries;
- Information relating to any known or possible instances of non-compliance with laws, legislative or regulatory requirements (including financial reporting requirements);

- Information relating to all related parties and related party transactions; and,
- Allowing access to those within the entity from whom the auditor determines it necessary to obtain audit evidence.

**Management's responsibility with respect to fraud and misstatement includes:**

- **The design and implementation of controls for its prevention and detection;**
- **An assessment of the risk that the consolidated financial statements may be materially misstated;**
- **Disclosure of situations where fraud or suspected fraud involving management, employees who have significant roles in controls, or others, where the fraud could have a material effect on the consolidated financial statements, have been identified or allegations have been made; and,**
- **Communicating your belief that the effects of any uncorrected consolidated financial statement misstatements aggregated during the audit are immaterial, both individually and in the aggregate, to the consolidated financial statements taken as a whole.**

In accordance with Canadian generally accepted auditing standards, we will request a letter of representation from management at the close of our audit in order to confirm oral representations given to us and reduce the possibility of misunderstanding concerning matters that are the subject of the representations. These representations are used as evidence to assist us in deriving reasonable conclusions upon which our audit opinion is based. [Emphasis added]

- (g) MNP's liability would be subject to limitations set out at Appendix E (the "**Limitations of Liability**"), including the following:

**12. Release and Limitation of Liability** - The Partnership and MNP agree to the following with respect to MNP's liability to the Partnership:

a. In any action, claim, loss or damage arising out of the engagement, the Partnership agrees that **MNP's liability will be several and not joint and the Partnership may only claim payment from MNP of MNP's proportionate share of the total liability** based on the degree of fault of MNP as finally determined by a court of competent jurisdiction.

**b. Other than for matters finally determined to have resulted from the gross negligence, fraud or willful misconduct of MNP, whether the claim be in tort, contract, or otherwise:**

- i. MNP shall not be liable to the Partnership and the Partnership releases MNP for all claims, damages, costs, charges and expenses (including legal fees and disbursements) incurred or suffered by the Partnership related to, arising out of, or in any way associated with the engagement to the extent that the aggregate of such amounts is in excess of the total professional fees paid by the Partnership to MNP in connection with this engagement during the 12 month period commencing from the date of the engagement letter to which these terms and conditions are attached; and,**
- ii. MNP shall not be liable to the Partnership for any consequential, indirect, lost profit or similar damages, or failure to realize expected savings, relating to MNP's services provided under the engagement letter to which these terms and conditions are attached.**

**13. Indemnity - The Partnership agrees to jointly and severally indemnify and hold harmless MNP against:**

- a. All claims, damages, costs, charges and expenses (including legal fees and disbursements) which are related to, arise out of, or are in any way associated with the engagement, whether the claims are civil, penal, regulatory, or administrative in nature, other than those finally determined by a court of competent jurisdiction to have resulted from MNP's gross negligence, fraud or willful misconduct; and,**
- b. Notwithstanding "a.," all claims, damages, costs, charges and expenses (including legal fees and disbursements) which are related to, arise out of, or are in any way associated with the engagement, whether the claims are civil, penal, regulatory, or administrative in nature, that arise from or are based on any deliberate misstatement or omission in any material, information or representation supplied or approved by any officer or member of the Board of Directors of the Partnership. [Emphasis added]**

48. MNP's subsequent engagements for the years ended December 31, 2017, December 31, 2018, December 31, 2019, December 31, 2020, December 31, 2021, December 31, 2022 and December 31, 2023 were governed by an Engagement Agreement that included terms substantially

similar those under the 2016 Engagement Agreement (collectively, with the 2016 Engagement Agreement, the “**Engagement Agreements**”).

49. At all material times, MNP’s role as auditor was limited to taking the steps required under Canadian GAAS to audit the PMI Fund’s 2016-2023 annual financial statements. In particular, MNP was engaged to express an opinion about whether the financial statements prepared by management and Apex fairly presented the financial position, results of operations, and cash flows of the PMI Fund in all material respects, in accordance with IFRS.

50. At no time, under the terms of the Engagement Agreements or otherwise at law, was MNP required or expected to be a guarantor of the PMI Fund’s financial statements or a guarantor that there had been no fraud or other mismanagement by the Plaintiffs or members of their management.

51. Rather, primary responsibility for prevention of fraud and the accuracy of the financial statements for the PMI Fund at all times lay with its management, including Santor, Chang-Sang and Hills, and with Apex, as the third party fund administrator engaged by the Plaintiffs.

### **G. Fraud by the Plaintiffs’ management**

52. At all relevant times, management of the Plaintiffs, including Santor, Hills and Chang-Sang, in conjunction with Apex, were responsible for the day-to-day operations and management of the PMI Fund. At all relevant times these parties owed fiduciary duties to the PMI Fund and bore primary responsibility for its financial reporting and for the prevention of fraud.

53. The allegations pleaded and defined in the Claim as the “Fraudulent Scheme” were part of a sophisticated course of action in which Santor and other members of management not only

conspired to misappropriate and misapply funds belonging to the PMI Fund, but also to hide their wrongful and fraudulent actions from MNP.

54. These actions not only included the steps expressly pleaded in the Claim, but also included steps to mislead third parties, including Apex, that owed obligations on a day-to-day basis to ensure that the ongoing financial reporting and record-keeping for the PMI Fund was accurate and consistent with good business practices.

55. Further, Santor and other members of the Plaintiffs' management solicited third party borrowers from the PMI Fund to fraudulently mislead MNP when it was conducting its audits. This included conspiring with Radiant Films International LLC ("**Radiant U.S.**") and its owner, Mimi Steinbauer, to have Radiant U.S. and Steinbauer issue a fraudulent loan confirmation letter to MNP on or about March 25, 2022 falsely indicating that millions of dollars in loans had been made by the PMI Fund to Radiant U.S. and were outstanding, when in fact no such loans existed.

56. The actions of the Plaintiffs and the Plaintiffs' management, including Santor, were sophisticated and specifically designed to evade detections by MNP and others, thereby enabling the Plaintiffs' fraud to continue unabated. These actions were also intended to, and did, artificially extend the life of the PMI Fund despite the misappropriations and other misconduct alleged in the Claim. This deliberate conduct not only fundamentally breached the Plaintiffs' obligations to MNP but also fundamentally breached the Plaintiffs' obligations to their investors and stakeholders.

#### **H. MNP's audits of the Annual Financial Statements of the PMI Fund**

57. MNP audited the annual financial statements for the PMI Fund for each of the years ended December 31, 2014 through December 31, 2023, inclusive.

58. In initially accepting the engagement to audit the annual financial statements of the PMI Fund, MNP received access to the working papers of the predecessor auditor for the PMI Fund, Deloitte & Touche, (“**Deloitte**”) for the purpose of assisting MNP in establishing opening account balances and to assist with audit planning. MNP also received assurances from Deloitte that satisfied MNP that there was no reason for MNP not to accept the engagement.

59. As auditor for the PMI Fund, it was MNP’s role to plan and carry out annual audits for each year for the purpose of obtaining reasonable assurance that the PMI Fund’s annual financial statements as a whole were free from material misstatement, whether due to fraud or error.

60. In that regard, both the Engagement Letters agreed to by the Plaintiffs and the relevant GAAS governing all audits made it clear that there were inherent limitations on the scope of the audits conducted by MNP and that MNP’s audits were not a guarantee against fraud, error, or deficiencies in the PMI Fund’s internal controls.

61. As detailed below, MNP at all times fulfilled all obligations and duties of care owed under the Engagement Agreements and otherwise. At all times MNP planned and conducted each audit of the PMI Fund in accordance with the terms of the Engagement Agreements and all relevant professional standards, including GAAS.

**a. Management representation letters provided to MNP**

62. In recognition of management’s primary responsibility for the accuracy of the PMI Fund’s financial statements, for every audit year the Plaintiffs provided to MNP a written acknowledgement of Management’s Responsibility for Financial Reporting expressly acknowledging that:

- (a) PMI GP was responsible for reviewing and approving the audited financial statements and other financial information of the PMI Fund and for fulfilling the PMI Fund's financial reporting responsibilities;
- (b) PMI GP had reviewed the financial reporting process and the audited financial statements together with other financial information of the PMI Fund; and
- (c) PMI GP had approved the audited financial statements and other financial information of the PMI Fund for issuance to the unitholders.

63. Further, as a term of MNP's engagement and as part of the audit process, each year the Plaintiffs provided Management Representation Letters to MNP confirming the reliability of information provided and that the audited financial statements completely and accurately reflected the PMI Fund's financial position and other attributes, as at the audit date. In particular, for each of the annual audits between 2016 – 2023, inclusive, the Plaintiffs acknowledged and represented in the Representation Letters, among other things, that:

- (a) Management of the PMI Fund were responsible for the preparation and fair presentation of the financial statements and comparatives in accordance with IFRS and guidance contained in National Instrument 81-106, Investment Fund Continuous Disclosure and for the accounting policies followed in relation thereto;
- (b) The financial statements and comparatives included all disclosures necessary for fair presentation, and all disclosures otherwise required to be included therein by the laws and regulations to which the PMI Fund was subject;

- (c) Management of the PMI Fund believed that the financial statements and comparatives were complete and presented fairly, in all material respects, the PMI Fund's financial position, comprehensive income for the year, changes in net assets and cash flows, and that the financial statements included accurate summaries of significant accounting policies and other explanatory information, in accordance with IFRS;
- (d) Management understood that MNP's audit was conducted in accordance with GAAS for the purposes of expressing an opinion on the financial statements and that such audit was not designed to identify, nor could it necessarily be expected to detect misstatements, non-compliance with laws and regulations, fraud or other irregularities, should there be any;
- (e) Management had responded fully to all enquiries made of them and had made available to MNP a complete record of all financial records relevant to the preparation and presentation of the financial statements, and related data, including minutes of the meetings of members and directors held throughout the year, and had provided access to those within the entity as determined necessary to obtain audit evidence;
- (f) The financial statements of the PMI Fund, among other things:
  - (i) Presented on a fair and consistent basis all assets and all known liabilities of the PMI Fund as at the year-end;

- (ii) Fairly reflected and summarized on a consistent basis the results of all transactions entered into during the year; and
- (iii) Recorded only those assets to which the PMI Fund had title and reflected only those transactions properly related to the activities of the PMI Fund; and
- (g) Management acknowledged its responsibility for the design, implementation and operation of controls to prevent and detect fraud, had assessed the risk that financial statements may be materially misstated as a result of fraud and determined such risk to be low, had disclosed to MNP any significant facts known to management in relation to frauds or suspected frauds that had a material effect on the financial statements, and confirmed that there had been no violations or possible violations of laws or regulations that should be considered for adjustment or disclosure in the financial statements.

64. In addition, for each audit year, each Management Representation Letter represented that the prior year's representation letter remained applicable to the prior year's financial statements and comparatives, and that no matters had arisen that required restatement of those financial statements or comparatives.

65. The Plaintiffs and their management intended that the acknowledgements of Management's Responsibility for Financial Reporting and the Management Representation Letters for each year would be relied upon by MNP both in accepting each audit engagement and in its planning and conduct of the audits and MNP did rely upon them.

66. It is now apparent that some or all of the Management Representation Letters, most or all of which were signed by Chang-Sang on behalf of the Plaintiffs, contained misrepresentations by the Plaintiffs. At a minimum, they failed to disclose that the Plaintiffs and members of their management were engaged in fraud in relation to the business and affairs of the Plaintiffs and/or that members of the Plaintiffs' management were aware of circumstances that could and did give rise to suspicions of fraud and misconduct. The Plaintiffs' failures to disclose known or suspected fraud frustrated the audit procedures planned and undertaken by MNP and were misrepresentations for which the Plaintiffs are responsible.

**b. The Alleged Red Flags:**

67. At all times, MNP planned and conducted the audits of the PMI Fund with the required care and skill in accordance with the relevant professional standards, including GAAS, and the terms of the Engagement Agreements. MNP denies the allegations in the Statement of Claim that it was grossly negligent or careless in the planning and conduct of the audits, or that it otherwise breached the requisite standard of care.

68. In particular, MNP denies that it carelessly overlooked red flags inherent in the structure, governance and operation of the Plaintiffs and denies that no persons other than Santor, Chang-Sang and Hills held any role in the management, as alleged.

69. The operation and financial reporting of the PMI Fund involved numerous other persons, including but not limited to other members of management of the Plaintiffs and independent third-party corporations, including Apex.

70. Given the involvement of these other persons and third-party corporations, it was not a red flag that Santor, Chang-Sang and Hills were heavily involved in the management of the PMI Fund. In fact, it was and is not uncommon for the high-level management of private equity limited partnerships such as the PMI Fund to be centralized in the hands of two or three individuals - especially when, as here, management has outsourced significant aspects of its day-to-day operations, financial record-keeping and financial reporting to independent arm's length contractors, like Apex.

71. In any event, MNP appropriately assessed the risk associated with the audits of the PMI Fund, designed its audits appropriately and in accordance with GAAS, and performed the required procedures for each audit year.

72. In the alternative, in the event that MNP's audit procedures were not designed or expanded to account for the risks associated with the PMI Fund financial statements, which is denied, this was due to the failure of the Plaintiffs, members of their management and Apex to notify MNP of facts that they knew or should have known raised additional concerns, despite their obligations to do so.

**c. Verification of the loans and other assets of the PMI Fund:**

73. At all times, MNP performed all required procedures to verify the existence and valuation of the PMI Fund's loan portfolio and other assets in accordance with GAAS and in reliance upon information provided to MNP by the Plaintiffs and Apex, including, among other things, review of applicable loan agreements, review of management loan and wire transfer approvals, management walk through of the loan approval process, reconciliation of loan payouts against PMI Fund bank statements, and the receipt and review of third party borrower loan confirmations.

74. The approval of loans by the Plaintiffs was not a “rubber stamp” as alleged in the Claim, and at no time did MNP have reason to believe that that was the case. Rather, during the relevant period, MNP did a review of the design and implementation of the loan approval process, discussed it with Chang-Sang and other members of management of the Plaintiffs, including Hills, and was provided with information that the loan approval process required unanimous consent of the members of senior management, including Santor, Chang-Sang and Hills, who also controlled the General Partner.

75. These steps were supplemented by loan confirmation letters sent to borrowers under the loan portfolio of the PMI Fund. As part of this loan confirmation process, MNP prepared loan confirmation letters, selected the borrowers who would be contacted, and confirmed that the individuals to be contacted were associated with the borrower. MNP was copied on the originating email attaching the confirmation letter and the response verifying the loans.

76. MNP specifically denies that it ceded control over the loan confirmation process to Santor or anyone else, and says that at all times it exercised appropriate control over the loan confirmation process in a manner consistent with relevant professional standards, including GAAS.

77. Regarding the allegations in the Claim, and associated particulars provided by the Plaintiffs, that the use of Gmail email addresses by certain borrowers from the PMI Fund were a red flag, MNP denies that this was a red flag and says that it was not uncommon for borrowers from the PMI Fund to use Gmail addresses in connection with their dealings with the Plaintiffs. To MNP’s knowledge, at least four borrowers from the PMI Fund used Gmail addresses as their official contact information for notifications under their Loan Agreements with the PMI Fund, namely, Altar Rock Entertainment, Here’s Yanni LLC, PVM Productions and Nunz LLC.

78. MNP further denies the allegations in the Claim that it failed to properly value the loan assets of the PMI Fund or to comply with the relevant professional standards in relation thereto. MNP carried out appropriate procedures to value the PMI Fund's loan portfolio, in compliance with GAAS and in recognition of the nature of the PMI Fund's business, as explained by the Plaintiffs' management.

79. This included steps taken by MNP to verify the loan portfolio shown in the annual financial statements, including the steps described above, and to audit management's assessment of the credit risk for each loan by:

- (a) Assessing each loan for significant increases in credit risk in comparison to the prior audit year based on the maturity date and the grace/extension period (as defined in management's credit policy);
- (b) Recalculating the probability of default (the likelihood that a borrower will default on their contractual obligations over a specified time horizon), the loss given default (the proportion of the exposure that is lost if a default occurs, after accounting for recoveries such as collateral, guarantees, or repayments), and exposure at default (the expected outstanding amount owed by the borrower at the time of default) for the loans in the PMI Fund portfolio, and recalculating the expected credit losses ("ECL") based on these numbers; and
- (c) Corroborating the credit risk factors by reviewing and considering the financial status of the producers (borrowers) and the stage of completion of the productions.

80. In that regard, MNP denies the allegation in the Claim that any delays in repayment of the loans owing to the PMI Fund during the relevant period were “red flags” or otherwise indicators of fraud, or that they presented risks beyond those already disclosed in the annual financial statements for the PMI Fund and its Offering Memoranda.

81. In particular, several events during the relevant period provided plausible and reasonable rationales for delays in the repayment of the PMI Fund loan portfolio, including the worldwide COVID-19 pandemic that began in early 2020 and extended through most or all of the remainder of the relevant period, a Writers Guild of America strike from May to November 2022, and the SAG-AFTRA actors strike from July to November 2023. These events delayed industry production as a whole, including projects that had been funded by the PMI Fund, such that it was reasonable and expected that many of the loans made by the PMI Fund would not be repaid until past their due dates.

82. Further, it was not uncommon for media loans such as those made by the PMI Fund to have short duration terms coupled with late fees and interest increases for late repayment, as lenders could generate increased interest from overdue loans. Indeed, most of the loan agreements entered into by the PMI Fund expressly provided for a “non-default interest rate” and a “default interest rate” in which higher interest would be charged on any amounts that were outstanding after a specified date.

83. Rather than being a red flag as alleged, the circumstances in which loans became overdue were both explained by external factors and were an expected feature of the financing of films and television productions in which delay could and did lead to increased profit to lenders. Further, the

inherent risks of such loans, including from delays in repayment, had been made clear in the Offering Memoranda provided to investors investing in the PMI Fund.

84. In any event, between 2019 and 2023 the financial statements of the PMI Fund did reflect increased risks associated with the loan portfolio by way of increased allowances for losses relative to the overall value of the portfolio.

85. Such disclosures were at all times the responsibility of the Plaintiffs' management and at all times MNP took appropriate steps in accordance with its professional standards to verify management's characterization of the loan portfolio and its level of risk. From the disclosures in the annual financial statements for the PMI Fund during the relevant period, it should have been clear to any sophisticated investor during the relevant period that the level of credit risk associated with the loan portfolio of the PMI Fund was increasing significantly.

86. Further, if payments were being made back to the PMI Fund fraudulently using funds misappropriated and misapplied by the Plaintiffs and members of their management, as alleged in the Claim, this would not be something that MNP would be expected to uncover under relevant professional standards, including GAAS.

87. In particular, while MNP was required to obtain reasonable assurance that the overall statements of receipts in the annual financial statements were free of material misstatement, the identities of which parties from which each of those receipts came was outside the scope of MNP's role as auditor.

88. Such day-to-day operations, including accounting for repayment of the loans, were monitored by management of the PMI Fund and its third-party contractors, namely, Apex and the

Collections Managers engaged by the Plaintiffs, and MNP appropriately relied upon these parties in relation thereto. This included obtaining support from Apex for the samples selected by MNP in its audit of repayment amounts on the loans.

89. Similarly, in response to paragraph 137 of the Claim, the CAMA Accounts, as referenced in the Claim, did not form part of the assets of the PMI Fund and were beyond the scope of MNP's annual audits.

90. Such day-to-day operations, including accounting for repayment of the loans, were monitored by the Plaintiffs' management and Apex and MNP appropriately relied upon those parties in relation thereto.

**d. The Plaintiffs' schemes to conceal their fraud:**

91. Further in relation to the Plaintiffs' fraud, GAAS includes the following standards that were applicable to MNP's engagements to audit the financial statements of the PMI Fund:

- (a) In every audit, there is an unavoidable risk that some material misstatements in financial statements may not be detected even when an audit is properly planned and performed in accordance with GAAS;
- (b) The risk of non-detection of a material misstatement is higher in the case of fraud than misstatements caused by error. A fraud may involve sophisticated and carefully organized schemes designed to conceal the fraud, including forgery, deliberately failing to record transactions, or making intentional misrepresentations to the auditor;

- (c) Concealed fraud is even more difficult to detect when accompanied by collusion; and
- (d) An auditor's ability to detect a fraud depends on factors such as the degree of collusion involved and the seniority of the individuals involved. There is a higher risk that an auditor will not detect a material misstatement resulting from fraud when perpetrated by management as compared to an employee because management may directly manipulate accounting records, present fraudulent information to auditors, or override control procedures designed to prevent fraud by employees.

92. An annual audit is not designed to identify every misstatement or error nor is it designed to give recipients a guarantee over the accuracy of financial statements. MNP did not have a duty (professional, contractual, or otherwise) to examine every transaction and event or to detect every misstatement caused by error or fraud. MNP was not required to, and did not, guarantee against fraud or error, under GAAS, its contractual obligations to the PMI Fund, or any other applicable duty or standard.

93. The above professional standards regarding MNP's duty and ability to detect fraud in its limited role as auditor of the annual financial statements for the PMI Fund were also reflected in the terms of the Engagement Agreements, to which the Plaintiffs agreed, as pleaded above.

94. The Plaintiffs and certain members of their management, including Santor, exploited their seniority and positions of power to circumvent applicable controls and defraud the PMI Fund and its investors. The concealed fraud, which included the use of Imposter Corporations, Imposter Domain Names and Imposter Email Accounts, collusion with third parties and intentional

misrepresentations to MNP and others, was carefully designed to subvert the audit process. The frauds alleged in the Claim were precisely the types of fraud recognized under GAAS as difficult for auditors to detect.

95. At all times, MNP complied with its professional obligations, including GAAS, in relation to the assessment of the risk of fraud and misstatement in the annual financial statements of the PMI Fund. MNP did not owe a professional obligation to detect fraud by management of the Plaintiffs, nor was it required or expected to do so under the Engagement Agreements.

96. Moreover, and in any event, given the steps taken by Santor, other members of the Plaintiffs' management, and other third parties in collusion with Santor and the Plaintiffs to hide the fraud and/or their suspicions of fraud, MNP could not have detected the fraudulent activities of the Plaintiffs' management. In fact, as referenced above, it took a whistleblower complaint in August 2024 followed by an extensive investigation by PwC in order to uncover the fraud alleged in the Claim.

97. Further, the types of fraud and other misconduct alleged in the Claim involved the day-to-day operations, financial transactions and financial record-keeping by the Plaintiffs and their management – tasks that at all times were the responsibility of both the Plaintiffs' management and Apex.

98. To the extent that the fraudulent conduct of the Plaintiffs and their management, including Santor, was not detected and was allowed to continue, it was due to breaches of various duties owed by management and Apex, including the duty to raise concerns and suspicions to MNP, and not to any failures on the part of MNP.

e. **Other breaches alleged against MNP in the Claim:**

99. As set out above, MNP denies that it breached any of the duties owed regarding its audits of the annual financial statements of the PMI Fund, including any applicable duties pleaded in the Claim.

100. In particular, MNP took appropriate steps to plan its audits each year and reported its findings to management, applied a reasonable level of professional skepticism in its audits, and performed its audits with due care and objectivity.

101. MNP specifically identified to management of the Plaintiffs any deficiencies in internal controls that it discovered. In particular, among other things, MNP specifically identified weaknesses surrounding the loan review process and recommended a formal procedure, including reviewing forward looking information to determine an appropriate estimate of the ECL.

102. Further, contrary to para. 109 (h) of the Claim, at no time did Santor, Chang-Sang or Hills or anyone else on behalf of the Plaintiffs identify or notify MNP of any suspicious circumstances, despite their duty to do so, that would have caused MNP to perform additional audit procedures.

103. In summary, in no respect did MNP breach its professional and contractual duties as auditor of the PMI Fund – either as alleged or at all.

I. **No causation of damages:**

104. As set out above, each of the audits conducted by MNP met the required standard of care, including GAAS, and MNP did not breach any duties owed to the Plaintiffs, as alleged or at all.

105. In any event, any breaches by MNP that did occur, which are denied, did not cause damages to the Plaintiffs.

106. The Plaintiffs are bound by the knowledge of their senior management, including Santor, Chang-Sang and Hills, and at no time did the Plaintiffs or their management rely upon the audited annual financial statements or MNP's auditor's report on those statements.

107. To the contrary, at all times, the Plaintiffs were aware or ought to have been aware that the information that they had provided to MNP or induced third parties to provide to MNP was inaccurate or misleading. Alternatively, the Plaintiffs failed to take appropriate care to verify the accuracy of the information that they had provided or caused to be provided to MNP in the course of its audits.

108. Further, as a limited partnership, the PMI Fund at all times did not and could not suffer a loss or damages in its own right. Rather, any profits or losses flowed through to the investors in units of the Fund that were its limited partners, who did not rely upon MNP in their decisions to invest in the PMI Fund nor to continue holding their PMI Fund units.

109. As set out above, most or all of the limited partners were professionally managed pension funds and/or persons and entities that invested through registered Exempt Market Dealers, namely Westfield and/or Qwest. These limited partners did not rely upon MNP but, rather, relied upon professional pension managers and/or investment advisors at Qwest or Westfield for advice and information in connection with their investments in the PMI Fund.

110. Regarding Qwest, between 2019 and 2021, a majority of the investors in the PMI Fund were persons who had invested through a single-purpose fund that was managed by Qwest and

audited by KPMG. While Qwest accounted for less than a majority of the investors in the PMI Fund in 2022 and 2023, it remained the case in those years that a significant portion of the investors invested through Qwest. At all times, investors in the PMI Fund through Qwest would have relied upon Qwest and KPMG for advice and information in relation to their investments rather than MNP.

111. Further and in the alternative, the damages claimed are unduly remote and were not caused by the acts or omissions pleaded in the Claim against MNP. Rather, any damages suffered by the Plaintiffs were instead wholly or partially caused by the negligence and other wrongful conduct of the Plaintiffs and their management, as well as by Apex, Qwest, Westfield, and other parties for which MNP is not responsible. The damages claimed were also wholly or partially caused by external market factors that were and are outside the control of MNP, including factors impacting the film and television production industries as referenced herein. MNP pleads and relies upon the *Negligence Act*, R.S.O. 1990, c.N.1, as amended.

112. The actions of others that have caused the damages claimed include those of the Receiver, KSV. Among other things, KSV prematurely shut down the business and operations of the Plaintiffs, and failed to take adequate, or any, steps to manage the business of the PMI Fund. This includes a failure to take adequate, or any, steps to collect amounts owing to the PMI Fund, including from the borrowers identified in the Claim as “Target Corporations.” Additionally, KSV has failed to pursue claw-back or other recovery actions against those investors whom KSV has admitted were repaid funds from the fraudulent loans referenced in the Claim and therefore profited from the alleged fraud.

113. By its conduct as pleaded above, including the conduct of KSV for which the Plaintiffs are liable, the Plaintiffs have failed to mitigate their alleged damages.

114. Further, as particularized above, the Limitations of Liability in the Engagement Agreements eliminate or limit MNP's liability for the damages claimed, including the provisions limiting MNP's liability to its several liability for any alleged damages, limiting any damages to the total fees paid to MNP pursuant to each of the Engagement Agreements, and providing that MNP is not liable for any consequential, indirect, lost profit or similar damages.

115. This action is wholly or partially statute-barred pursuant to the *Limitations Act, 2002*, S.O. 2002, c. 24, as it was commenced more than two years after the Plaintiffs, and in particular members of the Plaintiffs' management, knew or should have known of the causes of action alleged in the Claim.

116. The Defendant, MNP, therefore asks that this action be dismissed as against it with costs.

## COUNTERCLAIM

117. The Defendant / Plaintiff by Counterclaim, MNP, claims as against the Plaintiffs (Defendants by Counterclaim):

- (a) contribution and indemnity under sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c.N.1, as amended, and under common law and equity for any amounts for which MNP may be found liable to either of the Plaintiffs;
- (b) pre-judgment and post-judgment interest in accordance with section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) the costs of this proceeding, plus all applicable taxes; and
- (d) such further and other relief as to this Honourable Court may seem just.

118. MNP repeats and relies upon the allegations in its Statement of Defence in support of this Counterclaim.

119. PMI GP was at all times the general partner and manager of the PMI Fund and the primary party responsible for managing its operations and affairs, making all decisions regarding the business of the PMI Fund, and managing its financial record-keeping and reporting.

120. Santor, Chang-Sang and Hills were the officers and directors of PMI GP, and at all times, PMI GP had a duty to administer and manage the PMI Fund and its assets, including its loan portfolio, honestly, in good faith, and with reasonable care and diligence. PMI GP, with the assistance of Apex, was also responsible for the preparation and fair presentation of the financial

statements for the PMI Fund, the selection and implementation of accounting policies and procedures, and the design and implementation of internal controls.

121. PMI GP is liable for the mismanagement of the PMI Fund, including but not limited to:

- (a) entering into false and fraudulent loan agreements supported by fabricated and/or altered supporting documentation;
- (b) failing to conduct appropriate due diligence into borrowers and their principals;
- (c) failing to disclose that a loan was impaired and restructuring loans to conceal the impairment;
- (d) failing to appropriately recognize and account for loans that were unlikely to be fully repaid and concealing or failing to disclose the facts that these loans were unlikely to be fully repaid;
- (e) failing to implement appropriate corporate governance practices, including inconsistent and ineffective management practices and appropriate internal controls;
- (f) failing to disclose and/or uncover the fraudulent schemes perpetrated by the Plaintiffs and their management, including the payment of funds to Imposter Corporations;
- (g) taking steps to cover up and hide the fraudulent schemes pleaded in the Claim from MNP, the investors in the PMI Fund and others;

- (h) colluding with third parties to hide the fraudulent schemes pleaded in the Claim from MNP, including by inducing third parties to sign and send false and misleading loan confirmations to MNP in connection with its audit process;
- (i) misleading the PMI Fund, its investors, Apex, and MNP as to the PMI Fund's financial performance, the nature of its loans and other financial dealings, and its relationships with alleged third-party borrowers that were in fact Imposter Corporations (as defined in the Claim);
- (j) to the extent there were material misstatements in the PMI Fund's financial statements, preparing inaccurate annual financial statements on behalf of the PMI Fund and fabricating documents to conceal the fraudulent schemes;
- (k) self-dealing and/or making payments to members of management and to employees to secure their cooperation in PMI GP's ongoing misconduct and participation in the fraudulent schemes; and
- (l) fabricating documents to cover the tracks of PMI GP and members of its management who either participated in the fraudulent schemes or suspected fraud by PMI GP's management but did nothing to address it.

122. As described in the Statement of Defence, the Plaintiffs (Defendants by Counterclaim) knew or ought to have known that monies were being misappropriated by members of their senior management, including Santor, and were being used for improper purposes contrary to the terms of the Offering Memorandum, and in breach of the fiduciary duties owed by the Plaintiffs' management, but did nothing to stop it.

123. The Plaintiffs and their management were negligent in failing to report or otherwise stop the conduct that they knew or should have known was fraudulent or a breach of a fiduciary duty. To the extent that the directors, officers, and senior management of the Plaintiffs were negligent, the Plaintiffs are vicariously liable for their negligence, which negligence caused or contributed to the Plaintiffs' alleged losses, as particularized in the Claim, which losses are not admitted but are denied.

124. Further, the Plaintiffs, through members of their management, made the representations contained in the Management Representation Letters knowing that MNP would rely on such representations and MNP did rely upon such representations in accepting its audit engagements, in planning and conducting the audits, and in issuing its Audit Reports on the annual financial statements of the PMI Fund.

125. In particular, MNP was entitled to and did in fact rely on the information and representations provided to it by the Plaintiffs and their management that:

- (a) the information provided by management was complete and accurate; and
- (b) that the financial statements were complete, accurate, and prepared in accordance with applicable standards.

126. If the audited financial statements did contain material misstatements, MNP pleads that the Plaintiffs breached their obligations to the PMI Fund, its limited partners, and to MNP by providing MNP with inaccurate or incomplete information and by representing that the financial statements were complete, accurate and prepared in accordance with applicable standards when they were not.

127. To the extent that MNP breached any duties owed to the Plaintiffs and is liable to the Plaintiffs, which is denied, MNP is entitled to contribution and indemnity from PMI GP in law and in equity and MNP is also entitled to indemnity from both Plaintiffs pursuant to the terms of the Engagement Agreements, under which the Plaintiffs agreed to indemnify and hold MNP harmless from any claims, damages, costs, charges and expenses (including legal fees and disbursements) related to MNP's engagement as auditor.

128. MNP pleads and relies upon the *Courts of Justice Act*, RSO 1990, c C43, *Negligence Act*, RSO 1990, c N1, as amended, *Partnerships Act*, RSO 1990, c P5, and the *Ontario Business Corporations Act*, RSO 1990 c B16.

129. MNP proposes that this counterclaim proceed at the same time as Claim, and that the matters be tried together or one after another.

### **CROSSCLAIM**

130. The Defendant, MNP, crossclaims as against Apex for:

- (a) contribution and indemnity under sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c.N.1, as amended, and under common law and equity for any amounts for which MNP may be found liable to either of the Plaintiffs;
- (b) pre-judgment and post-judgment interest in accordance with section 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) the costs of this proceeding, plus all applicable taxes; and

(d) such further and other relief as to this Honourable Court may seem just.

131. MNP repeats and relies upon the allegations in its Statement of Defence and, for the purposes of this Crossclaim only, the allegations in the Claim relating to Apex at paragraphs 8, 12, 14, 48 – 64, 80 – 85 and 139 – 153.

132. Beginning from the formation of the PMI Fund and its general partners, PMI GP, Apex was the primary party engaged to assist with, and carry out, the financial reporting and record-keeping for the Plaintiffs. To the extent that there were errors or misstatements in relation to those tasks, or fraud by management of the Plaintiffs occurred and was not discovered, this was within the scope of Apex's retainer and not the responsibility of MNP, in its limited role as auditor of the annual financial statements of the PMI Fund.

133. Apex's role included, among other things, assisting management with: (a) maintenance of financial records regarding the operations of the PMI Fund, including schedules of payees for dealer payments, accrued expenses and amortization, (b) calculating the Net Asset Value of the PMI Fund on the last day of each calendar month in accordance with the LP Agreement; (c) assisting the plaintiffs with their banking, including depositing with the bankers for the PMI Fund monies, bills and notes received by the PMI Fund and performing bank reconciliations; (d) processing any distributions to partners of the PMI Fund; and (e) the preparation of the financial statements for the PMI Fund.

134. Apex also handled all receipts and disbursements of funds to and from the borrowers under loans advanced by the PMI Fund, and at all times undertook to ensure that such receipts and disbursements were properly recorded and verified, and were appropriate and consistent with the

loan approval process used in connection with the PMI Fund, and consistent with the best interests of the PMI Fund and its partners.

135. Apex expressly agreed to be responsible for liaising with the auditors of the PMI Fund and at all times shared responsibility with the Plaintiffs and their management for ensuring that the PMI Fund's auditors, including MNP, received accurate and reliable information and documentation needed to conduct their audits, and that the PMI Fund's financial statements accurately presented the PMI Fund's financial status and affairs.

136. In that regard, Apex had CPAs on staff that at all times were aware of the requirements under IFRS in relation to the preparation of annual financial statements. Apex was relied upon by the Plaintiffs in ensuring that the financial statements were prepared in accordance with IFRS.

137. At all times, it was Apex that was primarily responsible for monitoring and verifying all transactions conducted in relation to the PMI Fund, and for ensuring that any management instructions in relation thereto were properly recorded, verified and consistent with good business practices and the best interests of the PMI Fund and its investors.

138. In particular, Apex bore the responsibility for monitoring, verifying and recording funds paid out of the PMI Fund and for ensuring that such funds were paid in respect of legitimate loans or other legitimate payables, and not to Santor, Imposter Corporations (as defined in the Statement of Claim), or to any other person not entitled to receive those funds.

139. Similarly, it was at all times the responsibility of Apex along with the Plaintiffs' management to monitor, verify, and record payments made to the PMI Fund, including verification

of the source of those payments in order to ensure that they were made in respect of, and credited to, legitimate obligations owed by the PMI Fund's by borrowers.

140. All or, alternatively, most of the allegations in the Claim relate to tasks, such as the verification of bank accounts associated with individual payments to or from borrowers and day-to-day financial record-keeping, which were within the retainer of Apex, as Fund Administrator for the PMI Fund, and not the responsibilities of MNP in its more limited capacity as auditor of the annual financial statements of the PMI Fund.

141. At all times, Apex was the primary party responsible for working with the Plaintiffs' management to ensure that the financial record-keeping for the PMI Fund was accurate and complete, and that appropriate daily controls were in place to both detect and prevent fraud. Apex owed contractual, common law and fiduciary duties to the PMI Fund and its investors to act honestly, competently and in good faith in fulfilling these duties.

142. As an independent third party with day-to-day financial monitoring and financial record-keeping and accounting responsibilities that held itself out as having expertise in the management of private equity funds such as the PMI Fund, Apex was obliged to exercise the professional skill and care that would reasonably be expected of a prudent and professional administrator.

143. By virtue of its role as fund administrator for the PMI Fund for more than a decade, Apex was intimately aware of the details of the Plaintiffs' operations and better positioned to discover the fraud and other misconduct alleged in the Claim and, together with management, better positioned to ensure that the financial statements were accurate and prepared in accordance with IFRS.

144. As pleaded in the Claim, Apex also gained extensive and detailed access to the Plaintiffs' internal workings due to the direct involvement of two representatives of Apex's corporate affiliate, Apex Fund and Corporate Services (Jersey) Limited ("**Apex Jersey**"), on the board of directors of Productivity Media Lending Fund Limited ("**PMLF**") – a Jersey entity that had been created to allow non-Canadian investors to invest in the PMI Fund.

145. By virtue of all of the foregoing, Apex was uniquely situated, suited and obligated to assess and address the risks inherent in the Plaintiffs' business, and to monitor, assess, discover and report the fraud, misrepresentations, mismanagement and other misconduct alleged in the Claim. Apex was in the best position to both discover the fraud and other misconduct alleged in the Claim and to take steps to address it, prevent its continuation, and ensure that the PMI Fund's investors and MNP, as auditor, were notified of the fraud and not misled by the Plaintiffs and their management.

146. Apex was also relied upon by MNP for information and assurances in relation to the financial statements that Apex prepared for the PMI Fund in conjunction with management of the Plaintiffs, and Apex owed duties of care to MNP in relation thereto. In particular, Apex owed a duty to provide accurate information to MNP and to take reasonable steps to ensure that the information being provided to MNP by or on behalf of the Plaintiffs and their management was accurate, complete and not misleading.

147. Along with management of the Plaintiffs, Apex represented to MNP that the PMI Fund's financial statements were complete, accurate, and prepared in accordance with all applicable standards. If the audited financial statements did contain material misstatements, MNP pleads that Apex breached its obligations to both the PMI Fund and to MNP.

148. To the extent that MNP breached any duties owed to the Plaintiffs and is liable to the Plaintiffs, which is denied, MNP is entitled to contribution and indemnity from Apex in law and in equity.

149. MNP pleads and relies upon the *Courts of Justice Act*, RSO 1990, c C43, and the *Negligence Act*, RSO 1990, c N1, as amended.

150. MNP proposes that this Crossclaim proceed at the same time as the Claim and MNP's Counterclaim, and that the matters be tried together or one after another.

March 12, 2026

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

**ONTARIO  
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PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF DEFENCE, COUNTERCLAIM AND  
CROSSCLAIM OF MNP LLP**

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