

**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 LP, and not in its personal capacity

Plaintiff

and

MNP LLP and APEX FUND SERVICES (CANADA) LTD.

Defendants

STATEMENT OF DEFENCE, CROSSCLAIM AND COUNTERCLAIM

1. Except as otherwise expressly admitted, Apex Fund Services (Canada) Ltd. (“**Apex Canada**”) denies all of the allegations in the Fresh As Amended Statement of Claim (the “**Claim**”), including any entitlement to relief in paragraph 1 of the Claim.

Overview

2. This action seeks to hold Apex Canada responsible for the alleged losses arising from the discovery of a fraudulent scheme orchestrated by one or more directors and officers of Productivity Media Inc. (“**PMI GP**”) and Productivity Media Income Fund LP (the “**Fund**”, together with PMI GP, “**Productivity Media**” or the “**Plaintiff**”).

3. Apex Canada is not responsible for these losses. Apex Canada was engaged to provide fund administration services pursuant to an Administration Agreement, dated May 1, 2012 (the

“**Administration Agreement**” or the “**Agreement**”). Apex Canada performed those services in good faith and in accordance with its contractual obligations.

4. For many years, Productivity Media was presented to investors, counterparties and service providers as a legitimate participant in the film financing industry. It attracted significant investor capital and advanced loans purportedly secured against film and media projects.

Productivity Media was led by William Santor (“**Santor**”), together with other senior executives and directors, Andrew Chang-Sang (“**Chang-Sang**”), and John Hills (“**Hills**”), who exercised control over the Fund, its operations and the information provided to third parties, including investors.

5. Apex Canada was not part of Productivity Media’s management, had no operational control over Productivity Media and relied on information and instructions provided by Productivity Media’s authorized principals.

6. It is now alleged that, hidden beneath the surface of Productivity Media’s operations, Santor and potentially others engaged in a sophisticated and carefully concealed fraudulent scheme involving the intentional misappropriation of investor funds and falsified documentation (the “**Fraudulent Scheme**”). The alleged fraud spanned almost one decade and involved a complex web of phony corporations, fraudulent financial transactions and funds transfers, and impersonations. It was not detected for years by Productivity Media’s own management, directors, investment committee or independent auditors, MNP LLP (“**MNP**”).

7. In August 2024, an anonymous whistleblower report led to an extensive investigation into Productivity Media, led by PwC. This investigation resulted in the discovery of Productivity Media’s alleged fraud, which is outlined in the Claim. Apex Canada had no knowledge of the

fraud prior to PwC's investigation. To the extent the Plaintiff suffered any losses, those losses are not attributable to Apex Canada, which was intentionally misled in connection with a sophisticated and carefully organized fraud that was actively concealed by members of Productivity Media's senior management.

8. The Plaintiff subsequently commenced multiple proceedings against Productivity Media's principals and other parties alleging fraud, breach of fiduciary duty and unjust enrichment. The damages claimed in this action overlap with losses sought to be recovered from those alleged wrongdoers.

9. The Plaintiff commenced this action, initially against MNP only. MNP audited Productivity Media's financial statements since inception. It also audited the net asset value ("NAV") calculations performed by Apex Canada based on information provided by Productivity Media's management. MNP delivered clean audit opinions throughout the relevant period of the fraud. It failed to identify any risks of material misstatements in the financial statements due to fraud, or any deficiencies in internal controls that could give rise to fraud risks.

10. Apex Canada was added as a defendant to this action six months later. Apex Canada is not alleged to have participated in the fraud, nor is it alleged to have had actual knowledge of the fraud. Instead, the Plaintiff alleges that Apex Canada ought to have detected or prevented wrongdoing committed by others who controlled Productivity Media and its records, in circumstances where Productivity Media's own officers, directors and auditors failed to detect the fraud.

11. Apex Canada cannot be held liable for the misrepresentations or failures of Productivity Media's officers and directors, or for the negligence of Productivity Media's auditors. It is not a

forensic investigator responsible for detecting fraud committed by Productivity Media's management. Further, the Administration Agreement expressly permitted reliance by Apex Canada on information provided to it by Productivity Media, without further investigation, and excludes Apex Canada's liability arising from that reliance, absent gross negligence, wilful misconduct or fraud.

12. The Plaintiff's allegations reflect a fundamental misunderstanding of Apex Canada's role. The Claim is an impermissible attempt to impose hindsight-based duties and standards of conduct, outside the scope of the parties' contractual relationship, to reallocate responsibility away from those who controlled Productivity Media and committed or failed to detect the wrongdoing. Apex Canada is not in the position of an insurer or auditor of the Fund.

The Parties

The Plaintiff

13. KSV Restructuring Inc. is the court-appointed Receiver of Productivity Media and commenced this action in that capacity.

14. The Fund is an Ontario Limited Partnership formed and organized on February 29, 2012, under the laws of Ontario. PMI GP is the general partner of the Fund. It was incorporated on January 17, 2012, under the laws of the province of Ontario.

15. The Fund was co-founded by Santor, Chang-Sang and Hills, who were directors, officers and shareholders of PMI GP:

- (a) Santor was an individual ordinarily resident in the Cayman Islands until his death on December 28, 2024. He was a Canadian citizen and a resident of Burlington,

Ontario, until he switched his primary residency to the Cayman Islands in approximately 2019. Santor was PMI GP's Chief Executive Officer and held 50% of PMI GP's voting shares;

(b) Chang-Sang is an individual ordinarily resident in Benalmadena, Spain. He is a Canadian citizen and was a resident of Oakville, Ontario, until he moved abroad in 2014. Chang-Sang was PMI GP's President and Chief Financial Officer and held 25% of PMI GP's voting shares; and

(c) Hills is an individual ordinarily resident in Burlington, Ontario. He was PMI GP's Chief Operating Officer and held 25% of PMI GP's voting shares.

16. In November 2021, Shara Lerman joined Productivity Media as General Counsel. She was the only other officer of PMI GP. She was also a member of the Fund's credit committee which was responsible for reviewing and approving proposed loans and investments and negotiating the required loan documents. Her specific role and involvement, if any, in the fraud is not with the knowledge of Apex Canada but is within the knowledge of the Plaintiff.

17. PMI GP, through Santor, Chang-Sang and Hills, managed the Fund's day-to-day affairs pursuant to the Limited Partnership's Fourth Amended and Restated Limited Partnership Agreement dated June 15, 2015 (the "LPA"). PMI GP was responsible for managing the Fund's overall business as well as investing the Fund's assets in accordance with the Fund's stated investment objectives, namely, to achieve a high level of interest income, superior risk-adjusted returns and potential for long-term income generation on select investments with moderate volatility and low correlation to traditional asset classes.

18. PMI GP's board of directors was comprised solely of Santor, Chang-Sang and Hills who, together with PMI GP's management, were solely responsible for the investment advice and recommendations provided to the Fund, as well as the Fund's monthly NAV and year end investment valuations.

19. At all times, PMI GP was required to exercise its powers granted and discharge its duties pursuant to the LPA honestly, in good faith and in the best interests of the Fund and its investors. It was required to exercise the degree of care, diligence and skill that a reasonably prudent general partner would exercise in comparable circumstances.

PMI Jersey

20. Productivity Media Lending Fund Limited ("**PMI Jersey**") is a Jersey Private Fund established in Jersey, with its registered office located in Saint Helier, Jersey.

21. PMI Jersey had five directors: Santor, Chang-Sang and Hills, as well as two directors provided by Apex Fund and Corporate Services (Jersey) Limited, which, pursuant to a merger completed in December 2025, is now Apex Financial Services (Alternative Funds) Limited ("**Apex Jersey**").

22. PMI Jersey facilitated investments in Productivity Media from non-Canadian investors, pursuant to various participation agreements.

23. PMI GP also acted as an investment advisor to PMI Jersey, whose board of directors relied on PMI GP in respect of investment recommendations, subsequent valuations and reporting.

24. Apex Canada did not determine or provide investment advice or recommendations to PMI Jersey.

Apex Canada

25. Apex Canada is a limited liability partnership under the laws of Ontario. It is a fund administration service provider that offers services to asset managers, financial institutions, private clients, and family offices. Its head office is located in Toronto, Ontario.

26. Fund administrators are not regulated in Canada. There is no free-standing duty of care or fiduciary duty owed by fund administrators at common law. Rather, their obligations and duties are established pursuant to contract.

27. Apex Canada provided fund administration services to Productivity Media from 2012 to 2024, at which time KSV Restructuring Inc. was appointed as the Receiver of Productivity Media. The services were performed pursuant to the Administration Agreement, which governed the relationship between Apex Canada and Productivity Media.

Apex Jersey

28. Apex Jersey is a company under the laws of Jersey. Its registered office is in Saint Helier, Jersey. It is not a subsidiary of, or parent to, Apex Canada.

29. Apex Jersey is not a party to this action. However, the Plaintiff advances certain allegations in respect of Apex Jersey, which are denied by Apex Canada.

30. In 2021, Apex Jersey contracted with PMI Jersey to perform certain fund administration services. It also agreed to provide directors for PMI Jersey's Board of Directors. At the material

times, two of Apex Jersey's employees acted as directors of PMI Jersey, for nominal fees of £5,000 per director per annum payable to Apex Jersey.

31. Apex Jersey did not provide any directors for Productivity Media's Board of Directors, nor was it under any obligation to do so. Apex Canada denies that Apex Jersey owed any duties to Productivity Media, whether contractual, at common law or otherwise.

MNP

32. MNP is a national accounting firm with its head office in Calgary, Alberta. MNP provides a wide range of services including audits, accounting and financial reporting, bookkeeping and cloud accounting, and consulting, among others.

33. MNP was Productivity Media's auditor for the years ending 2016 to 2024. Pursuant to a series of written engagement letters, MNP delivered clean audit opinions for the years ending December 31, 2016, to December 31, 2023.

34. MNP was also the auditor for PMI Jersey and WG Secure Film Limited, a feeder fund for investors in PMI Jersey. From 2020 to 2024, MNP delivered clean audit opinions in respect of these entities.

Productivity Media's Business

35. Productivity Media was in the business of providing senior secured debt financing for independent films and television productions in Canada, the United States, the United Kingdom, France, Malta, Germany, Australia and New Zealand, with budgets in the range of US\$2 million to US\$50 million.

36. Its business model included (1) film and television production financing (“**Production Loans**”) and (2) loans to global sales agents and distribution companies for the purpose of allowing them to provide minimum guarantees to production companies for future distribution income (“**MG Loans**”). These loans were not akin to typical bank loans. Interest was not generally payable pursuant to a set schedule but rather accrued over time and continued until the film production was monetized. As such, it was reasonably expected that no interest would be paid over the course of a number of years.

37. Productivity Media raised capital to fund the Production Loans and MG Loans by issuing units in the Fund to third-party investors, primarily through exempt market dealers. Productivity Media’s stated objective was to generate high returns for unitholders. Investors were entitled to significant returns on their investments but only when they redeemed their units. In its Offering Memorandum dated May 20, 2016, Productivity Media characterized these investments as “speculative” and “risky”, “suitable only for persons who are able to assume the risk of losing their entire investment”.

38. Productivity Media had an Investment Committee, comprised of Santor, Chang-Sang, and Hills. The Committee was responsible for:

- (a) providing investment advice and recommendations, including sourcing new media projects;
- (b) reviewing PMI GP’s adherence to the Partnership’s investment objectives, strategies and restrictions;

- (c) developing and recommending control, due diligence and investment process policies; and
- (d) reviewing and reporting on the Fund's performance.

39. Santor led the Investment Committee. Chang-Sang and Hills claim they relied on and deferred to Santor who was knowledgeable about the entertainment industry and financing.

There were no other members of the Investment Committee.

40. New media projects, sourced by the Investment Committee or its members, were subject to an extensive due diligence process performed by PMI GP to determine whether it was consistent with the Fund's overall investment portfolio. Apex Canada was not involved in PMI GP's due diligence process, nor was it responsible for reviewing due diligence results.

41. PMI GP was exclusively responsible for monitoring the Fund's investments and performance, including, among other things, monitoring cash flows, reviewing project completion schedules, and ultimately recouping the Fund's investments, including through collection account managers and foreclosure on security interests.

42. Apex Canada was not responsible for assessing or determining the future collectability or performance of the Production Loans or the MG Loans.

The Apex Canada Administration Agreement

43. The Administration Agreement governed the relationship between Productivity Media and Apex Canada.

44. Apex Jersey and PMI Jersey are not parties to the Administration Agreement with Productivity Media in respect of the Fund.

45. Apex Canada was appointed as the Fund's Administrator pursuant to Section 2 of the Administration Agreement. The First Schedule to the Agreement describes the scope of Apex Canada's services, which includes preparing Productivity Media's annual and semi-annual financial statements, keeping the books and records up to date, liaising with the Fund's auditors, and calculating the NAV of the Fund on the last day of each calendar month.

46. In exchange for these services, the Fund paid monthly professional fees to Apex Canada. In accordance with Section 6 and the Third Schedule of the Administration Agreement, the fees were calculated based on the NAV of the Fund.

47. Pursuant to section 4 of the Administration Agreement, PMI GP was required to:

- (a) provide all information needed for Apex Canada to perform its work under the Agreement;
- (b) prepare and provide material and information of a non-financial nature for inclusion in annual and other reports of the Fund;
- (c) provide prices of investments and methodology used to value assets;
- (d) determine the source of and make available funds for distribution to unitholders of the Fund;
- (e) notify Apex Canada of any concerns in connection with unitholders including suspicious circumstances;
- (f) notify Apex Canada of any material changes to the Fund; and

- (g) perform relevant anti-money laundering (“**AML**”) and know-your-client (“**KYC**”) checks on investors.

48. The Second Schedule of the Administration Agreement identified a single authorized signatory on behalf of PMI GP – Santor.

49. The Administration Agreement expressly entitled Apex Canada to rely on information provided by PMI GP to perform its responsibilities under the Administration Agreement. Apex Canada was entitled to do so without further investigation or review of the accuracy or completeness of the information. Specifically:

- (a) Section 5.4 states that in the course of discharging its duties, Apex Canada may rely on information provided to it by or on behalf of the Fund, PMI GP or others. This provision further limits the liability of Apex Canada as a result of having relied absolutely or in part upon the authority, accuracy, truth and completeness of such information, including pricing information furnished by PMI GP in the course of Apex Canada discharging its duties with respect to NAV calculations.
- (b) Section 5.5 states that Apex Canada has no responsibility or duty to investigate the completeness, accuracy or sufficiency of the information provided to it by PMI GP:

The Administrator shall not be liable in respect of any action taken or omitted to be taken under this Agreement (i) in accordance with a legal opinion or other advice of a reputable professional advisor approved by the General Partner or (ii) if the General Partner has not given or procured that the Administrator be given such information as the Administrator may reasonably require in order to perform its obligations under this Agreement and the **General Partner acknowledges that, the Administrator has no responsibility for nor**

duty to perform any investigation as to the completeness, accuracy or sufficiency of any information provided to it by the General Partner in connection with the performance of its duties under this Agreement (provided that the Administrator shall promptly notify and seek clarification from the person providing such information if the Administrator has reason to believe that such information may be incomplete, inaccurate or insufficient) and shall not be responsible to any person whatsoever for any liability, loss, damage, claim, cost or expense suffered or incurred as a result of the Administrator relying upon such information. [Emphasis Added].

- (c) Section 5.6 states that Apex Canada shall have no responsibility for ensuring compliance by or on behalf of the Fund with the legislation or regulations of any jurisdiction in which the Fund's units are being sold.

50. These provisions were included in the Administration Agreement because Apex Canada does not possess expertise in film financing to independently assess the accuracy or reliability of the information provided by PMI GP. In addition, the investments were in respect of private film productions such that there was no ready market with which Apex Canada could ascertain the value of these investments. In fact, the offering memorandum prepared by Productivity Media stated, "these securities do not trade on any exchange or market". As a result, responsibility for providing accurate, complete and reliable information to Apex Canada so that it could perform its services under the Administration Agreement rested exclusively with PMI GP.

51. Indeed, Chang-Sang, who had been a member of the executive management team since at least 2013 and responsible for the financial operations and reporting of Productivity Media and PMI Jersey, admits at paragraph 35 of his affidavit, sworn November 6, 2024, in support of the Receiver's appointment, that management itself relied on Santor's assessment of a project's financial viability, timeline and quality given Santor's experience and expertise with film financing.

52. Responsibility for reviewing, investigating and scrutinizing loan transactions resided with PMI GP and its management, not Apex Canada. Sections 2.5 and 4.7 of the Administration Agreement expressly required PMI GP to conduct AML, KYC and related compliance checks. These provisions demonstrate that core management and oversight responsibilities were retained by PMI GP and were not delegated to Apex Canada, which had no such obligations under the Agreement.

53. Apex Canada did not have any authority to act for or represent the Fund. Section 2.3 of the Administration Agreement made clear that Apex Canada was “at all times subject to the control of and review by [PMI GP]” and required to “comply with and conform to all the reasonable and proper orders, directions and requirements of [PMI GP]”.

54. Section 13.1 states that in carrying out its duties, Apex Canada is required to comply with all reasonable instructions of PMI GP. Section 13.2 further provides that in the absence of gross negligence, wilful misconduct or fraud, Apex Canada is entitled to rely on any instruction, acknowledgement or notice that it reasonably believes to have been issued by the authorized signatories of PMI GP.

No Fiduciary Duty or Common Law Duty of Care

55. Apex Canada denies that it owed any fiduciary obligation to Productivity Media akin to that of a general partner or the investor group, whether contractual, at common law or otherwise.

56. Fund administrators are not regulated in Canada. They are governed by the contractual arrangements in which they enter into with their clients.

57. The obligations and responsibilities owed by Apex Canada to Productivity Media are contractual in nature, governed by the Administration Agreement.

58. Apex Canada denies that it owed any common law duty of care to Productivity Media beyond the contractual duty provided for in the Administration Agreement.

Apex Canada Did Not Materially Breach the Administration Agreement

59. Apex Canada denies that it materially breached the Administration Agreement. To the contrary, Apex Canada performed its duties in good faith, in compliance with the Administration Agreement and with the professional skill and care that would reasonably be expected of a prudent and professional fund administrator.

60. In preparing NAV calculations and financial statements, Apex Canada relied on the information provided to it by PMI GP, including:

- (a) loan agreements, security agreements and other financial instruments provided by Santor as PMI GP's sole authorized signatory;
- (b) pricing information; and
- (c) value assessments prepared by PMI GP's management, including the inclusion of any loss provisions.

61. Apex Canada's reliance was not only contractually permitted but it was also reasonable in the circumstances given that Apex Canada did not have the same level of operational oversight or governance responsibilities as the directors, officers and management of Productivity Media.

62. Apex Canada did not have authority to make independent decisions regarding any loss provisions in respect of the NAV, nor was it required to assess the loans to determine whether any loss provisions were necessary and/or appropriate. Rather, it was contractually required to follow the instructions of PMI GP when calculating the NAV and provide the calculations to PMI GP for review and approval.

63. The NAV calculations were subject to review and approval by PMI GP, including as part of PMI GP's approval process in respect of Apex Canada's fees. The NAV calculations were signed, every month, by one of Santor, Chang-Sang or Hills, confirming their approval of the calculations.

64. Moreover, all loans were approved by the Investment Committee and/or by Santor, Chang-Sang or Hills, who directed Apex Canada in its capacity as administrator to wire funds pursuant to those approved loans. Apex Canada was not responsible for assessing the collectability of the loans, any impairment of the loans and/or any resulting loss provisions in respect of the NAV.

65. Any inaccuracies or misstatements were the result of incorrect or misleading information provided by Productivity Media and a failure of PMI GP to carry out its own responsibilities under the Administration Agreement, not any omission or failure by Apex Canada. At no time did Chang-Sang or Hills advise Apex Canada that the information or instructions provided by Santor were inaccurate, misleading or could not be relied upon.

66. The NAV calculations were also subject to annual independent review by MNP, who audited the calculations as part of its audit procedures in respect of the Fund's financial statements. MNP also audited PMI Jersey's financial statements. To the extent that the NAV

calculations required independent assessment and review, it was MNP as the auditor who was charged with that responsibility, and not Apex Canada which was performing an administrative role, compiling the information and data provided by Productivity Media and its principals.

67. Apex Canada had no authority or responsibility under the Administration Agreement to verify the authenticity of underlying loan transactions or documentation, nor to investigate potentially fraudulent conduct by Productivity Media or its principals. Apex Canada's services were not designed to be a guarantee against fraud or deficiencies in Productivity Media's internal controls.

68. Apex Canada's performance under the Administration Agreement was consistent with both the contractual standard and industry practices.

Apex Canada Did Not Act with Gross Negligence or Wilful Misconduct

69. Apex Canada expressly denies that it was grossly negligent at any time in the performance of its obligations under the Administration Agreement. Section 1.3 of the Agreement defines gross negligence as "a standard of conduct beyond negligence whereby that person acts with reckless disregard for the consequences of his or her action or inaction".

70. Contrary to paragraph 107 of the Claim, Apex Canada was not grossly negligent in the preparation of the monthly NAV calculations. The monthly NAV calculations were prepared by Apex Canada in accordance with industry practices and standard accounting methodologies. The values and inputs for the NAV calculations and financial statements were supplied by PMI GP.

71. Apex Canada did not at any time determine the pricing or make value judgments, nor did it have any authority or responsibility for approving the pricing or values of the assets. Such

responsibilities rested solely with PMI GP. Using the information provided by PMI GP, Apex Canada prepared Pricing Investment Schedules that were provided to PMI GP for review and approval.

72. In addition, the NAV calculations and financial statements were reviewed by MNP as part of its audit procedures in connection with Productivity Media's financial statements. MNP's mandate was to provide reasonable assurance that the financial statements, taken as a whole, were free of material misstatement, whether due to fraud or error.

73. Apex Canada relied on MNP and Productivity Media's management, who issued letters of representation to MNP in connection with the completeness and accuracy of the financial statements, confirming their responsibility to identify and disclose any errors, misrepresentations or misstatements. No such errors, misrepresentations or misstatements were ever identified or communicated.

74. The allegations in the Claim, even if taken as true which is expressly denied, do not approach the elevated standard of gross negligence. At all material times, Apex Canada exercised reasonable skill, care and diligence that would reasonably be expected of a prudent and professional fund administrator carrying on business in Canada, in accordance with Sections 2.2, 5.1, 5.4 and 5.5 of the Administration Agreement.

75. Apex Canada denies that the Plaintiff or their investors relied on the financial statements or NAV calculations as alleged in the Claim or at all in connection with their investments. Rather, investors relied on multiple representations and sources of information in making investment decisions, including the offering memorandum prepared by Productivity Media, investor reports, public representations made by Productivity Media's management and

information and representations provided by fund managers such as Qwest Investment Fund Management Ltd. (“**Qwest**”) and Westfield Partners Ltd. (“**Westfield**”).

76. In particular, entities such as Qwest and Westfield, through whom the majority of investors acquired and held their units in the Fund, owed regulatory and common law duties to their clients. This included the obligation to conduct their own due diligence on the Fund and the risks associated with the investment. These entities had access to and knowledge regarding the operating and status of the Fund. Investors primarily dealt with and relied on those dealers in connection with their investment decision in the Fund, rather than on Apex Canada.

77. Further, the majority, if not all, of the investors were sophisticated. A substantial number were pension funds and labour-sponsored funds, managed by professional investment managers who owed regulatory and fiduciary duties to conduct appropriate due diligence and ensure that investments made on behalf of those funds were suitable and consistent with their investment mandates. Such investors would in any event have conducted their own due diligence with their own professional advisors. The offering memorandum made clear that the investments were “risky” and “speculative”, suitable only for investors “who are able to assume the risk of losing their entire investment”. In addition, an FAQ document, prepared by Productivity Media’s principals, identified the risk of loss due to internal fraud, conflicts of interest, error and deviation from policies and procedures.

78. The Plaintiff has not pleaded, and there is no evidence of, any wilful misconduct by Apex Canada or any participation by Apex Canada in the Fraudulent Scheme.

No “Significant Red Flags”

79. At paragraph 81 of the Claim, the Plaintiff purports to identify alleged discrepancies that it characterizes as “significant red flags”. To the extent any such discrepancies existed, they were not significant at the time, were not objectively identifiable and are pleaded entirely with the benefit of hindsight. The Fraudulent Scheme was not reasonably detectable by Apex Canada.

80. For several years, one or more members of Productivity Media’s management carefully orchestrated the Fraudulent Scheme. Santor is alleged to have created imposter corporations, domains, bank accounts and email addresses that closely resembled those of legitimate media production companies with which Productivity Media had genuine dealings. These companies and names were therefore familiar to, and reasonably trusted by, Apex Canada.

81. The alleged impersonations were sophisticated. For example, Santor used the imposter domain name “www.concoursemedia.media” to imitate the legitimate domain name www.concourse-media.com. He also used email addresses with similar email addresses to legitimate businesses and forged signatures on fund transfer documents. The fraud was perpetrated by Santor by bypassing the bank account managed by Apex Canada and using his own personal bank account which was actively concealed from Apex Canada. PwC’s investigative report, provided in the form of the Affidavit of Krista Mooney, confirms that the alleged Fraudulent Scheme was sophisticated, well-hidden by Santor and went undetected by Productivity Media’s management and auditors for many years.

82. Apex Canada was not responsible for maintaining or controlling Productivity Media’s email systems and information & technology platform. Its role under the Administration

Agreement was limited to acting on instructions provided by PMI GP and approved by Productivity Media's management and the designated authorized signatory, Santor.

83. Specifically, Apex Canada received funds transfer instructions from Productivity Media's management and reviewed supporting documentation to confirm the amount, payee and banking transfer details to execute on the instructions provided. Apex Canada was not responsible for or required to perform any background checks or other procedures in respect of the identity of the payee or the payee's bank account, including KYC or AML requirements. Apex Canada was not, and could not reasonably be expected to act as, a forensic investigator or fraud auditor in respect of instructions provided by PMI GP for fund transfers. Rather, pursuant to the Administration Agreement, it was the responsibility of Productivity Media's directors, officer, management and legal advisors to review the legal names of the payees to confirm that the payees were legitimate and in compliance with KYC and AML requirements.

84. Moreover, at the time Apex Canada received materials and instructions from PMI GP, there was no obvious or objective basis to review those materials with a heightened degree of scrutiny. Moreover, PMI GP's management represented to Apex Canada that it had "robust" internal controls and procedures in respect of each stage of the investment cycle: origination, structuring and analysis, investment approval, settlement and funding, monitoring and accounting (including valuation). Apex Canada reasonably relied on this representation and was not, in any event, responsible for or charged with the duty to review, consider, monitor or implement internal controls and procedures at Productivity Media.

85. The alleged "red flags" were not apparent even to members of Productivity Media's senior management, who were responsible for originating, approving and providing information

regarding the relevant transactions to Apex Canada. Chang-Sang and Hills have themselves alleged they had no knowledge of any fraud despite being members of the executive team since 2013. If senior insiders with direct operational knowledge were unaware of any “significant red flags”, Apex Canada could not reasonably have known of it. In each of their Statement of Defences in related actions, they describe the Fraudulent Scheme as sophisticated and carefully concealed.

86. Further, MNP, which was the auditor, did not identify any “red flags” in the course of its audits notwithstanding its regulatory requirement to identify and assess any potential fraud risks as part of their overall audit procedures. Specifically, auditors in Canada are responsible for obtaining reasonable assurance that financial statements taken as a whole are free from material misstatement, whether caused by fraud or error. They are required to perform risk assessment procedures to identify and assess whether any fraud risk factors exist. If such factors exist, they are required to use those factors to identify and assess the risk of misstatements resulting from fraudulent financial reporting and misstatements resulting from misappropriation of assets. Such risks are considered “significant” risks such that the auditor is required to design and perform further audit procedures responsive to the “significant risks”.

87. Here, MNP did not properly assess the risks of material misstatement caused by fraud and failed to conduct the required procedures responsive to such risks. As a result, it failed to identify risk of fraud resulting in material misstatements of the financials and to detect the fraud itself.

88. Apex Canada specifically denies the allegation at paragraph 148 of the Claim, that it was “blinded” by “personal” relationships with Productivity Media’s management. At all material

times, Apex Canada's relationship with Productivity Media and its management was professional.

89. To the extent there were any "significant red flags" in respect of the Production Loans or MG Loans, which is denied, they did not come to light until summer 2024, after which there were no further investments made in either Canada or Jersey.

Apex Jersey's Knowledge Cannot be Imputed to Apex Canada

90. As described above, Apex Jersey appointed two of its employees as directors of PMI Jersey, whose identities changed over time but always remained employees of Apex Jersey (the "Apex Jersey Directors"), except for the period between January 31, 2025 and March 10, 2026, where only one Apex Jersey employee was on PMI Jersey's board of directors.

91. The Apex Jersey Directors were directors of PMI Jersey. They were not directors of Productivity Media, nor have there been any Apex Canada or Apex Jersey directors appointed to PMI GP's board of directors.

92. To the extent the Apex Jersey Directors owed any duties, whether fiduciary or otherwise, those duties were owed to PMI Jersey, and not to the Fund or PMI GP. Accordingly, there is no legal basis to impute the knowledge or duties of the Apex Jersey Directors to Apex Canada or any duties by Apex Jersey to Productivity Media.

Apex Canada's Liability is Limited or Excluded by the Administration Agreement

93. To the extent that Apex Canada has any liability, which is denied, such liability is limited or excluded by various provisions under the Administration Agreement. Specifically:

- (a) Section 5.1 states that Apex Canada shall not be liable for any loss of any nature whatsoever suffered by the Fund or PMI GP in connection with the performance by Apex Canada of its obligations under the Agreement, except a loss resulting directly from gross negligence, wilful misconduct or fraud or material breach of the Agreement;
- (b) Section 5.1 further states that Apex Canada shall not be liable for any indirect, special or consequential loss “howsoever arising”, meaning that this limitation of liability is not subject to an exclusion for gross negligence, wilful misconduct or fraud or material breach;
- (c) Sections 5.4 and 5.5 of the Agreement states, Apex Canada is not liable for losses arising from its reliance “absolutely or in part upon the authority, accuracy, truth and completeness of information provided”; and
- (d) Section 19.3 caps Apex Canada’s liability for any breach of the Administration Agreement to a maximum sum equal to Apex Canada’s “annual fees and remuneration” as calculated pursuant to the Third Schedule of the Agreement.

94. In addition to these limitation of liability provisions, section 9.1 of the Administration Agreement provides an indemnity in favour of Apex Canada, covering all liabilities, damages, costs, claims and expenses incurred in the performance of its obligations under the Agreement. The only exception to this indemnity is liabilities arising from Apex Canada’s own gross negligence, wilful misconduct, fraud or material breach of the Agreement – none of which are present in the circumstances of this case.

95. The facts and allegations pleaded by the Plaintiff do not rise to, and are incapable of establishing, conduct meeting the elevated contractual threshold of gross negligence, wilful misconduct, fraud or material breach of the Agreement.

No Causation

96. In the alternative, if Apex Canada was grossly negligent or materially breached the Administration Agreement, which is expressly denied, such negligence or breach did not cause damage to the Plaintiff, whether in fact or in law.

97. Rather, to the extent the Plaintiff suffered losses, those losses were caused by factors entirely outside the control of Apex Canada, including but not limited to:

- (a) **The Plaintiff's failures:** The Plaintiff, including its directors, officers and senior management, was aware, or ought to have been aware, that the representations and information provided to Apex Canada were inaccurate or misleading, either directly or by its failure to take reasonable steps to determine or verify the accuracy of the representations and information. The Plaintiff is bound by the knowledge of its directors, officers and senior management;
- (b) **The Fraudulent Scheme:** The alleged damages suffered by Productivity Media were not caused by Apex Canada, but rather by the Fraudulent Scheme perpetrated by Santor and potentially other principals of Productivity Media;
- (c) **External market factors:** Intervening factors such as the global COVID-19 pandemic, the Writers Guild of America's 148-day strike and the 118-day SAG-AFTRA strike had a significant impact on the portfolio values and broader

market. These events influenced the claimed damages in ways that are entirely outside Apex Canada's control;

- (d) **The existence of non-performing loans:** Any losses attributable to non-performing loans occurred independently of any alleged overstatement of the NAV or material misstatement in the financial statements;
- (e) **The collection managers:** The actions or omissions of the collection managers, Freeway Entertainment and Fintage House, referred to in paragraphs 39 to 40 of the Claim, exacerbated the damages suffered by the Plaintiff. Specifically, the Collection Managers made payments on loans pursuant to a predetermined waterfall structure rather than using the loan collections on the non-fraudulent portion of the Loan Portfolio to disburse payments to the specific loans being repaid. This predetermined payment structure caused or contributed to an increase in the interest payable on these loans and resulted in loans aging "well past maturity", thereby further inflating the alleged damages; and
- (f) **Actions of other parties:** Any losses were also caused, in whole or in part, by the conduct of other parties, including the Receiver, Qwest, Westfield, and other third parties, for which Apex Canada bears no responsibility. The Receiver's actions, including prematurely shutting down the business operations of the Plaintiff and failing to collect amounts owed by borrowers identified in the Claim, contributed directly to the claimed losses. Additionally, most or all of the limited partners in the Fund were professional managed entities, such as pension funds, or invested through registered Exempt Market Dealers, including Westfield and Qwest, and

relied on their professional advisors rather than on Apex Canada in making investment decisions. To the extent investors invested through Qwest, including through single-purpose funds audited by KPMG, such investors relied upon Qwest and KPMG for advice and information regarding their investments, not Apex Canada.

98. Accordingly, the losses claimed are not attributable in whole or in part to any conduct or omission on the part of Apex Canada.

No Damages

99. Apex Canada denies that the Plaintiff has suffered the damages alleged in the Claim as a result of any acts or omissions on the part of Apex Canada, or at all. In any event, any damages claimed are excessive, speculative, remote or otherwise not recoverable at law.

100. In the alternative, any claimed damages are overstated and must be reduced or excluded to account for:

- (a) **NAV misrepresentation:** To the extent any alleged damages were suffered as a result of Apex Canada's conduct, which is expressly denied, they must be calculated from the date when the NAV was no longer a fair representation of the Fund's financial position or when it became "overvalued". Prior to that date, if the NAV was fairly represented, investors would have been taking informed and educated risks based on accurate information available to them;
- (b) **No "significant red flags" prior to 2024:** To the extent there were any "significant red flags", which is denied, such "red flags" did not occur prior to

2024, after which time there were no further investments in the Fund by third party investors. Accordingly, any losses suffered by the Plaintiff prior to these “red flags” should not be included in any damages attributable to Apex Canada;

- (c) **PMI Jersey losses:** To the extent the alleged damages include losses that may have been suffered by PMI Jersey, these losses should be excluded as PMI Jersey is not a party to this action and no claim has been advanced by the Receiver on behalf of PMI Jersey;
- (d) **Receiver’s other recoveries:** The claimed damages do not account for any recoveries made by the Receiver to date, including approximately \$1.8 million from the property located at Calle de Dinamarca 1, Benalmádena, Málaga, Spain;
- (e) **Recovery of misappropriated funds:** The Receiver has commenced a separate action against Santor which includes a claim for \$44 million in misappropriated funds. To the extent these funds are recoverable, they must be deducted from the Plaintiff’s claimed damages in this action to avoid double recovery; and
- (f) **Settlement with Productivity Media principals:** Any value derived from any settlement with the principals of Productivity Media should be deducted from the Plaintiff’s claimed losses in this action to avoid double recovery.

101. If damages were suffered as a result of any acts or omissions on the part of Apex Canada, which is expressly denied, they should be calculated based on the proper periods and deductions outlined above.

Productivity Media is Contributorily Negligent

102. As set out above, Apex Canada denies that the Plaintiff has suffered any damages, whether caused by Apex Canada or at all. However, if the Plaintiff suffered damages, then such damages were caused or contributed to by the Plaintiff's own negligence and that of its directors, officers and senior managers for whom the Plaintiff is responsible at law.

103. Any alleged damages arose from the failure of Productivity Media and its management to exercise appropriate oversight and take reasonable steps to prevent the Fraudulent Scheme. Among other things, the Plaintiff knew or ought to have known about the conduct described herein including the misappropriation of funds as alleged in the Claim, and the fraudulent use of those funds. Despite this, Productivity Media failed to take reasonable steps to stop such conduct.

104. The failure of Productivity Media to detect and stop the Fraudulent Scheme further contributed to the Plaintiff's alleged damages. Specifically, these failures included:

- (a) The absence of an effective system of financial and governance controls to prevent and detect fraud and financial misstatements;
- (b) PMI GP's failure to implement an appropriate and comprehensive credit approval process, with the requisite due diligence and independent verification processes in respect of proposed loans and investments, particularly in circumstances where it had developed a written Credit Approval Policy;
- (c) Productivity Media's failure to disclose and/or communicate situations where fraud or suspected fraud involving management and employees who have

significant roles in the company's controls where the fraud could have a material effect on the financial statements;

- (d) The Investment Committee's role as a mere 'rubber stamp' and its failure to provide adequate oversight and scrutiny of the loans advanced by the Fund, relying only on one-page "deal memos" prepared by Santor without any objective review or independent verification;
- (e) The Investment Committee's composition of non-arms length members, specifically Santor, Chang-Sang and Hills, compromising its objectivity and resulting in self-review of investments for approval;
- (f) Productivity Media's failure to appoint two non-founder key management members to the Investment Committee and to establish an independent advisory board or committee;
- (g) Productivity Media's failure to identify the significance of the complete or near-complete absence of any independent members of the board, management or Investment Committee;
- (h) Productivity Media's failure to complete sufficient due diligence on proposed new loans and related counterparties, and its acceptance of Santor's representations without any scrutiny;
- (i) The failure of Productivity Media's directors and officers to act in the best interests of the company and to exercise appropriate oversight in respect of the loans and the Fund's financial position; and

- (j) Productivity Media's signed letters of representation in connection with MNP's audits in which management falsely attested to the completeness, accuracy and veracity of the information contained in the financial statements and that such statements were prepared by management in accordance with International Financial Reporting Standards which include confirming no knowledge of fraud or error that may result in material misstatement.

105. Productivity Media was responsible for instituting and maintaining internal financial and governance controls and accounting policies. To the extent such controls or policies were deficient or inaccurate, this was caused or contributed to by its own negligence.

106. Further, certain loans approved by Productivity Media's Investment Committee were made to legitimate borrowers but ultimately became non-performing due to market conditions unrelated to the calculation or reporting of the Fund's NAV. These losses were caused or contributed to by Productivity Media's failure to implement appropriate screening, diligence and monitoring of potential loan recipients.

107. Accordingly, if Apex Canada is found liable to the Plaintiff, which is expressly denied, the Plaintiff was contributorily negligent to the full extent of the alleged losses.

108. Apex Canada pleads and relies on the *Negligence Act*, RSO 1990, c N.1.

Plaintiff's Failure to Mitigate Damages

109. To the extent the Plaintiff has suffered any damages as a result of any acts or omissions on the part of Apex Canada, which is expressly denied, it has failed to take reasonable and necessary steps to mitigate those damages. The allegation that "substantially all of the Fund's

loans receivable are uncollectible” is speculative and unsupported. The Plaintiff was required to take reasonable steps to mitigate any alleged losses, including pursuing recoveries under valid loan agreements, realizing on available collateral and seeking repayment from responsible parties including Mr. Santor’s estate. The Plaintiff has failed to plead or demonstrate that any such steps were taken, or that any efforts undertaken were reasonable or adequate.

110. Further, to the extent the Plaintiff alleges that the Fund operated as a Ponzi Scheme, the Plaintiff was required to pursue claw-back or recovery actions against investors who profited from the scheme, in order to return those funds for redistribution and allocation toward the alleged losses. The Plaintiff admits in its Response to Apex Canada’s Demand for Particulars that some of the serviced and/or repaid loans were part of the fraudulent MG Loans. The Plaintiff has failed to plead or demonstrate that any such recovery efforts were commenced or pursued.

111. The Plaintiff and its limited partners failed to mitigate any alleged losses, including failing to take appropriate steps to protect the Fund’s assets or monitor the Fund’s financial performance.

Plaintiff’s Claim is Statute-Barred

112. This claim, in whole or in part, is statute-barred pursuant to the *Limitations Act*, 2002, S.O. 2002, c. 24, as it was commenced more than two years after the Plaintiff, through its directors, officers or senior management, became aware or ought reasonably to have become aware of the facts giving rise to the alleged causes of action.

Relief Requested

113. Apex Canada asks that the Plaintiff’s claim be dismissed with costs.

CROSSCLAIM

114. Apex Canada crossclaims against the Defendant, MNP, for:

- (a) contribution and indemnity under Sections 2 and 3 of the *Negligence Act*, R.S.O. 1990, c. N.1, as amended, for any amounts which Apex Canada may be found liable to the Plaintiff in this action;
- (b) contribution and indemnity under the common law and in equity for any amounts which Apex Canada may be held liable to the Plaintiff in this action;
- (c) the costs of the main action, plus all applicable taxes;
- (d) the costs of this Crossclaim, plus all applicable taxes; and,
- (e) such further and other relief as to this Honourable Court may seem just.

115. Apex Canada repeats and relies on the allegations contained in the Statement of Defence in support of this Crossclaim. It also repeats and relies on the allegations contained in the Statement of Claim in respect of MNP only.

116. Apex Canada denies the allegations in the Claim (other than those expressly admitted in the Statement of Defence) and denies that the Plaintiff is entitled to any of the relief and/or remedies claimed against them in the Claim. However, if it is determined that the Plaintiff suffered any damages or losses for which Apex Canada is found to be liable, which is expressly denied, Apex Canada pleads that such damages or losses were caused, in whole or in part, by the acts or omissions of MNP.

117. At all material times, MNP was exclusively responsible for auditing the Fund's financial statements and ensuring such statements were free from material misstatements whether caused by fraud or error. MNP's duties required the exercise of independent professional judgement and could not be discharged by reliance solely on management's representations. Those duties imposed a higher standard of responsibility on MNP than that owed by Apex Canada in its administrative capacity.

118. Pursuant to the Administration Agreement, including Schedule 1 and Section 1.3, Apex Canada's role was limited to liaising with MNP and providing information concerning the Fund as MNP reasonably required to carry out its audit, so as to enable the completion and publication of audited financial statements. By contrast, MNP was required to plan and perform its audits to obtain assurance that the financial statements are free from material misstatement, whether caused by fraud or error. Further, to the extent any information it obtained from either Apex Canada or Productivity Media indicated that a fraud or a risk of fraud may exist, it was required to communicate any such fraud or risk of fraud to Productivity Media's management. MNP was also responsible for identifying any significant deficiencies in the design or implementation of controls to prevent and detect fraud or misstatements.

119. In the event any of the financial statements of Productivity Media or its affiliates are found not to have presented fairly, in all material respects, the financial position of their assets, which is denied, then MNP breached its contractual obligation to Productivity Media and its affiliates and fell below the applicable standard of care for an auditor in its position.

120. To the extent the financial statements were materially misstated, MNP ought to have discovered any such misstatements in the course of its audit. In carrying out its audit, MNP

overlooked or failed to appropriately investigate any “significant red flags” inherent in the structure, governance and operation of Productivity Media, failed to exercise appropriate care in auditing Productivity Media’s loan assets, and improperly ceded control of the audit confirmation and loan receivable confirmation processes to Productivity Media (including that MNP failed to independently verify contact information provided by Santor in respect of loan confirmations from third parties), among other breaches of its professional obligations.

121. To the extent that the company’s financial statements, including the NAV were inaccurate, misleading in a material respect or failed to disclose material risks, any resulting losses were caused, in whole or in part, by MNP’s acts and omissions and its material breach of professional duties as the auditor and requirement to demonstrate professional skepticism.

122. Accordingly, if Apex Canada is found liable to the Plaintiff, which is expressly denied, MNP was contributorily negligent to the full extent of such losses and Apex Canada is entitled to contribution and indemnity as against MNP on that basis.

123. Apex Canada pleads and relies on the *Negligence Act*, RSO 1990, c N.1.

124. Apex Canada requests that this Crossclaim be tried at the same time as the main action.

COUNTERCLAIM

125. The Defendant / Plaintiff by Counterclaim, Apex Canada, claims as against Productivity Media:

- (a) a declaration that Apex Canada is entitled to contribution and indemnity from Productivity Media pursuant to section 9.1 of the Administration Agreement;
- (b) an interim order pursuant to section 9.1 of the Administration Agreement directing Productivity Media, by its Receiver, to make advances for reasonable legal expenses, including all disbursements and related taxes, incurred by Apex Canada in defence of the Action, pending its disposition, including those costs already expended in defence of the Action;
- (c) an order pursuant to 9.1 of the Administration Agreement directing Productivity Media, by its Receiver, to fully indemnify Apex Canada for any and all damages for which Apex Canada may be found liable in the main action;
- (d) 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 Apex Canada may be found liable in the main action;
- (e) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;
- (f) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, RSO 1990, c. C.43, as amended;

(g) the costs of this Counterclaim, plus all applicable taxes; and

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

126. Apex Canada repeats and relies on the allegations contained in the Statement of Defence herein in support of this Counterclaim.

127. Apex Canada states that under the Administration Agreement, it is entitled to full indemnity for any damages or costs it incurs in this proceeding. Specifically, section 9.1 of the Administration Agreement states:

The Fund shall indemnify the Administrator and hold it harmless from and against all liabilities, damages, costs, claims and expenses (including and without limitation reasonable legal fees and amounts reasonably incurred with the agreement of the General Partner, such agreement not to be unreasonably withheld) incurred by the Administrator or its officers, employees, servants, or agents in the performance of any of their obligations or duties under this Agreement (including and without limitation complying with instructions given to the Administrator by or on behalf of the General Partner) save where such liabilities, damages, costs, claims and expenses arise from the Administrator's own gross negligence, wilful misconduct or fraud or material breach of this Agreement.

128. Apex Canada denies that it was grossly negligent within the meaning of the Administration Agreement or in material breach of the Administration Agreement. There is no allegation that Apex Canada engaged in wilful misconduct or fraud. Accordingly, Apex Canada is entitled to full indemnification under the Administration Agreement.

129. Apex Canada also relies on the indemnity to receive reimbursement and future payment of its legal expenses, including all disbursements and applicable taxes, during the course of this action. In June 2025, Apex Canada notified the Receiver of its reliance on the indemnity and corresponding demand that Productivity Media advance funds to pay for its legal expenses in

accordance with the indemnity. Since that time, Productivity Media, by its Receiver, has failed or refused to provide such advances or to even acknowledge its obligation to indemnify Apex Canada.

130. It would be unjust and inequitable to deny Apex Canada the right to receive the agreed upon advances of its legal expenses under its indemnity while it defends a highly complex claim brought against it by the same indemnifying parties.

131. Apex Canada also claims contribution and indemnity from Productivity Media under sections 2 and 3 of the *Negligence Act*.

132. At all material times, Productivity Media was the primary party responsible for the administration, oversight and management of the fund, including making and monitoring loans, managing its assets and providing instructions and information to Apex Canada necessary to perform its duties under the Administration Agreement.

133. Productivity Media, through its directors, officers and employees, owed Apex Canada a duty to exercise reasonable care, skill and diligence in managing the Fund, ensuring the accuracy and integrity of financial records, supervising fund operations and providing accurate instructions and information to Apex Canada in its role as Administrator.

134. Productivity Media, by its directors, officers and employees is liable for the mismanagement of the Fund, including but not limited to:

- (a) providing false, misleading and incomplete instructions and information to Apex Canada in connection with the administration of the Fund;

- (b) failing to conduct proper due diligence and oversight over fund operations, loans and other financial matters;
- (c) failing to disclose to Apex Canada that certain loans or transactions were impaired, at risk or otherwise unlikely to be repaid in full;
- (d) restructuring or approving Fund transactions in a manner that concealed impairment, misrepresented financial performance or otherwise undermined Apex Canada's administration;
- (e) failing to implement or enforce appropriate governance practices, internal controls or reporting procedures;
- (f) failing to disclose, uncover or prevent the Fraudulent Scheme and misappropriation of Fund monies;
- (g) taking steps to cover up or hide from Apex Canada, including by providing incomplete or misleading documentation;
- (h) colluding with third parties to mislead Apex Canada or to obscure improper Fund activities;
- (i) misrepresenting the nature of the loans, relationships with borrowers or financial performance to Apex Canada;
- (j) preparing, approving or allowing inaccurate records or documents that concealed Fund mismanagement;

- (k) self-dealing, making payments or inducing others to act in a way that concealed or facilitated misconduct; and
- (l) fabricating or altering documents in a manner that prevented Apex Canada from fully understanding or managing the Fund.

135. As described in the Statement of Defence, Productivity Media knew or ought to have known that monies were being mismanaged or misappropriated and that its instructions, omissions or failures could cause Apex Canada to incur liability in performing its duties under the Administration Agreement.

136. Productivity Media and its management were negligent in failing to report, stop or correct conduct that they knew or should have known was improper or in breach of duties owed to the Fund. To the extent any directors, officers or employees of Productivity Media were negligent, Productivity Media is vicariously liable for that negligence, which caused or contributed to any potential liability Apex Canada faced in the main action.

137. Productivity Media, through its management, made representations, statements and provided information to Apex Canada knowing that Apex Canada would rely on them in performing its obligations under the Administration Agreement. Apex Canada did in fact rely on such instructions and information in carrying out its duties.

138. Apex Canada asks that this Counterclaim be tried with the main action and the Crossclaim herein.

March 12, 2026

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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 LP, and not in its personal capacity
Plaintiff

-and- MNP LLP et al.

Defendants

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**STATEMENT OF DEFENCE, CROSSCLAIM AND
COUNTERCLAIM**

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