

**SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF NEW YORK**

KAROLINE MOLBERG as Executor of the ESTATE OF
ERIK MOLBERG, individually and derivatively on behalf
of PHOENIX HOLDCO LP, and BLUE BEAR LTD.

Plaintiffs,

- vs -

PHOENIX CAYMAN LTD. and VISHAL GARG

Defendants.

Index No. _____

COMPLAINT

Plaintiff Karoline Molberg as Executor of the Estate of Erik Molberg, in her individual capacity and derivatively on behalf of Phoenix Holdco LP (“Phoenix Holdco” or the “Partnership”) and Blue Bear Ltd. (“Blue Bear” or the “New General Partner”) (collectively “Plaintiffs”), by and through their undersigned counsel, alleges as follows against Defendants Phoenix Cayman Ltd. (“Phoenix Cayman” or the “Former General Partner”) and Vishal Garg (“Garg”), (collectively referred hereinafter as “Defendants”):

NATURE OF THE ACTION¹

1. This is an action concerning Phoenix Holdco, a Cayman Islands Limited Partnership, and the refusal by its Former General Partner—Phoenix Cayman—and its director Vishal Garg, to relinquish operational control of Phoenix Holdco after a supermajority of the limited partners removed Phoenix Cayman by written resolution (the “Removal Resolution”) pursuant to the terms of Phoenix Holdco’s limited partnership agreement (the “LP Agreement”).

¹ Unless otherwise defined, all capitalized terms used in this “Nature of the Action” section shall have the defined meanings set forth later in this Complaint.

Plaintiffs bring this action derivatively seeking a judgment declaring that the Removal Resolution removing and replacing the Former General Partner is valid.

2. In 2011, Garg, along with others, lured a group of 15 individuals (the “Limited Partners”), including Plaintiff Molberg’s late father, into what turned out to be a fraudulent investment opportunity involving \$5.6 billion of underperforming residential mortgage-backed securities (“RMBS”), which were held by three CDO trusts—the Triaxx CDOs. The stated objective of the investment opportunity was for certain Phoenix-named entities run by Defendants to actively buttress the management of the Triaxx CDOs and their RMBS pursuant to a Services Agreement, and improve the performance of the underlying RMBS through activist strategies.

3. In return for this work and these 15 Limited Partner’s investment, the Phoenix entities would receive: (1) rights to the Subordinate Management and Incentive Fees under the Collateral Management Agreements with the Triaxx CDOs; and (2) immediate revenues from the Triaxx CDOs’ Administrative Fees pursuant to the Services Agreement. As investors in Phoenix Holdco, Plaintiff Molberg—along with the other Limited Partners—expected to benefit directly and/or indirectly from these improved outcomes and revenue streams.

4. Relying on Garg’s representations, Plaintiff Molberg and the other Limited Partners invested in Phoenix Holdco by tendering their respective investments and signing a limited partnership agreement (the “LP Agreement”) on or around March 11, 2011. The LP Agreement provided the Limited Partners several contractual rights and mechanisms to hold the Former General Partner—Defendant Phoenix Cayman—accountable for its operation of the Partnership, including, but not limited to, Plaintiff Molberg’s right to inspect the Partnership’s books and records.

5. Unfortunately, throughout the course of the Limited Partners' investment, Defendants have consistently obstructed the Limited Partners' efforts to exercise their right to access the Partnership's books and records; understand why they have not received promised (and contractually-mandated) distributions; and trace Partnership monies and assets that appear to have been diverted elsewhere for the purpose of funding Garg's other business ventures. The Limited Partners' inability to access the Partnership's books and records, the Partnership's failure to pay distributions, and other alleged breaches of fiduciary duty are the subject of a related lawsuit, *Andrew Black et al. v. Phoenix Cayman Ltd. et al.*, Index No. 652460/2020, pending in the Supreme Court of the State of New York, New York County (the "Black LP Action").

6. After certain Limited Partners commenced the Black LP Action and the case proceeded to discovery, their concerns about Phoenix Cayman's management of Phoenix Holdco only grew and culminated when: (i) the auditor retained by the Defendants disclaimed its opinion for the financial statements prepared for 2014-2019 based on, *inter alia*, the inability to gather "sufficient and appropriate audit evidence" about all cash transactions, related party transactions and inability obtain sufficient independent third-party confirmations as to the existence, completeness and accuracy of amounts due from related parties; (ii) Defendants refused to distribute annual audited financial statements for Fiscal Year 2021; and (iii) Defendant Garg testified on April 19, 2023, in another related matter, *U.S. Bank National Bank Association vs. Triaxx Asset Management, LLC et. al.*, 18-cv-04044 (SDNY, Moses, B.) (the "Trustee Action"), that he intended to pay himself and his inner group of associates—Ziggy Jonnsson, Mingsung Tang, Nicholas Calamari, and Dom Savino—a "discretionary bonus" in the aggregate of \$5M from any litigation proceeds awarded in the Trustee Action instead of rightly disbursing such funds to the Limited Partners.

7. Thus, on April 28, 2023, Plaintiff Molberg served a formal written notice for the benefit of the Partnership setting forth Phoenix Cayman's breaches of the LP Agreement for the failure to provide the Limited Partners with books and records, including audited annual financial statements, and also demanded annual audited financial statements for the 2021 Fiscal Year, and quarterly reports for 2020, 2021, 2022 and the first quarter of 2023 (the "April 28 Notice"). Phoenix Cayman failed to provide the contractually required financials demanded within thirty (30) days.

8. Accordingly, on June 5, 2023, Cayman Islands counsel proctored a vote for the removal of the Former General Partner and a supermajority (over 78% of the cumulative shareholder interests including 12 different individuals) (the "Supermajority") exercised their contractual right under the LP Agreement to remove Phoenix Cayman for cause as the general partner of Phoenix Holdco by the written Removal Resolution.

9. Despite Phoenix Cayman's undeniable breaches of the LP Agreement, the failure to cure those breaches, and the Supermajority's action to remove Phoenix Cayman and substitute it with a new general partner, Phoenix Cayman and its directors, including Defendant Garg and non-party Raja Visweswaran, have refused to relinquish control of the operations of the Partnership, self-servingly declaring the Removal Resolution "null and void."

10. Accordingly, Plaintiffs bring this action seeking a judgment declaring the removal of Phoenix Cayman and the Removal Resolution valid.

JURISDICTION AND VENUE

11. The Commercial Division of this Court has jurisdiction over this action pursuant to CPLR § 202.70(b) (4) & (7) of the Rules of the Commercial Division because equitable and

declaratory relief is sought derivatively based on the internal affairs of a New York State business organization.

12. This Court has jurisdiction over all Defendants because they maintain a systematic and continuous business presence within the New York State, reside in New York State, and/or maintain sufficient contacts with New York State such that CPLR 302(a)—New York’s Long Arm Statute—confers jurisdiction upon this Court.

13. Venue is proper pursuant to CPLR 503(a) because a substantial part of the events or omissions giving rise to Plaintiffs’ claims occurred in New York County, and a party—Defendant Garg—was a resident at the time this action was commenced. Venue is also proper pursuant to CPLR § 501 because the LP Agreement contains a mandatory forum selection clause for courts of the State of New York, New York County.

THE PARTIES

14. Plaintiff Karoline Molberg is an individual residing in the United Kingdom. Ms. Molberg is the sole executor of the estate for her late father, Erik Molberg, who was a limited partner in Phoenix Holdco.

15. Plaintiff Blue Bear Ltd. is a Cayman Islands Exempted Limited Liability Company. On June 5, 2023, Blue Bear was elected by the Supermajority as the incoming general partner for Phoenix Holdco.

16. Upon information and belief, Defendant Phoenix Cayman Ltd. is a Cayman Islands Exempted Limited Liability Company. Phoenix Cayman, which was formally known as ARAM Cayman Ltd., was the general partner of Phoenix Holdco (f/k/a ARAM Phoenix Holdco LP) prior to the written resolution for its removal (*see infra*). Upon information and belief, Phoenix Cayman’s principal place of business is 1 World Trade Center, New York, New York.

17. Upon information and belief, Defendant Vishal Garg is an individual residing in New York, New York. Garg is a director of Phoenix Cayman and Phoenix Holdco, and of two wholly-owned subsidiaries of Phoenix Holdco—Phoenix Real Estate Solutions Ltd. (“PRES”) and Phoenix Structured Credit Investco Ltd (“PSCIL”). Upon information and belief, as a director for each entity within the Phoenix corporate structure, Garg is in control of each respective Phoenix entity’s books and records, bank accounts, and operations.

18. Non-Party Raja Visweswaran is an individual residing in the United Kingdom. Visweswaran is director of Phoenix Cayman, Phoenix Holdco, PRESL and PSCIL—all entities that have a principal place of business in New York. Upon information and belief, as a director for each entity within the Phoenix corporate structure, Visweswaran is in control of each respective Phoenix entity’s books and records, bank accounts, and operations. Plaintiffs and their counsel have inquired if Visweswaran will consent to the jurisdiction of the New York Courts per the terms of the LP Agreement, Visweswaran’s counsel has failed to respond.

SUBSTANTIVE ALLEGATIONS

19. The facts that directly give rise to the claims in the present action stem from a broader dispute between certain limited partners of Phoenix Holdco and the Former General Partner—Phoenix Cayman—Defendant Garg, and other affiliated parties. That dispute, which involves, among other things, fraud, conversion, breaches of contract and fiduciary duties, is the subject of the Black LP Litigation, which at its core alleges that Defendant Garg set up an offshore partnership structure and improperly entered into multiple sham related party transactions to enrich himself and his associates at the expense of the Limited Partners. The broader factual background and detailed allegations concerning this fraudulent misconduct are set forth in the Amended Complaint in that action (the “Black Complaint”). In the interest of efficiency and brevity, rather

than reiterate those allegations here, Plaintiffs incorporate, and respectfully refer the Court to the Black Complaint, which is attached hereto as **Exhibit 1**², and sets forth below only the facts necessary and most relevant to Plaintiffs' cause of action in this action.

A. Background To The Formation Of The Partnership

20. Plaintiff Molberg and the Limited Partners became investors in Phoenix Holdco after Defendant Garg pitched them an investment opportunity where they would achieve a return on capital invested, in large measure, by improving the performance of some \$5.6 billion worth of RMBS positions held by three special purpose vehicles, which issued senior to junior tranches of collateralized debt obligation ("CDO") notes secured by portfolios of RMBS and revenue streams from the underlying pools of packaged loans.

21. Those three special purpose vehicles were trusts organized in 2006 and 2007 under the laws of the Cayman Islands named Triaxx Prime CDO 2006-1, Ltd. ("Triaxx 2006-1"), Triaxx Prime CDO 2006-2, Ltd. ("Triaxx 2006-2), and Triaxx Prime CDO 2007-1, Ltd. ("Triaxx 2007-1" and together with Triaxx 2006-1 and Triaxx 2006-2, collectively, the "Triaxx CDOs"). The CDO notes issued and sold to bondholders are governed by one of three Trust indentures (the "Indentures") specific to the particular issuing Triaxx CDO. The Indentures specify, among other things, the terms of the notes, including the interest rate, maturity, redemption terms, covenants, events of default, and the payment waterfall from the most senior tranches to the most junior tranches of notes.

22. Subject to the terms of both the collateral management agreements (the "Collateral Management Agreements") with each Triaxx CDO and the Indentures, the original collateral

² A true and correct copy of the Defendants' Answer to the Black Complaint is annexed as **Exhibit 2**.

manager, ICP Asset Management LLC (“ICP Asset Management”)—which later was replaced by a Garg-affiliated entity, Triaxx Asset Management—was responsible for, among other things, the selection, acquisition, and disposition of the underlying RMBS portfolio, which, upon information and belief was composed of some 190,000 residential mortgages when the Triaxx CDOs were first established.

23. Upon further information and belief, the RMBS collateralizing the CDO notes, were Alt-A RMBS composed largely of [subprime] loans issued at higher loan-to-values, higher debt-to-income, and lower down payments, thus commanding a higher interest rate but carrying a higher risk of default. For its management services, each Triaxx CDO paid the ICP Asset Management subordinate management fees (the “Subordinate Management Fees”) and incentive management fees (the “Incentive Fees”) calculated in accordance with the terms of the Indentures.

24. Embroiled in defending against an SEC prosecution relating to alleged fraudulent conduct, ICP Asset Management left the Triaxx CDOs and underlying RMBS portfolios in disarray. This in turn set the stage for Defendant Garg and his associates to capitalize on the situation and launch their own fraudulent scheme built on the existing Triaxx CDO-ICP Asset Management structure in order to enrich themselves at the expense of unsuspecting investors, including Plaintiff Molberg and other Limited Partners.

B. Garg Devises A Scheme To Exploit the State of the Triaxx CDOs’ RMBS Portfolio

25. By early 2011, the Triaxx CDOs had failed their rating tests, as the underlying RMBS portfolios had been downgraded. As a result, other than ordinary expense reimbursements, the fees to ICPM had been frozen, impairing its ability to manage the Triaxx CDO’s RMBS portfolio.

26. Upon information and belief, ICP Asset Management was thus strapped for cash and facing mounting legal fees and expenses as a result of the SEC prosecution. To stem the cash crunch, ICP Asset Management met with Garg and non-party Raja Visweswaran, to negotiate the transactions discussed below.

27. Garg capitalized on ICP Asset Management's misfortune by offering to purchase its assets, including its right to Subordinate Management Fees and Incentive Fees and its equity in the CDO transactions, while simultaneously reaping immediate revenues by charging the Triaxx CDOs administrative fees (the "Administrative Fees") for providing due diligence and "activist strategy" services to optimize the performance of the Triaxx CDOs' RMBS pools. Upon information and belief, ICP Asset Management would be able to pay such fees on behalf of the Triaxx CDOs, as the contemplated due diligence and advisory services would constitute administrative expenses that ICPM was permitted to incur under the Indentures.

28. To accomplish these objectives, Garg needed two things: (i) capital from investors to fund the purchase of ICP Asset Management assets; and (ii) a corporate structure with entities to take in the investment capital and consummate the purchase of the ICP Asset Management assets and Services Agreements with the Triaxx CDOs.

29. With respect to the latter, Garg proceeded to set up an offshore Cayman corporate structure with a limited partnership—Phoenix Holdco—serving as the investment vehicle; a wholly owned subsidiary of Phoenix Holdco—PRES—to provide advisory services to the Triaxx CDOs; and a second wholly owned subsidiary—PSCIL—to purchase ICP Asset Management's assets. Garg also created and placed at the top of the structure Phoenix Cayman, the Former General Partner, which is wholly owned by another Cayman entity—Asian Castle Limited. The following diagram illustrates this corporate structure.

OFFSHORE PHOENIX CORPORATE STRUCTURE

30. As for capital, in early 2011, Garg engaged in an effort to solicit individuals and entities domiciled in the United States and other countries, including Plaintiff Molberg, to invest as in the Phoenix Holdco limited partnership. In total, Garg raised \$5,299,960 from the Limited Partners, of which \$250,000.00 was attributable to Plaintiff Molberg. On or about March 22, 2011, the Limited Partners and the Former General Partner executed the LP Agreement for Phoenix Holdco. A true and correct copy of the LP Agreement is annexed as **Exhibit 3**.

31. With the above structure in place and capital to deploy, Defendants caused Phoenix Holdco's wholly owned subsidiaries, PSCIL and PRESL, to enter into various transactions that effectively provided them with the revenue streams derived from ICP Asset Management's work as the collateral manager of the Triaxx CDOs. PSCIL also entered into an agreement that granted it the option to purchase the management of ICP Asset Management for \$1.00, which Defendant

Garg and his colleague Nicholas Calamari later usurped for themselves and exercised by installing their company Triaxx Asset Management.

32. Defendants also caused PRES to enter into agreements with each of the Triaxx CDOs to provide analytical and advisory services for which PRES would receive specified fees under the Indentures.

C. Defendants Obstruct the Limited Partners' Access to the Partnership's Books and Records.

33. In his capacity as a director to the many entities and as a signatory to all of the relevant agreements discussed above, Defendant Garg was at all times aware of the assets and liabilities of the entities within the Partnership. Moreover, as the signatory of the LP Agreement on behalf of the Former General Partner, he was cognizant of the general partner's duties under that agreement, including its obligation to operate the Partnership with financial transparency.

34. Indeed, the plain language of the LP Agreement requires the general partner to, among other things, maintain books and records, retain accounting professionals, and permit inspection of the partnership's books, records, and financial condition:

Section 8.1 Books and Records. The General Partner shall maintain at the General Partner's principal place of business separate books of accounts which shall show a complete and accurate record of the assets, liabilities, transactions and financial condition of the Partnership, including the costs and expenses incurred, all charges made, all credits made and received, and all income derived in connection with the conduct of, and transactions by, the Partnership and the operation of its business and affairs in accordance with (a) GAAP; (b) U.S. federal income tax accounting rules and (c) the reports prepared and provided by the General Partner. The accounting methods of the Partnership shall be consistently applied.

* * *

Section 8.2 Financial Statements and Other Reports. The General Partner shall use commercially reasonable efforts to distribute to the Partners the following reports at the indicated times:

Tax Information. As soon as practicable, but in any event within 90 days after the end of each Fiscal Year of the Partnership, such information concerning the Partnership (including Schedule K-1 or successor schedule) as is necessary for a Partner to complete and satisfy its U.S. federal, state and local and foreign tax reporting requirements.

Financial Information.

(i) Within 60 days after the end of each Fiscal Year of the Partnership, a written annual report containing the financial statements of the Partnership for such Fiscal Year audited by KPMG LLP or such other accounting firm of similar national recognition. Such financial statements shall include (i) the assets and liabilities of the Partnership as of the end of such Fiscal Year; (ii) the net profit or net loss of the Partnership for such Fiscal Year; and (iii) each Limited Partner's closing Capital Account balance as of the end of such Fiscal Year. (ii) Within a reasonable time after the end of each quarter of a Fiscal Year of the Partnership, a report containing information regarding the quarterly income, expenses and financial position of the Partnership for, and as of, such quarter.

* * *

Section 8.4 Right of Inspection.

(a) Each Partner, or the authorized representative(s) thereof, shall have access to and may inspect, photocopy and conduct audits of all relevant books, records, accounts and materials of the Partnership for any purpose reasonably related to such Limited Partner's interest as a limited partner in the Partnership. The exercise of the rights contained in this Section 8.4 shall be made at such times that may be reasonably arranged with the General Partner. Each Partner shall bear the costs and expenses related to that Partner's exercise of the rights provided under this Section 8.4 and Section 8.2(c), except as otherwise permitted by the General Partner in its sole discretion, provided that so long as such Partner is not a Competitor, the General Partner will not unreasonably refuse to permit the Partnership to incur a portion or all of such costs and expenses. An audit may be conducted by any Person or Persons that Partner selects at such Partner's cost with at least 30 days notice.

35. Despite the clear and unambiguous terms of the LP Agreement delineating the Phoenix Cayman's obligations and responsibilities, Phoenix Cayman and Defendant Garg have persistently refused to disclose the operations and finances of the Partnership.

36. At the outset of the Partnership, the Limited Partners received some financial information, albeit limited in nature, including financial reports for the fiscal years ending June 30, 2012, June 30, 2013, and June 30, 2014. But when the Partnership's financial administrator—

Schindlers—terminated its engagement with the Partnership as a result of the transparency issues and mismanagement, Plaintiff Molberg and other Limited Partners began regularly calling and emailing Defendant Garg and non-party Visweswaran, requesting the most basic information owed to any investor, such as financial information, updates from the Phoenix Cayman, and scheduling of investor calls.

37. These extensive efforts were largely ignored. Rather than respond in any meaningful way, Defendants either: (1) outright ignored the Limited Partners; (2) made empty promises that distributions and financials were forthcoming; (3) diverted the Limited Partners and their requests to personnel of Defendant Garg’s other business ventures (*e.g.* Nicholas Calamari, Ziggy Jonsson and Sara Siddiq-Westgate of 1/0 Capital); (4) imposed unreasonable preconditions outside the scope of the LP Agreement to the transmission of contractually obligated financial information and distribution of funds; or (5) threatened to outright eject certain Limited Partners from the Phoenix Partnership.

38. For example, in September 2016, Defendants’ counsel sent certain Limited Partners a Release and Indemnity Agreement for execution “prior to any distribution being made” and threatened “termination of [Plaintiff’s] interest in the Partnership” in the event they communicated with any party outside the Partnership.

39. Ironically, despite Defendants’ threat of “termination” for discussing Partnership matters with outside parties, the Release and Indemnity purported to release and indemnify individuals and entities that were outside the Partnership, including business entities related to Defendant Garg:

We, _____, hereby “Limited Partner”, with an office at _____; on behalf of each and all of their heirs, successors, assigns, agents, attorneys, and representatives, both do hereby release, acquit and forever discharge Triaxx Prime COO 2006-1; Triaxx

Prime COO 2006-2; Triaxx Prime COO 2007-1, ("Triaxx") as well as ICP Asset Management, LLP, Miller & Wrubel P.C., Phoenix Cayman Ltd., Phoenix Real Estate Solutions Ltd., hereafter "PRES", Phoenix Holdco LP, hereafter "PHLP", Phoenix Advisors and Managers Ltd., Phoenix Advisors and Managers USA LLC, Thomas Priore, John Moon, Vishal Garg, and Raja Visweswaran (collectively along with Triaxx the "Released Parties") and each of the Released Parties' officers, directors, shareholders, employees, agents, affiliates, attorneys, heirs, successors, and assigns (collectively, with the Released Parties the "Releases") from any and all claims, actions, inactions, causes of action, suits, debts, agreements, promises, damages, judgments, liabilities, losses, expenses, and demands whatsoever, direct or indirect, in law or in equity, whether known or unknown, matured or not, which Limited Partner has had, or now has against any of them, including without limitation all claims for damages and attorney fees arising out of or relating any agreement between Triaxx and the Released Parties to PRES or any of the Released Parties or any payment made by Triaxx and the Released Parties to PRES or any of the Released Parties, or any agreement between PRES and PHLP and any distribution from PRES to PHLP and any distribution from PHLP to the Limited Partner.

40. Subsequently, on June 29, 2018, Plaintiff's father, Mr. Molberg, retained counsel in the Cayman Islands and sent a formal notice to Phoenix Cayman as the general partner pursuant to Section 8.4 of the LP Agreement requesting "an audit of all relevant books, records, accounts and materials of the Partnership for the purpose of understanding the financial position of the Partnership." Defendants ignored Mr. Molberg's formal notice.

41. Again, on July 31, 2018, Mr. Molberg sent another formal notice to Phoenix Cayman demanding that the "relevant books, records and materials of the Partnership will be available for review by [Mr. Molberg or his authorized representative] in accordance with clause 8.4 of the [LP Agreement] on 12 September 2018." Flouting their obligations under LP Agreement and to the Partnership, Defendants similarly ignored this demand.

42. Accordingly, on December 27, 2019, Plaintiff Molberg's undersigned counsel sent a third formal demand for books and records, but in this instance indicated Mr. Molberg and other Limited Partners' intent to commence legal action in the event of that Defendants refused access or failed to respond.

43. Although Defendants through Garg's then in-house litigation counsel at 1/0 Capital—Cristy Philips, Esq.—responded to the third demand, she imposed unjustifiable preconditions to providing access to the requested information in yet another attempt to circumvent Defendants' contractual and fiduciary obligations. In particular, Defendants refused to produce the Partnership's books and records unless: (1) Mr. Molberg and other Limited Partners executed another document acknowledging their pre-existing confidentiality obligations under the LP Agreement; and (2) Mr. Molberg and the other Limited Partners agreed not to share any disclosed information with their retained counsel.

44. Thereafter, on or about February 21, 2019, non-party Visweswaran emailed unaudited financial information for the years 2014-2019 to certain Limited Partners, but not to Mr. Molberg.

45. Although the Former General Partner was required to circulate the books and records of the Partnership pursuant to the LP Agreement, the unaudited financial information nonetheless contained yet another threat to divest the receiving party of its Partnership interest stating, “[INVESTOR NAME] UNDER THE CONFIDENTIALITY PROVISION OF THE LIMITED PARTNERSHIP AGREEMENT. ANY DISCLOSURE TO ANY THIRD PARTY WILL RESULT IN VIOLATION OF LP AGREEMENT AND FORFEITURE OF PARTNERSHIP INTEREST.”

46. Accordingly, on June 12, 2020, Plaintiff Molberg along with other Limited Partners (including Andrew Black, Celestino Amore, and Dr. Henry Balboa) commenced the Black LP Action alleging various claims against Defendant Phoenix Cayman, Defendant Garg, non-party

Raja Visweswaran³, non-party Nicholas Calamari and non-party Triaxx Holdco LLC, individually and collectively, for, among other things, fraud, violations of Cayman Law, breach of the LP Agreement, specific performance for the production of the Partnership's books and records, conversion of Partnership funds, conversion of the Partnership's ownership interest in the Triaxx CDOs' collateral manager, unjust enrichment, tortious inference, breach of fiduciary duty, and corporate waste.

47. A year after the commencement of the Black LP Action and in response to an order from this Court requiring the production of the Partnership's books and records, Defendants produced what they alleged to be an "audit" conducted by Moore Cayman for the years 2014-2019 concurrently on the same day. But the financial statements produced by the Defendants were not an "audit" and only confirmed Plaintiff Molberg's (and other Limited Partner's) numerous concerns regarding the mismanagement of the Partnership. The financial statements created by Moore Cayman state, among other things, that: (1) Moore Cayman disclaimed providing an opinion, citing that they were "unable to gather sufficient and appropriate audit evidence"; (2) they lacked sufficient evidence of all cash transactions; (3) they were unable to obtain sufficient independent third-party confirmations as to the existence, completeness and accuracy of amounts due from related parties; (4) they were unable to gather sufficient audit evidence as to the existence and valuation of the Partnership's liabilities due to the significant related party transactions; (5) found that capital distributions were not made in line with the allocation ratios of the LP Agreement; and, (6) found that Partnership funds had been transferred to a director's personal account.

³ Mr. Visweswaran was dismissed from the Black LP Action for lack of personal jurisdiction. Plaintiffs in that matter have filed their notice of appeal of Mr. Visweswaran's dismissal.

48. Thereafter, on January 23, 2023, Limited Partner Dr. Henry Balboa sent a request to Phoenix Cayman, Defendant Garg and non-party Visweswaran to provide copies of the annual reports containing the audited financial statements for the 2021 Fiscal Year. Defendants denied this request.

49. On January 29, 2023, Limited Partner Celestino Amore made a further request to the Former General Partner to provide copies of the annual reports containing the audited financial statements for the 2021 Fiscal Year, and Mr. Amore reminded Defendants of their obligations under the LP Agreement to distribute audited accounts.

50. Rather than send the contractually-mandated annual reports, Defendant Garg again refused to provide the requested financials, blaming the Black LP Action for Defendants' breach of their obligations under the LP Agreement:

I don't believe there is any cash distribution of \$9mm to phoenix in 2019 . If there was I wouldn't be lending the partnership money to pay its legal bills. We have \$13mm that is owed to phoenix stuck in a trust account with the cdo on account of the pimco lawsuit, partially due to the sheer idiocy of the Black suit and it's completely unfounded and bogus claims.

That is what we are working to get out for the benefit of all the LPs and those who are owed money by the partnership - those who are not sitting around throwing frivolous lawsuits at the people who actually work to save this entire deal from the train wreck it was destined to become post the collapse of ARAM.

Anyway, Celestino you are a party to the Black lawsuit and therefore adverse to the non litigating LPs and the partnership. You are partially the cause of the frivolous and wasteful lawsuit - so pls communicate via your counsel.

51. Because Defendants refused to provide the requested information to the Limited Partners, on February 16, 2023, Plaintiff Molberg circulated the 2020 year-end financials⁴ prepared by Moore Cayman to the Limited Partners. In that same email, Plaintiff Molberg also reiterated that the Limited Partners who are not named parties in the Black LP Action deserved transparency from the Phoenix Cayman into their investments in the Partnership. Defendants did not respond to Plaintiff Molberg's email.

D. The Trustee Action Trial and the April 28 Notice and Demand.

52. From April 17 to 21, 2023, a trial was held in the related Trustee Action, which interpleader plaintiff U.S. Bank National Association commenced as trustee of the Triaxx CDOs (the "Trustee") so that the district court may adjudicate the rights of several parties named as interpleader defendants with respect to (i) certain invoices to be paid to interpleader defendant PRES, and (ii) the payment of legal expenses incurred by Triaxx Asset Management and PRES in connection with the Trustee Action.

53. Among other things, Defendant Garg testified at trial that he did not believe there would be any "surplus profit"—*i.e.* funds to distribute to the Limited Partners—in the event of a litigation recovery by PRES because "costs would be enough that there would be no recovery." Remarkably, Garg testified those costs included "new bonuses that have been accrued" to himself and his inner group of associates—*i.e.* Ziggy Jonnsson, Mingsung Tang, Nicholas Calamari, and Dom Savino—in the amount of \$1M each from any litigation proceeds derived from the Trustee Action.

⁴ These financials were produced in the Black LP Action and were not marked "Confidential." Regardless, they fall within the scope of documents that the Limited Partners are entitled to under the LP Agreement.

54. In response to that testimony, on April 22, 2023, Raza Khan—a Limited Partner through his interest in Structured Credit Investco LLC and a shareholder of Phoenix Cayman through his interest in Phoenix Cayman’s parent Asian Castle—sent an email (the “April 22 Khan Email”) to the Limited Partners and the directors of Phoenix Cayman expressing concerns, among other things, about Defendant Garg’s intention to pay himself and his associates millions of dollars in bonuses and other expenditures that had been detrimental to the Partnership.

55. Concerned with the Partnership’s state of affairs and with Defendants’ refusal to provide the required financial statements, Plaintiff Molberg, for the benefit of the Partnership, properly served Phoenix Cayman a formal written notice of breach and demand on April 28, 2023 (the “April 28 Notice”).

56. The April 28 Notice identified Phoenix Cayman’s prior breaches of the LP Agreement—*i.e.* its refusal to provide the books and records of the Partnership or the annual audited financials. The April 28 Notice also demanded annual audited financial statements for Fiscal Year 2021 and quarterly reports for 2020, 2021, 2022, as well as Q1 2023. A true and correct copy of the Notice of Breach and Demand is annexed as **Exhibit 4**.

E. Defendants’ Refusal to Comply with the April 28 Notice

57. On May 3, 2023, and May 10, 2023, respectively, Defendants’ counsel, Matthew Maron—who is employed by Garg’s company 1/0 Capital—sent the Limited Partners two emails responding to the April 22 Khan Email and to the April 28 Notice. Significantly, neither email included audited financial statements for the Fiscal Year 2021 or quarterly reports for 2020, 2021, 2022 and Q1 2023. Instead, the emails provided a litany of excuses for Phoenix Cayman’s failure to provide the demanded information.

58. In his May 3, 2023 email, which removed Mr. Khan as a recipient, Mr. Maron claimed, among other things, that \$11 million was being held in escrow related to the Trustee

Action and that the money should be paid to PRES pending the outcome of that litigation. Mr. Maron also claimed that no decisions had been made as to how that money, if received, would be used on behalf the Partnership. A true and correct copy of Mr. Maron's correspondence is annexed hereto as **Exhibit 5**.

59. In his May 10, 2023 email, Mr. Maron responded to the April 28 Notice by, among other things, asserting that the Partnership's auditor, Moore Cayman, had been acquired by another firm in late August 2022 and had resigned as the Partnership's auditor, citing these nine-month old developments as pretexts for Phoenix Cayman's failure to prepare and provide audited financials. Mr. Maron claimed that Phoenix Cayman had made attempts to engage a replacement auditor, however failed to provide documentation reflecting these purported efforts. *Id.*

60. Even though there was no reason why Phoenix Cayman could not have internally prepared quarterly financial statements, neither of Mr. Maron's May 3, 2023 or May 10, 2023 emails attached any such statements. *Id.*

61. Instead, well after the 30-day cure period following Phoenix Cayman's receipt of the April 28 Notice, Mr. Maron has sent sporadic emails attaching the Partnership's bank statements.

62. Moreover, Phoenix Cayman has persistently alleged that the preparation of the annual audit and quarterly reports has been cost prohibitive, and a reason why it chose not to prepare the contractually-required financials.

63. Yet, from 2014 to 2018, Defendant Garg was enriching himself with Partnership funds by (i) taking millions in discretionary bonuses from Partnership-related entities, transferring over \$1.5M to his personal bank account from the Partnership's wholly owned subsidiary PSCIL, and (ii) paying himself at least \$800,000.00 in director fees from entities within the Partnership.

64. To date, Defendants still have not provided audited financials for Fiscal Year 2021 and 2022. Nor have they provided quarterly reports for 2020, 2021, 2022 and the Q1 2023 (although they have provided some bank statements following the Removal Resolution—*see infra*). Nor have they engaged a new auditor because every firm they have allegedly approached, has refused the engagement due to Moore Cayman's disclaimed opinion.

F. Removal of the Phoenix Cayman as General Partner

65. Weary of Defendants' continued refusal to comply with their obligations under the LP Agreement, their hollow excuses, and their failure to produce the financials demanded in the April 28 Notice, the Limited Partners chose to exercise their right to remove Phoenix Cayman as general partner pursuant to the terms of the LP Agreement.

66. Section 6.1(d) of the LP Agreement permits the Limited Partners to remove the general partner for Cause, and upon such removal, the general partner is divested in its rights and interests to the Partnership, including distributions:

(i) Notwithstanding anything contained herein to the contrary, the General Partner may (A) withdraw from the Partnership in accordance with the Act or (B) ***be removed with Cause upon the affirmative act of a Supermajority in Interest. Following such General Partner's removal or withdrawal, upon the affirmative act of a Supermajority in Interest, a new General Partner shall be appointed effective as of the date of such removal or withdrawal and the business of the Partnership shall be continued.***

(ii) Upon the General Partner's removal or withdrawal pursuant to Section 6A(d)(i), the departing General Partner shall have the option, exercisable prior to the effective date of the withdrawal or removal of such departing General Partner, to require (A) the retirement and redemption of its General Partnership Interest in accordance with the terms of this Agreement or (B) the purchase of its General Partner Interest by the successor General Partner, in each case for an amount in cash equal to (x) the aggregate amount of Capital Contributions funded by the departing General Partner plus (y) any accrued but unpaid amounts due to the departing General Partner under Section 5.1 or Section 10.2. Such amounts shall be determined as of the effective date of the departing General

Partner's withdrawal or removal and shall be paid either: (I) in full as of the effective date of the departing General Partner's withdrawal or removal; or (II) by the departing General Partner continuing to receive distributions pursuant to Section 5.1 or Section 10.2 until such departing General Partner has received distributions in an aggregate amount equal to the amount due to such departing General Partner under this Section 6.1(d).

(iii) The departing General Partner shall be entitled to receive indemnification pursuant to Section 6.5, but shall otherwise have no further right, title or interest in the Partnership (including without limitation any distributions as provided for in Section 5.1 and Section 10.2 that accrue after the date of removal or withdrawal of the departing General Partner).

67. A material breach of the general partner's obligations under the LP Agreement—*i.e.* failure to distribute the Partnership's books and records or prepare annual audited financial statements—falls within the scope of the definition of "Cause":

"Cause" means the General Partner: (a) has been found by a court of competent jurisdiction in a non-appealable judgment to have committed an act of fraud, willful misconduct or misappropriation of funds with respect to the Partnership; (b) has been convicted of, or pleads *nolo contendere* to, a felony involving moral turpitude or any crime involving fraud, theft or dishonesty that has a direct, material and adverse impact on the business of the Partnership; or (c) ***has committed a knowing, willful and material breach of this Agreement that is not cured within 30 days after the General Partner's receipt of a notice from the Partnership with respect to such breach.***

68. As discussed above, because Defendants failed to produce the financial statements demanded in the April 28 Notice within the 30-day cure period, on June 5, 2023, the Cayman Islands law firm Appleby Global, with the assistance of New York and UK counsel, proctored a vote by written Removal Resolution for the removal and replacement of Phoenix Cayman as the general partner of Phoenix Holdco. A true and correct copy of the Removal Resolution is annexed hereto as **Exhibit 6**.

69. After receiving the Removal Resolution, a Supermajority of over 78% of the Limited Partners (which included 12 different individuals) resolved to remove Phoenix Cayman as the general partner of Phoenix Holdco.

70. The Supermajority also resolved to replace Phoenix Cayman with Blue Bear Ltd.

71. Upon information and belief, after receipt of the Written Resolution, Defendants and non-party Visweswaran made efforts to thwart the vote and the Removal Resolution.

72. Further, after the Removal Resolution was passed by the Supermajority, rather than remove themselves from the operations and affairs of the Partnership following the decision of the Supermajority as required under the LP Agreement, Defendants have instead self-servingly declared the Removal Resolution “null and void,” erroneously claiming, among other things, that: (i) they had been unsuccessful in finding a replacement auditor for nine months despite exerting commercially reasonable efforts; (ii) it was too expensive to prepare financial statements, even though Garg absconded millions for himself from the Partnership and put no cash into reserve for operating expenses; (iii) the Partnership’s “scarce resources” were allocated to outside counsel to recover the monies sought in the Trustee Action; (iv) the effort to remove Phoenix Cayman was “wrongheaded” because it was purportedly “spearheaded” by counsel in in the Black LP Action, which Defendants have declared to be “meritless;” and (v) the Removal Resolution had an improper purpose to divest Phoenix Cayman of funds it purported to be entitled to from the \$11M placed in escrow in the Trustee Action, even though the plain language of the LP Agreement—which was signed by Phoenix Cayman—is clear that the Former General Partner is divested of its interest to distributions upon removal.

73. To date, despite the will of the Supermajority and the valid Removal Resolution, Phoenix Cayman, Garg and non-party Visweswaran have refused to relinquish operational control of the Partnership.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **(Declaratory Judgment)**

74. Plaintiffs incorporate by reference and realleges each and every allegation contained in the paragraphs above as if fully set forth herein.

75. An actual controversy exists between Plaintiff Molberg derivatively on behalf of the Partnership and Phoenix Cayman concerning the legality and/or enforceability of the Limited Partners' removal of the Former General Partner and appointment of the New General Partner.

76. Adjudication of this dispute by entry of judgment concerning the validity of the removal is necessary and appropriate under the existing facts and circumstances.

77. Judgment will serve a useful purpose in clarifying and settling the legal relationship between Plaintiff derivatively on behalf of Phoenix Holdco, Phoenix Cayman, and the Partnership.

78. By reason of the foregoing, pursuant to N.Y. C.P.L.R § 3001, Plaintiffs request a declaratory judgment that the Supermajority's removal of Phoenix Cayman is valid and enforceable, and that the New General Partner is the sole general partner of the Partnership.

SECOND CAUSE OF ACTION **(Attorney's Fees)**

79. Plaintiffs incorporate by reference and reallege each and every allegation contained in the paragraphs above as if fully set forth herein.

80. Section 12.8 of the LP Agreement provides for reasonable attorney's fees and costs to the prevailing party.

81. By reason of the Defendants' breaches and conduct set forth above, Plaintiff Molberg is entitled to reasonable attorney's fees and costs from Phoenix Cayman and Garg.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Molberg derivatively on behalf of Phoenix Holdco along with Plaintiff Blue Bear Ltd. as the New General Partner, prays for judgment and relief as follows:

A. On the First Cause of Action against Defendants Phoenix Cayman and Garg, declaring that the Removal Resolution and removal of Phoenix Cayman is valid and enforceable, and that the New General Partner is the sole general partner of the Partnership;

B. On the Second Cause of Action against Defendants Phoenix Cayman and Garg awarding reasonable attorney's fees and costs in favor of the Plaintiff Molberg in an amount to be determined at trial, plus pre-judgment and post judgment interest thereon; and

C. Granting such other and further relief as this Court deems just and proper.

Dated: August 9, 2023

Respectfully submitted,

By: /s/ Rachael A. Kierych

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