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,

- against -

PHOENIX CAYMAN LTD. and VISHAL GARG,

Defendants.

Index No. 653841/2023

Hon. Nancy Bannon (Part 61)

Mot. Seq. 004

DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ATTORNEY'S FEES

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TABLE OF CONTENTS

TABLE OF AUTHORITIES III
PRELIMINARY STATEMENT 1
ARGUMENT 5
I. Under The LP Agreement, Plaintiffs Are Liable For Attorney's Fees, Expenses And Costs Incurred By Defendants In Defending This Meritless Case 5
A. The "Costs of Litigation" Provision In The LP Agreement Is Enforceable Under New York Law 6
B. The "Costs of Litigation" Provision Applies Here Because This Litigation Pertains To The Partnership Affairs And The LP Agreement, And Because Defendants Are The Prevailing Parties 6
C. The Attorney's Fees Sought By Defendants Are Reasonable 7
CONCLUSION 15
WORD COUNT CERTIFICATION 17

TABLE OF AUTHORITIES

CASES

264 Sears Road Corporation v. Exxon Mobile Corporation,
No. 09-CV-889 (NGG)(JMA), WL 4506973 (E.D.N.Y., August 22, 2013) 11
43rd St. Deli, Inc. v. Paramount Leasehold, L.P.,
178 A.D.3d 411 (1st Dep't 2019)..... 6
Bd. of Managers of Foundry at Washington Park Condo. v. Foundry Dev. Co.,
142 A.D.3d 1124 (2d Dep't 2016) 11
Bd. of Managers of Foundry at Washington Park Condo. v. Foundry Dev. Co.,
44 Misc. 3d 550 (Sup. Ct. Orange Cnty. May 28, 2014) 11
Blackstone Tech. Group, Inc. v. Moll,
No. 650858/2023, 2023 WL 3374530 (Sup. Ct. N.Y. Cnty. May 10, 2023) 6
Breest v. Haggis,
No. 161137/2017, 2023 WL 2403936 (Sup. Ct. N.Y. Cnty. Mar. 08, 2023)..... 10
Broadcast Music v. R Bar,
919 F.Supp.656 (S.D.N.Y. 1996)..... 12
Cohen v. Bus. Payments Sys., LLC,
92 A.D.3d 467 (1st Dep't 2012)..... 6
Cowen & Co., LLC v. Reshape Lifesciences, Inc.,
No. 654817/2021, 2022 WL 17475683 (Sup. Ct. N.Y. Cnty. Dec. 6, 2022) 6
In the Matter of Greenpoint Hospital Community Board,
114 AD 2d 1028 (2d Dep't 1985) 11
Leitner v. BBG, Inc.,
No. 652263/2018, 2018 WL 3201910 (Sup. Ct. N.Y. Cnty. June 29, 2018) 7
LLM Capital Partners, LLC, v. Mill Point Capital, LLC,
No. 653606/2022, 2024 WL 1284109 (Sup. Ct. N.Y. Cnty. March 26, 2024) 7
Matter of Thomas B. v. Lydia D.,
120 A.D.3d 446 (1st Dep't 2014)..... 8
Shi v. Alexandratos,
No. 160529/13, 2017 WL 3834845 (Sup. Ct. N.Y. Cnty. Sep. 01, 2017) 8

Sykes v. RFD Third Ave. I Assocs., LLC,
39 A.D.3d 279 (1st Dep't 2007)..... 7
Travelers Ins. Co. v. Commissioners of State Ins. Fund,
227 A.D.2d 208 (1st Dep't 1996)..... 11
Video-Cinema Films, Inc. v. Cable News Network, Inc.,
No. 98-CV-7 I 28, 2004 WL 213032 (S.D.N.Y., February 4, 2004) 11, 12
Wolf Haldenstein Adler Freeman & Herz LLP v. 270 Madison Ave. Assocs. LLC,
No. 652297/2021, 2021 WL 5449600 (Sup. Ct. N.Y. Cnty. Nov. 22, 2021)..... 6

Defendants Phoenix Cayman, Ltd. ("Phoenix Cayman") and Vishal Garg (collectively, "Defendants") respectfully submit this memorandum of law in support of their motion for attorney's fees, expenses and costs incurred in connection with the now-dismissed above referenced action brought by Blue Bear Ltd. ("Blue Bear") and Karoline Molberg (collectively, "Plaintiffs").

PRELIMINARY STATEMENT

This motion for attorney's fees arises out of an unsuccessful and improper attempt by Ms. Molberg and other limited partners ("LPs") of Phoenix Holdco LP ("Phoenix Holdco" or the "Partnership") to try to obtain additional money from Mr. Garg beyond the substantial returns they already have received, and beyond that to which they could conceivably be entitled as investors in the Partnership. The failed case was, in essence, an attempt to collaterally attack another litigation also before this Court—*Black et al. v. Phoenix Cayman Ltd. et al.*, Index No. 652460/2020 ("*Black*").

Ultimately, on February 20, 2025, the Supreme Court Appellate Division, First Department (the "First Department"), reversed Justice Barry Ostrager's denial of Defendants' Motion to Dismiss, holding that a letter sent by Ms. Molberg (the "Molberg Letter") to Defendants was defective and failed to trigger the necessary cure period "under the subject LP Agreement" and that this letter, "did not," as was required, "put [D]efendants on a notice that a 'knowing, willful and material breach' of the LP Agreement had already occurred . . . ." (NYSCEF 216). On February 27, 2025, this Court entered a decision marking the case "as disposed." (NYSCEF 218).

Having successfully won dismissal of this action, Defendants now move to enforce their contractual right to attorney's fees, expenses and costs under the Partnership's governing agreement (the "LP Agreement"). As explained below, Plaintiffs' complaint was plainly devoid

of merit, and nothing more than a run-around of the *Black* action to try to extract money from Mr. Garg to which they have no conceivable right.[1] In an effort to defend this meritless lawsuit, Defendants retained the services of cost-effective yet well-recognized outside counsel from the firm Morvillo Abramowitz Grand Iason & Anello, P.C. ("Morvillo Abramowitz"), which—together with Mr. Garg's in-house counsel—efficiently and successfully guided the case to dismissal. Accordingly, pursuant to Defendants' contractual right to recover attorneys' fees, expenses, and costs (referred to jointly as "fees" or "attorney's fees") under the parties' Limited Partnership Agreement ("LP Agreement") and consistent with their counterclaim for such fees, Defendants respectfully ask the Court to issue an order directing Plaintiffs to pay the attorney's fees incurred by Defendants in defending this action.

BACKGROUND

Since 2020, Ms. Molberg and three other LPs have been using the *Black* litigation to try to extract money from Mr. Garg to which they have no conceivable right—using burdensome discovery requests, manufactured discovery disputes, baseless assertions of discovery misconduct, and repeated applications to extend discovery as weapons to try to achieve their unjust ends. After years of litigation, the LPs' efforts to expand discovery in *Black* reached a dead end. The LPs were therefore forced to abandon their strategy and file the note of issue. The record in *Black* supports what Mr. Garg has said all along: the plaintiff LPs have received the Partnership money to which they are entitled and more—their initial investment, plus an 8% preferred return and an additional over $2 million.[2]

[1] Plaintiffs sued Mr. Garg personally despite the fact that Plaintiffs' sole issue centered around Phoenix Cayman's alleged failure to provide financials. It is clear that Mr. Garg was named personally to harass him, make him spend money, create headlines, and to try to extort a settlement.

[2] On July 28, 2022, this Court dismissed one of the conversion counts in its entirety, dismissed a named defendant from the case, and significantly limited the counts specific to Mr. Garg. Then, on January 9, 2025, the First Department issued a decision which severely narrowed the scope of the *Black* case, dismissing five counts entirely (including for

As a result, the LPs devised a new scheme: (i) manufacture a contrived claim that Phoenix Cayman (the Partnership's General Partner ("GP")) breached its obligation under the Partnership's LP Agreement to provide the LPs with certain recent financial statements (which, under the circumstances, any reasonable investor would find immaterial), and (ii) use the manufactured claim to try to force Phoenix Cayman's removal as the GP in favor of a new general partner, Blue Bear, controlled by the LPs.

The LPs sought to do this as a means to stop Mr. Garg from causing the GP to pay incurred expenses and other fees that are due to him, as well as individuals or entities associated with him, for the money they invested and the work they performed in furtherance of the Partnership—which enabled the Partnership to obtain substantial returns. That work has included the GP operating the Partnership since 2018 without receiving any of the remuneration, in the form of distributions, reimbursements or otherwise, which it is entitled. The LPs hoped to replace the GP so that, instead, they could direct Blue Bear, as the new general partner, to pay the money to themselves.

But, as held by the First Department, the new scheme suffered from a fatal legal defect: in seeking to effectuate the removal of Phoenix Cayman based on a purported "knowing, willful and material breach" of the LP Agreement, the LPs failed to comply with the express requirement of the LP Agreement that they provide Phoenix Cayman with "a notice from the Partnership with respect to such breach" sufficient to trigger the LP Agreement's 30-day "cure[]" period. (Berland Aff. Ex. A (LP Agreement, § 6.1(d))). Instead, Ms. Molberg intentionally sent a letter to Phoenix Cayman, dated April 28, 2023, that did everything it could to avoid suggesting that it was meant to be "a notice from the Partnership with respect to such [a] breach."

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fraud and breach of fiduciary duty), dismissed four more defendants, and significantly limited the remaining counts. There are now merely four substantive counts remaining, and two defendants (out of what was once an expansive 12-count complaint with seven defendants), and only one claim has survived against Mr. Garg.

On September 22, 2023, Defendants moved to dismiss the Complaint on these very grounds.[3] (NYSCEF 51). During an October 18, 2023 hearing—at which Justice Barry Ostrager did not hear argument from either party on the motion—(NYSCEF 105) and in a written order issued on October 20, 2023 (NYSCEF 86), Justice Ostrager summarily denied the motion.

On August 15, 2024, Defendants appealed Justice Ostrager's decision on two grounds. First, that the trial court disregarded well-settled law that parties to a contract must adhere strictly to that contract's notice provisions. (Appellate No. 2023-05964 at NYSCEF 7). In failing to apply that law, Justice Ostrager improperly discredited (and, indeed, failed to address completely) Defendants' contention that the Molberg Letter was not "from the Partnership," as required by the LP Agreement, and therefore deficient. Justice Ostrager erred when he disregarded, among other things, that the Molberg Letter contains *none* of the contractually necessary language to suggest it was "from the Partnership" (it begins "I write," is signed "Karoline Molberg, Executor of the Estate of Erik Molberg," and contains no suggestion that it was sent on behalf of anyone other than Ms. Molberg in her capacity as executor of the estate of her father). (*Id.*)

Second, also in the face of controlling case law compelling strict adherence to the terms of the LP Agreement, Justice Ostrager improperly summarily concluded that the Molberg Letter "sufficiently identified the existence of a breach of the LP [Agreement]." (*Id.*) However, there was likewise no plausible basis to reach that conclusion because the Molberg Letter did not contain *any* language suggesting that it was alleging a "knowing, willful and material breach" of the LP Agreement that would trigger the "cure[]" period, and from which drastic consequences (*i.e.*, a "Cause" removal) could flow. Indeed, the Molberg Letter was bereft of even a single term to suggest that it was intended to be a "notice" of a supposed "knowing, willful and material breach"

[3] This defense was also fully raised in Defendants' Answer and Counterclaims (*see* NYSCEF 106), in which Defendants also raised an affirmative counterclaim for attorney's fees under the LP Agreement (*see id.*, at ¶¶ 55-56).

of the LP Agreement (such as "notice," "breach," "knowing," "willful" or "material"). (*Id.*) The Molberg Letter was, at most, a document demand.

Defendants contended that because the Molberg Letter did not come close to satisfying the notice requirements under the LP Agreement, Justice Ostrager should have concluded that Ms. Molberg's and the other LPs' effort to remove the GP and replace it with Blue Bear was invalid, that Plaintiffs therefore had no viable claims, and that the First Department should therefore reverse Justice Ostrager's order and dismiss the Complaint. (*Id.*)

On February 20, 2025, the First Department agreed with Defendants and unanimously reversed Justice Ostrager's denial of Defendant's Motion to Dismiss, *with costs*, finding that "dismissal of this action is warranted be because the April 28, 2023 letter did not trigger the 30-day cure period under the subject LP Agreement . . . [and] . . . the letter also did not provide notice of any breach – of § 8.2 or any other provision of the LP Agreement." (NYSCEF 216). The First Department decision fully and unequivocally closed the door on Plaintiff's multi-year attempt to improperly oust Phoenix Cayman as the GP in favor of Blue Bear. Finally, on February 27, 2025, this Court entered a decision marking the case "as disposed." (NYSCEF 218).

ARGUMENT

I. UNDER THE LP AGREEMENT, PLAINTIFFS ARE LIABLE FOR ATTORNEY'S FEES, EXPENSES AND COSTS INCURRED BY DEFENDANTS IN DEFENDING THIS MERITLESS CASE

Defendants are unquestionably the prevailing parties in this action, having prevailed entirely on their motion to dismiss. Accordingly, pursuant to the LP Agreement, Plaintiffs are liable to Defendants for attorney's fees. The fees sought in this motion are reasonable.

A. The "Costs of Litigation" Provision In The LP Agreement Is Enforceable Under New York Law

Section 12.9 of the LP Agreement, titled "Costs of Litigation," awards reasonable attorney's fees as follows:

> In any legal or mediation proceedings, or other actions between the Partners to enforce any of the terms or conditions of this Agreement or of any other contract relating to the Partnership, or any action in any other way pertaining to Partnership affairs or this Agreement, *the prevailing party*, in addition to any other damages or compensation received, shall be entitled to recover that party's litigation or mediation costs, *including reasonable attorney's fees, expenses and costs of any appeals*.

(emphasis added) (Berland Aff. Ex. A). This provision is enforceable under well-settled precedent. *See*, *e.g.*, *43rd St. Deli, Inc. v. Paramount Leasehold, L.P.*, 178 A.D.3d 411, 412 (1st Dep't 2019) ("[T]he prevailing litigant [can collect] attorneys' fees from its unsuccessful opponents . . . when an award is authorized by agreement between the parties."); *Cohen v. Bus. Payments Sys., LLC*, 92 A.D.3d 467, 469 (1st Dep't 2012) (awarding attorney's fees pursuant to prevailing party provision in contract); *Blackstone Tech. Group, Inc. v. Moll*, No. 650858/2023, 2023 WL 3374530, at *2 (Sup. Ct. N.Y. Cnty. May 10, 2023) (Ostrager, J.) (same); *Cowen & Co., LLC v. Reshape Lifesciences, Inc.*, No. 654817/2021, 2022 WL 17475683, at *2 (Sup. Ct. N.Y. Cnty. Dec. 6, 2022) (Ostrager, J.) (same); *Wolf Haldenstein Adler Freeman & Herz LLP v. 270 Madison Ave. Assocs. LLC*, No. 652297/2021, 2021 WL 5449600, at *4 (Sup. Ct. N.Y. Cnty. Nov. 22, 2021) (Ostrager, J.) (same).

B. The "Costs of Litigation" Provision Applies Here Because This Litigation Pertains To The Partnership Affairs And The LP Agreement, And Because Defendants Are The Prevailing Parties

The "Costs of Litigation" provision of the LP Agreement applies here. First, this litigation unquestionably "pertain[s] to the Partnership affairs" and "th[e] [LP] Agreement." (Berland Aff. Ex. A). Indeed, Plaintiffs commenced this action to attempt—albeit unsuccessfully, and by

defective means—to remove Phoenix Cayman as the GP by enforcing Section 6.1(d) of the LP Agreement. (*See, e.g.*, NYSCEF 2).

Second, Defendants are the prevailing parties in this action. As the First Department has made clear: to be considered a "prevailing party," one must simply prevail on the central claims advanced, and receive substantial relief in consequence thereof. *LLM Capital Partners, LLC, v. Mill Point Capital, LLC*, No. 653606/2022, 2024 WL 1284109, at *2 (Sup. Ct. N.Y. Cnty. March 26, 2024) (Bannon, J.); *see also Sykes v. RFD Third Ave. I Assocs.*, LLC, 39 A.D.3d 279, 279 (1st Dep't 2007) (citations omitted).

On February 20, 2025, the First Department reversed Justice Ostrager's denial of Defendants' Motion to Dismiss, and dismissed this case in its entirety, holding that Ms. Molberg's defective notice to Defendants failed to trigger the cure period "under the subject LP Agreement" and that the subject notice "did not put [D]efendants on a notice that a 'knowing, willful and material breach' of the LP Agreement had already occurred . . . ." (NYSCEF 216).

It is indisputable that Defendants are the "prevailing parties" in this action, as they did not merely prevail on the "central claims" advanced by Plaintiffs and receive "substantial" relief—they prevailed on *every* claim and received *complete* relief. *See e.g.*, *Leitner v. BBG, Inc.*, No. 652263/2018, 2018 WL 3201910, at *5 (Sup. Ct. N.Y. Cnty. June 29, 2018) (Ostrager, J.) (holding defendant is "of course, the prevailing party" when it prevailed on all of its claims).

Accordingly, Defendants are entitled to reasonable attorney's fees, expenses and costs incurred in connection with the now-dismissed action and Plaintiffs are obligated to pay them.

C. The Attorney's Fees Sought By Defendants Are Reasonable

The attorney's fees sought by Defendants in the amount of $740,225.60 for Morvillo Abramowitz fees (incurred between approximately April 2, 2023 and approximately March 29, 2024) and in-house counsel fees in the amount of $349,654.00 (incurred between approximately

April 1, 2024 and the present)—for total attorneys' fees of $1,089,879.60[4]—are reasonable. The determination of reasonable attorney's fees "is a matter within the sound discretion of the trial court and, in the absence of an abuse of discretion, will be upheld." *Matter of Thomas B. v. Lydia D.*, 120 A.D.3d 446, 446 (1st Dep't 2014).

The reasonableness of a request for attorney's fees is based on the following factors: (1) the nature and extent of the services; (2) the actual time spent; (3) the necessity therefor; (4) the nature of the issues involved; (5) the professional standing of counsel; and (6) the results achieved. *See Shi v. Alexandratos*, No. 160529/13, 2017 WL 3834845, at *4 (Sup. Ct. N.Y. Cnty. Sep. 01, 2017) (Ostrager, J.) (collecting First Department cases). Here, each of the factors support the requested award.

First, through this case, Plaintiffs created a scheme to (i) manufacture a contrived claim that Phoenix Cayman breached its obligation under the LP Agreement, and (ii) use the manufactured claim to try to force Phoenix Cayman's removal as the GP in favor of a new general partner, Blue Bear, controlled by the LPs. This action needed to be vigorously defended, and such defense included, *inter alia*, (i) opposing Plaintiffs' motion for a preliminary injunction, which included preparing for and leading a full-blown preliminary injunction hearing at which at least five witnesses were examined (Morvillo Abramowitz); (ii) drafting motion to dismiss papers and preparing for and attending oral arguments concerning dismissal (Morvillo Abramowitz); (iii) drafting an answer with counterclaims (Morvillo Abramowitz); (iv) conducting document discovery, which included preparing document demands, collecting documents from several custodians, reviewing those documents for relevance and privilege, preparing productions, and

[4] Both Morvillo Abramowitz and in-house counsel have provided Defendants a rate reduction of 20% for attorneys billing time, bringing Morvillo Abramowitz's attorney's fees from $925,282.00 to $740,225.60, and in-house counsel's imputed fees from $437,067.50 to $349,654.00.

reviewing Plaintiffs' production (in-house counsel); (v) defending and taking multiple depositions, as well as preparing witnesses for these depositions (in-house counsel); (vi) opposing Plaintiffs' motion for summary judgment, which they submitted mid-discovery (in-house counsel); (vii) perfecting and completing the winning appeal, including drafting appellate briefs with supporting materials and preparing for and arguing the appeal at the First Department (in-house counsel); and (viii) conducting all necessary research and strategizing in connection with the foregoing. Accordingly, notwithstanding that the claims were entirely without merit, the nature of the matter was serious in that it sought to remove Phoenix Cayman as the general partner of the Partnership, and thus required a commensurate defense, which entailed significant litigation over an 18-month period until the case was ultimately dismissed.

Next, the detailed invoices attached as exhibits to the accompanying attorney affirmations show that counsel (with the assistance of paralegals) at Morvillo Abramowitz, as well as Mr. Garg's in-house counsel, performed the necessary work efficiently and at hourly rates reasonable for the value of the services that were required to be performed. The invoices establish a total of 1,238.70 hours expended by Morvillo Abramowitz and 533.20 hours by in-house counsel in defending this action from 2023 to 2025. The majority of that time was spent conducting legal research underlying the potential claims and defenses of the action; drafting multiple briefs filed in connection with the motion to dismiss, the preliminary injunction, the summary judgment motion (which was solely, and prematurely, brought by Plaintiffs); drafting responsive pleadings; completing the appeal; and preparing for and attending oral arguments and hearings in connection with the aforementioned motions and appeal, all of which was necessary to defend against Plaintiffs' meritless claims and achieve full dismissal. Moreover, the invoices reflect an efficient utilization of associates and paralegals from Morvillo Abramowitz for commensurate tasks. The

total amount of legal fees incurred in this timeframe, before the applied 20% rate-reduction, is $925,282.00 from Morvillo Abramowitz and $437,067.50 from in-house counsel.

Morvillo Abramowitz is a New York-based law firm with a nationally recognized complex commercial litigation practice. As detailed in an accompanying affirmation, Christopher Harwood, the lead partner on this matter, is a recognized trial lawyer with a proven track record of success. He has extensive experience representing hedge funds, private equity firms, and public companies in the areas of commercial, securities and antitrust litigation.

The professionals and legal support staff at the Morvillo Abramowitz are required to keep time records contemporaneously as work is performed. Time records are entered into the firm's computerized time and billing system by attorneys or their legal assistants. Mr. Harwood's hourly billing rate during this litigation was $920 per hour. This was a reduced hourly rate. The remaining rates of the attorneys and support staff whose services were rendered to Defendants ranged from $545 to $755 per hour for associates, and $325 to $375 per hour for legal support staff.

In New York, "the reasonable hourly rate should be based on the customary fee charged for similar services by lawyers in the community with like experience and of comparable reputation to those by whom the prevailing party was represented." *Breest v. Haggis*, No. 161137/2017, 2023 WL 2403936, at *2 (Sup. Ct. N.Y. Cnty. Mar. 08, 2023) (citation omitted). "In most communities, the marketplace has set a value for the services of attorneys, and the hourly rate charged by an attorney for his or her services will normally reflect the training, background, experience and skill of the individual attorney." *Id.* The rates billed by Morvillo Abramowitz for its work on this matter are either below or commensurate with the rates charged by other comparable New York based law firms. The set hourly rates Morvillo Abramowitz applies are commensurate with each of its attorney's and legal support staff member's experience. Based upon

the qualifications and experience of Morvillo Abramowitz lawyers, this amount is fair and reasonable. Moreover, while Morvillo Abramowitz's set rates are reasonable on their own, here, the firm's rate reduction for Defendants of 20% for attorneys billing time to this matter further establishes their reasonableness.

This Court should also award attorney's fees incurred by Mr. Garg's in-house counsel from the time Morvillo Abramowitz withdrew and Mr. Garg's in-house counsel stepped in as lead counsel. During that period (from approximately April 1, 2024 through present), in-house counsel, *inter alia*, performed substantial document discovery, drafted the opposition to Plaintiffs' motion for summary judgment, prepared witnesses for depositions and took/defended these depositions, and perfected and argued the First Department appeal. "[A]ttorneys' fees and costs should be awarded for litigation performed by in-house counsel if such fees would be awarded for the same work performed by outside counsel . . . ." *264 Sears Road Corporation v. Exxon Mobile Corporation*, No. 09-CV-889 (NGG)(JMA), WL 4506973, at *8 (E.D.N.Y., August 22, 2013) (citing *Video-Cinema Films, Inc. v. Cable News Network, Inc.*, Nos. 98-CV-7 I 28, 2004 WL 213032 (S.D.N.Y., February 4, 2004)); *see also Travelers Ins. Co. v. Commissioners of State Ins. Fund*, 227 A.D.2d 208, 209 (1st Dep't 1996) (concluding that in-house counsel fees should be included in "legal defense costs" because the choice to use in-house counsel "should not result in free legal work"); *In the Matter of Greenpoint Hospital Community Board*, 114 AD 2d 1028, 1032 (2d Dep't 1985); *Bd. of Managers of Foundry at Washington Park Condo. v. Foundry Dev. Co.*, 44 Misc. 3d 550, 559 (Sup. Ct. Orange Cnty. May 28, 2014) *aff'd,* 142 A.D.3d 1124 (2d Dep't 2016) (concluding that a party whose in-house attorney "used his professional time, knowledge and experience to defend his firm" was entitled to recover fees and costs for that in-house attorney's services).

As detailed in an accompanying affirmation, Jason Berland, lead in-house counsel for Defendants, has been litigating for more than twenty-years (having spent the first almost eight years as a Manhattan prosecutor), and spent over eleven years as a partner at two New York City law firms, including more than five years as the Chair of the White-Collar Group of a litigation boutique. Mr. Berland has tried more than thirty cases. Mr. Berland's last law-firm billing rate, while at the New York firm Lewis Baach Kaufmann Middlemiss PLLC, was $850 per hour in May 2022 (and would be over $1,000 per hour today in private practice based on seniority and experience). Likewise, Nathan Schwartzberg joined Defendants' in-house team in April 2024, after over seven years in private practice, most recently at Kramer Levin Naftalis & Frankel LLP, and serving as a judicial law clerk for a U.S. Magistrate Judge for the U.S. District Court for the Southern District of New York. His most recent law firm billing rate was $1,050 per hour.

The accompanying affirmations of in-house counsel set forth the time and work in-house counsel performed on this matter, akin to a timesheet typically generated by outside law firms. *See* *Video-Cinema Films*, 2004 WL 213032, at *8. Because in-house counsel also represented Defendants in this matter, the attorneys performed the functions that would typically be performed by a combination of partners and associates at an outside law firm. *See id*. Defendants submit that this Court should apply the rates (after the applied 20% discount) used by Morvillo Abramowitz partners and associates, as courts usually determine an appropriate fee for in-house counsel's services based on what the appropriate fee would be for work performed by "independent counsel for similar services." *Broadcast Music v. R Bar*, 919 F.Supp.656, 661 (S.D.N.Y. 1996). Defendants' in-house team replaced the Morvillo Abramowitz team and did the same work, at the same duration and level, and with complete success—ultimately prevailing completely after

perfecting the winning appeal (which included drafting thorough appellate briefs) and arguing the appeal in court.

Defendants therefore respectfully submit that this Court award $920 per hour to Defendants for the work performed by Mr. Berland, which mirrors the rate for Mr. Harwood (before the applied 20% discount), and $755 per hour for the work performed by Mr. Schwartzberg, which mirrors the rate for a Morvillo Abramowitz associate of comparable seniority to work on this case (before the applied 20% discount), for a total of $349,654.00 in in-house attorneys' fees (after the applied 20% discount).

For the Court's reference, below is a chart setting out (i) each attorney/paralegal who worked toward securing dismissal of the case; (ii) their hourly rate; (iii) each attorney/paralegal's total hours worked; (iv) each attorney/paralegal's total dollars billed; and (v) grand totals for hours worked and dollars billed.

Morvillo Abramowitz Employee	Hourly Rate	Total Hours	Total Dollars Billed
Christopher B. Harwood (partner)	$920	301.50	$277,380.00
Karen R. King (partner)	$920	26.20	$24,104.00
Margaret N. Vasu (associate)	$755	31.30	$23,631.50
Megan E. Knepka (associate)	$730	64.60	$47,158.00
Penina C. Moisa (associate)	$730	7.00	$5,110.00
	$710	89.80	$63,758.00
Daniel P. Gordon (associate)	$730	24.60	$17,958.00
	$710	138.80	$98,548.00

Jordan L. Weatherwax (associate)	$710	108.50	$77,036.00
	$690	79.80	$55,026.00
Christian B. Ronald (associate)	$690	274.60	$189,474.00
	$660	13.30	$8,778.00
Emily S. Shire (associate)	$640	3.20	$2,048.00
Scott M. Chludzinski (e-discovery attorney)	$545	460	$25,060.00
Carlson A. Floy (paralegal manager)	$375	12.50	$4,687.50
Grace Jang (paralegal)	$325	15.60	$5,070.00
Yesenia Ruano (paralegal)	$325	.50	$162.50
Alexander J. Fernandez (paralegal)	$325	.90	$292.50
GRAND TOTAL:		**1,238.70**	$925,282.00 With 20% discount: **$740,225.60**

In-House Attorney	Imputed Hourly Rate	Total Hours	Total Value of Legal Services
Jason Berland (general counsel)	$920	209.10	$186,392.00
Nathan Schwartzberg (deputy general counsel)	$755	324.10	$237,296.50
GRAND TOTAL:		**533.20**	$437,067.50 With 20% discount: **$349,654.00**

Finally, in the course of defending this litigation, Defendants, through counsel, incurred expenses and costs in connection with (i) housing and assisting with e-discovery and document review; (ii) court reporting for depositions; (iii) subpoena service; and (iv) perfecting the appeal. The total cost for these services was $68,554.85. Below is a chart setting out (i) Defendants' third-party vendors; (ii) the services provided; and (iii) the grand total for their services.

Vendor	Service Provided	Total Expense
Lighthouse	Housed and assisted with e-discovery	$42,518.36
HaystackID	Housed and assisted with e-discovery	$2,556.00
Tower Legal Solutions	Assisted with document review	$10,394.85
Gregory Edwards Reporting	Court reporting for depositions	$10,458.30
Demovsky Lawyer Services	Subpoena service	$1,384.33
Counsel Press, Inc.	Assisted with perfecting appeal	$1,233.01
GRAND TOTAL:		**$68,554.85**

CONCLUSION

For the foregoing reasons, Defendants respectfully request that this Court enforce Section 12.9 of the LP Agreement and enter an order requiring Plaintiffs to pay Defendants' attorney's fees, costs and expenses in the amount of $740,225.60 for Morvillo Abramowitz, in-house counsel

fees in the amount of $349,654.00, and vendor expenses in the amount of $68,554.85 (for a total amount of $1,158,434.45).

Dated: New York, New York
March 3, 2025

By: */s/ Jason H. Berland*
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WORD COUNT CERTIFICATION

Pursuant to Rule 17 of subdivision (g) of section 202.70 of the Uniform Rules of the Supreme Court and County Court (Rules of Practice for the Commercial Division of the Supreme Court), I hereby certify that the total number of words in this memorandum of law, excluding the caption and signature block is 4,378 words.

Dated: March 3, 2025
New York, New York

/s/ Jason H. Berland