**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re: | Chapter 11 |
| Apple Tree Life Sciences, Inc., *et al*.,[1] | Case No. 25-12177 (LSS) |
| Debtors. | (Joint Administration Requested) |

**OMNIBUS OBJECTION OF RIGMORA BIOTECH INVESTOR ONE LP AND RIGMORA BIOTECH INVESTOR TWO LP TO DEBTORS' CASH MANAGEMENT MOTION AND WAGES MOTION**

Parties in interest Rigmora Biotech Investor One LP, by its general partner Unicorn Biotech Ventures One Ltd and Rigmora Biotech Investor Two LP, by its general partner Unicorn Biotech Ventures Two Ltd (collectively, the "**LPs**") hereby submit this omnibus objection to (ii) *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing the Debtors To (A) Continue to Operate Their Cash Management System, (B) Honor Certain Pre-Petition Obligations Related Thereto, and (C) Continue to Perform Intercompany Transactions, (II) Granting Administrative Expense Status to Postpetition Intercompany Balances, and (III) Granting Related Relief* [D.I. 24] (the "**Cash Management Motion**"), and (ii) *Debtors' Motion for Entry of Interim and Final Orders to (I) Continue Employee Benefits Programs and (II) Grant Related Relief* [D.I. 23] (the "**Wages Motion**") and together with the Cash Management Motion, the "**Motions**") filed by the debtors and debtors in possession (collectively, the "**Debtors**") in the above-captioned chapter 11 cases.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

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## PRELIMINARY STATEMENT

1. As an initial matter, the LPs' position remains that these bankruptcy proceedings serve no legitimate purpose and should not be resolved until the court in the Cayman Islands determines whether the general partner has the power or authority to act on behalf of the fund that is at the core of these petitions. Any transactions by the Fund or additions of limited partners are otherwise voidable as a matter of law if and when the Cayman Court ultimately orders the Fund to be wound up. The Cayman Court will determine whether the GP should be permitted to continue to hold the LPs' assets on trust and act as their fiduciary in connection with a winding-up, or whether independent fiduciaries should assume that role. The Court of Chancery's decision only confirms that the GP has grossly mismanaged the fund. The Court's recent determination that the GP overstated the LPs' contingent subscription by ***$425 million*** and sued the LPs on that basis is shocking. Equally shocking are the GP's suggestions in this Court that, having contributed 98% of the capital to the Fund, the LPs are somehow seeking to destroy their own investment. To be clear, the LPs do not seek to starve the portfolio companies, have offered for over six months to provide interim funding for the portfolio companies that the GP has rejected, have long urged the GP to appropriately fund and manage the portfolio companies in accordance with the available contingent subscription, and seek the appointment of independent fiduciaries in the Cayman Islands precisely to permit funding to be allocated to maximize the value of the Fund ***to the LPs***. It is the GP's intransigence that puts the assets at risk.

2. Nonetheless, the LPs do not object to the interim relief sought by the Debtors to permit the continued operation of each of the seven Debtors as legally distinct entities[2], consistent with their contractual obligations, the applicable law, and past practice. But the sweeping and

[2] For the avoidance of doubt, as discussed below, the Fund does not have separate legal personality.

ill-defined relief sought by the Debtors appears to be far broader than that, effectively asking this Court to permit the Debtors to pool assets across the seven entities in direct contravention of the LPs' contractual rights, which the Delaware Court of Chancery affirmed less than two weeks ago. The Debtors ignore that the Fund is in effect a statutory trust subject to the terms of the parties' limited partnership agreement whereby the general partner holds the assets for the benefit of – and as a fiduciary of – the LPs that have contributed 98% of the capital to the Fund. This Court should reject the Debtors' efforts to use relief sought under a first day motion (here, the Cash Management Motion) to accomplish an end run around the LPs' contractual and other rights as described below.

3. Attached as Exhibit A to this omnibus objection are the LPs' proposed revisions to the interim order approving the Cash Management Motion, which primarily focus on the Debtors' request for authority to engage in intercompany transactions as well as compliance with the Debtors' contractual obligations and applicable law. The revisions seek to identify and delineate the scope of intercompany transactions as to which the Debtors seek approval on an interim basis, to ensure that any such transactions do not violate the contractual, property, and other rights of the LPs, and to address the segregated treatment of approximately $96 million in capital call contributions that are to be made by the LPs pursuant to the ruling of the Delaware Court of Chancery. The LPs have also proposed modest revisions to the interim order approving the Wages Motion which are shown in Exhibit B and described further below.

## BACKGROUND

4. The Motions have been filed on behalf of seven separate Debtors.

5. Debtor ATP Life Science Ventures, L.P. (the "**Fund**") is a Cayman Islands exempted limited partnership ("**ELP**") that invests in biotechnology companies. The Fund is in effect a "fund of one," as roughly 98% of the capital invested into the Fund was contributed by the

LPs. Ex. E, Chancery Court Post-Trial Op. at 5. The Fund is governed by a Limited Partnership Agreement (as amended, the "**LPA**") dated November 1, 2012, which is governed by the law of the Cayman Islands and is expressly subject to the Cayman Islands Exempted Limited Partnerships Act (the "**ELP Act**"). Ex. C, LPA ¶ 18(g)(i). Under applicable Cayman Islands law, "an ELP is not an entity with a separate legal personality," and "it cannot own property in its own right." Dkt. 4, Faulkner Dec. ¶ 20. Instead, "any rights or property" of an ELP "shall be held or deemed to be held by the general partner upon trust for the limited partners in accordance with the terms of the partnership agreement." *Id.* The general partner holds "the assets of the partnership on a statutory trust for the limited partners pursuant to section 16(1) of the ELP Act," and owes fiduciary duties to the limited partners. *Id.* ¶¶ 23, 29.

6. Debtor ATP III GP, Ltd. (the "**GP**"), is a Cayman Islands Company, and the GP of the Fund. Debtor Apple Tree Life Sciences, Inc. ("**ATLS**") is a wholly owned subsidiary of the Fund that is responsible for satisfying various operational expenses of the Fund.

7. Debtors Apertor Pharmaceuticals, Inc. ("**Apertor**"), Initial Therapeutics, Inc. ("**Initial**") Marlinspike Therapeutics, Inc. ("**Marlinspike**"), and Red Queen Therapeutics, Inc. ("**Red Queen**") are portfolio companies in which the Fund has invested pursuant to the LPA.

8. Under the LPA, the GP may only call capital for portfolio companies for a project and within a budget approved by the LPs, up to the LPs' Contingent Subscription amount. Ex. C, LPA, ¶ 5(a)(i); Ex. F, LPA Amendment 3 at 2 (amending LPA ¶ 5(a)(ii)(E)); Ex. E, (Delaware Court of Chancery Post-Trial Memorandum Opinion) at 6 ("The LPA thus granted Rigmora the right to approve budgets for projects before the General Partner can call capital for those projects."). The Court of Chancery has confirmed that the LPs have an absolute contractual right to approve or disapprove budgets proposed by the GP. Ex. E at 73-76 (Delaware Court of

Chancery Post-Trial Memorandum Opinion ) ("The LPA grants Rigmora the discretion to approve budgets. . . . [N]one of the relevant tests support implying a good faith term."). Indeed, the GP dropped its request that the Court deem the LPs to have waived their rights to approve or disapproved proposed portfolio company budgets in their discretion. *Id.* at 44 n.257 ("In the Pre-Trial Order, [the GP] sought a declaration that Rigmora waived or otherwise forfeited its voting and budget approval rights, but dropped this request after trial").

9. ATLS receives an annual fee which is funded by the LPs (the "**ATLS Fee**"). The ATLS Fee is required to be applied towards certain Fund operating expenses including facilities overhead expenses and employee costs. The GP is required to prepare a yearly budget for the ATLS Fee which is presented to the LPs for their approval. In the event the LPs exercise their discretion to decline approval in any given year, the most recently approved budget applies by default. Ex. G, LPA Amendment 20 (amending LPA ¶ 20(e)(ii)).

10. For many years the GP proposed budgets, the LPs approved them, and the GP issued capital calls for specific portfolio companies with approved budgets. Ex. H, ATP Post-Trial Br. at 20-21, 41. After the GP filed suit against the LPs in the Court of Chancery on May 30, 2025, the LPs learned of several instances in which the GP had either (1) directed portfolio companies to issue interest-free loans for the benefit of other portfolio companies or (2) recycled proceeds from investments to invest in other portfolio companies rather than distributing those proceeds to the LPs, without seeking the LPs' consent (including to portfolio companies that did not have approved budgets, thereby breaching the terms of the LPA).[3] The LPs objected to that use of funds

[3] Specifically, the GP caused Marlinspike to issue a $1 million loan to Nereid, another portfolio company, even though Nereid did not have an approved budget at the time. The GP also used distributions from a Fund investment and proceeds from refinancing convertible loan notes to provide funds to portfolio companies that were subject to the Chancery litigation, including to three portfolio companies that had no approved budgets (Nereid, Nine Square and Replicate), in contravention of the LPA. Ex. J, Walkers Letter of September 9, 2025 ¶¶ 9, 11, 17, 20 (Replicate), 23-24 (Nereid and Nine Square).

as violating their rights under the LPA and Cayman law, and included them in their submissions to the Grand Court of the Cayman Islands (the "Cayman Court") as evidence that they had justifiably lost trust and confidence in the GP such that the Fund should be wound up. Ex. I, Amended Winding Up Petition, ¶ 52.

11. The Debtors' Application to Appoint a Claims Agent now suggests that the GP may have engaged in numerous intra-portfolio company transactions, with portfolio companies listed as creditors of other portfolio companies. Dkt. 22, Ex. 1 (*e.g.*, Apertor's creditors include Initial Therapeutics and Nine Square; Initial Therapeutic's creditors include Apertor, Deep Apple, and Nine Square; and Red Queen's creditors include Ascidian). That is profoundly troubling, as it suggests that the GP may have circumvented the LPA's requirement that capital be called from the LPs for a particular portfolio company in accordance with that portfolio company's budget, and not later redistributed among the portfolio companies as the GP sees fit.

12. On May 30, 2025, the GP issued capital calls for Debtors Apertor, Initial, Marlinspike, and Red Queen; for certain other portfolio companies; and for Debtor ATLS's fee and partnership expenses. Ex. K, Capital Calls. The Court of Chancery's recent Post-Trial Memorandum Opinion and Partial Final Judgment and Order required the LPs to specifically perform certain of those capital calls, totaling $96,960,925.88. Ex. E, Post-Trial Op. at 66; Ex. D, Partial Final Judgment ¶ 2. More specifically, the Court's decision and judgment require specific performance of the capital calls issued to the LPs for Apertor, Initial, Marlinspike and Red Queen, totaling $26.8 million, and the capital call for the ATLS's fee and partnership expenses in the amount of $13.3 million for both LPs. *See* Ex. K, Capital Calls, ($7.1m for Apertor); ($7m for Initial Therapeutics); ($6.3m for Marlinspike); ($6.4m for Red Queen); ($13.3m for LPs' portion of ATLS Fee). The remaining $56.8 million of the $96.9 million in capital calls that the Court of

Chancery specifically enforced were for non-debtor portfolio companies. Although the Court of Chancery determined that these capital calls were within the LPs' remaining contingent subscription of $125 million, it rejected the GP's contention that the LPs were somehow obligated to contribute ***$425 million or more*** in additional capital to the Fund. Ex. D,, Partial Final Judgment and Order, ¶ 4; Ex. E, Delaware Court of Chancery Post-Trial Memorandum Opinion at 47 ("What is the Contingent Subscription amount, $2.425 billion as Rigmora contends or over $2.85 billion as [the GP] argues? . . . Rigmora's Contingent Subscription is $2.425 billion.").

13. The LPs have a vested interest in protecting their consent and approval rights in the Fund in which they own a 98% interest, and ensuring that the Fund, and by extension the remaining Debtors who are supported by the Fund's capital, continue to operate smoothly and preserve the value of the LPs' investment. This does not mean, however, that the LPs must permit the Debtors to operate in ways that would violate the LPs' consent rights, as to the Debtors request in their Cash Management Motion. If approved, there is a significant risk that the Cash Management Motion would allow the GP to (continue to) funnel the LPs' funds and assets that it holds in trust between the various Debtors without any regard—and in violation of—the LPs' consent rights. The LPs accordingly request that the Court adopt the modified interim cash management order enclosed herewith that balances the Debtors' requests for relief while protecting the LP's consent and approval rights.

## ARGUMENT

### I. Any Order Approving the Cash Management Motion Should Limit the Debtors' Authority to Engage in Intercompany Transactions.

14. Under the guise of seeking interim relief as to cash management systems, the Cash Management Motion seeks broad authority to engage in so-called "Intercompany Transactions"

among the Debtors, a term that is vaguely defined as "relationships with each other," which the Debtors claim "result[] in intercompany receivables and payables in the ordinary course of business." Dkt. 24 Cash Management Motion, at ¶ 21. Although the Debtors offer a few examples of what they refer to as "typical Intercompany Transactions," footnote 3 makes clear that the definition is not limited to those described in the Motion. *Id.* ¶ 22 n.3 ("The relief requested herein is applicable with respect to all Intercompany Transactions and is not limited to those Intercompany Transactions described in this Motion."). Nor does the relief sought in the Cash Management Motion offer or impose any guardrails to prevent the Debtors from engaging in intercompany transactions that violate the LPA and applicable law.

15. Notably, the Debtors offer no legal authority in the Cash Management Motion to support the proposition that section 363(c) authorizes the Debtors, under the veneer of "ordinary course" transactions, to engage in intercompany transactions that violate existing partnership or contractual obligations or applicable law. Actions that require setting aside the LPs' rights under the LPA and Cayman law are by definition not "ordinary course" transactions. The GP cannot seriously claim that it has in the ordinary course ignored the LPs' rights to approve or disapprove the budgets against which the GP can call capital, or that diverting capital called for a specific portfolio company to another purpose would be a step taken in the ordinary course.

16. If anything, Delaware courts have long recognized that chapter 11 proceedings do not supersede corporate governance rights that exist under applicable nonbankruptcy law. *In re Indianapolis Downs, LLC.,* 486 B.R. 286, 302 (Bankr. D. Del. 2013) ("It is axiomatic that commencement of a chapter 11 case does not suspend or displace non-bankruptcy law and contractual rights regarding corporate governance."); *see also In re Marvel Ent. Grp., Inc.*, 209 B.R. 832, 838 (D. Del. 1997) ("[T]he automatic stay provisions of the Bankruptcy Code are not

implicated by the exercise of shareholders' corporate governance rights."). The consent rights of the LPs under the LPA fall squarely within the ambit of corporate governance rights that remain intact in chapter 11.

17. Indeed, the LPs are entitled to additional protections where, as here, a large portion of the cash in the possession of the GP and the Fund does not constitute property of any Debtor's estate, but rather is held by the GP in trust for the LPs. As argued in the LPs' previously filed motion to dismiss and for relief from the automatic stay [Dkt. 3, at 32 n.7], because of the nature of the Fund under Cayman Islands law and the fact that the assets attributed to the Fund are held in trust by the GP for the LPs and other limited partners – who are the beneficial owners of such assets – any assets attributed to the Fund, including any cash in the Fund's bank accounts, are not even property of the estate under section 541(b)(1) and (d) of the Bankruptcy Code, but rather constitute property of the LPs. Dkt. 4 Declaration of Liam Faulkner, ¶¶ 16-27 (describing nature of the Fund and ownership of its assets under Cayman Islands law); 11 U.S.C. § 541(b)(1), (d); *In re Columbia Gas Systems, Inc.*, 997 F.2d 1039, 1054 (3d Cir. 1993) (bankruptcy estate only includes property to the extent of debtor's equitable interest in such property, and where a debtor only possesses legal title to monies, such funds are not an asset of the bankruptcy estate); *In re SemCrude, L.P.*, 418 B.R. 98, 106 (Bankr. D. Del. 2009) (citing *Begier v. Internal Revenue Service*, 110 S. Ct. 2258 (1990)). With respect to such assets, Section 363(e) of the Bankruptcy Code provides that "[n]otwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property, used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

18. Accordingly, the Debtors should not be permitted to use the Cash Management Motion as a vehicle to enable the Debtors to run roughshod over the LPs property, contractual, and other rights. Rather, any order approving the Cash Management Motion should incorporate the following revisions to the order as set forth in Exhibit A attached hereto.

19. First, the scope of the term "Intercompany Transactions" needs to be narrowed from the vague and overly broad version proposed by the Debtors. This is particularly important where, as here, the Debtors have provided no meaningful information with respect to the Intercompany Transactions that they characterize as historical practice and as to which they seek approval. Indeed, the Debtors have not yet provided the LPs or parties in interest with any budget that might provide some insight into those expenditures, notwithstanding the request of the LPs yesterday morning for a copy of it. Nor have they explained why any Intercompany Transactions are even needed during the interim period prior to a final hearing on the Cash Management Motion, or why the various bank accounts of each Debtor within the Cash Management System are not sufficient in amount to pay the anticipated expenses of that Debtor.

20. To be sure, the LPs recognize that certain ordinary course Fund expenses historically paid by the specific Debtor ATLS (which as noted, is responsible for meeting Fund operating costs) and the Partnership's funding of portfolio companies with capital called from the LPs for those portfolio companies in accordance with their approved budgets, should continue in order to avoid any disruption to the Debtors' respective businesses. That being said, there is no basis for the Debtors to use the cloak of a Cash Management Motion to transfer cash among affiliates without any explanation or rationale, particularly given the LPs' knowledge of instances such as those described above where the GP has violated the terms of the LPA.

21. Accordingly, the LPs propose that the scope of intercompany transactions authorized under the interim order approving the Cash Management Motion be revised as set forth in the proposed order such that: 1) any such transactions authorized by the order shall not include intercompany transactions with any portfolio company without an approved budget, or in excess of an approved budget, absent written approval from the LPs, 2) any intercompany transactions by the Debtors that violate the LPA, the ELP Act, or applicable law shall be prohibited, including the use of capital called for a particular portfolio company for any purpose not authorized by the LPs or under the LPA, and 3) shall not involve transfers among portfolio companies.

22. Second, the Interim Order needs to provide appropriate protections for approximately $96 million in additional contributions to the Fund that have been ordered by the Delaware Court of Chancery to be deposited into a segregated account on or before December 26, 2025. The Court of Chancery ordered specific performance of capital calls for certain specified portfolio companies and for ATLS fees and partnership expenses. Any interim order approving the Cash Management Motion should provide for the immediate creation of a segregated account into which the $96 million in funds will be deposited along with wiring instructions to be provided to the LPs, and further provide that (a) such funds not be withdrawn, used or encumbered absent further Court order or the written consent of the LPs, and (b) any use of such funds should be restricted to the purpose for which that capital was called and otherwise be consistent with, and not contravene, the LPA, the Delaware Court of Chancery's ruling, and applicable law.

23. Third, the Interim Order should make clear that, with respect to any of the transactions or payments involving Banks, that any such authorization is subject to and contingent upon compliance with the LPA, the ELP Act, and any applicable state, federal or foreign law.

24. Fourth, the Interim Order should be revised to provide for a clear reservation of the LPs' rights, remedies and objections, both to any prepetition transactions as well as to any of the transactions for which the Debtors seek relief in the Cash Management Motion or otherwise, which is especially important given the interim relief sought and the LPs' lack of information (let alone timely information) from the Debtors when submitting this Objection on a compressed schedule.

**II. The LPs Request Certain Modifications to the Employee Benefits Motion.**

25. With regard to the Employee Benefits Motion, the LPs' objection is limited to the following provisions: (a) any language that authorizes the Debtors to modify, change or discontinue the Employee Compensation and Benefits without the need for approval from this Court should be stricken; (b) the language any authority to pay prepetition obligations owed to Insiders; and (c) any authority to exceed the amounts set forth in sections 507(a)(4) and 507(a)(5) with respect to payments of pre-petition obligations of any individual employee (including where applicable state law would, in the absence of bankruptcy, otherwise require such payments). The LPs thus propose following revisions to the order as set forth in Exhibit B attached hereto

26. WHEREFORE, the LPs respectfully request that the Court condition entry of any interim orders approving the Motions on inclusion of the revisions to the proposed orders as set forth in Exhibits A and B hereto.

Dated: December 17, 2025
Wilmington, Delaware

Respectfully Submitted,

**RICHARDS, LAYTON & FINGER, P.A.**

*/s/ Clint M. Carlisle*

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*Co-Counsel for Rigmora Biotech Investor One LP (by and through its general partner Unicorn Biotech Ventures One Ltd) and Rigmora Biotech Investor Two LP (by and through its general partner Unicorn Biotech Ventures Two Ltd)*

# Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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|---|---|
| In re:<br><br>Apple Tree Life Sciences, Inc., *et al*.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 25-12177 (LSS)<br><br>(Joint Administration Requested)<br><br>**Re: Docket No. ___** |

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PRE-PETITION OBLIGATIONS RELATED THERETO, AND (C) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POST-PETITION INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"): (a) authorizing, but not directing, the Debtors to (i) continue to operate their cash management system (the "Cash Management System"); (ii) honor certain pre-petition obligations related thereto; and (iii) perform Intercompany Transactions[3] in a manner consistent with the Amended and Restated Limited Partnership Agreement dated November 1, 2012 as amended (the "LPA") and the Cayman Islands Exempted Limited Partnership Act (the "ELP Act"); and (b) scheduling a final hearing to consider approval of the Motion on a final basis, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C.

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1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

2 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

3 As used herein, "Intercompany Transactions" shall mean solely receivables and payables made in the ordinary course of business.

§ 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, entered February 29, 2012; and that this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing with respect to this Motion shall be held on **_____, 2025 at __: ____.m.** (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before **__: ____.m (prevailing Eastern Time) on _____, 2025** and served on the following parties: (a) proposed co-counsel to the Debtors, (i) Quinn Emanuel Urquhart & Sullivan, LLP, 700 Louisiana Street, Suite 3900, Houston, TX 77002, Attn: Patricia B. Tomasco (pattytomasco@quinnemanuel.com) (ii) Quinn Emanuel Urquhart & Sullivan, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric D. Winston (ericwinston@quinnemanuel.com), and (ii) Potter Anderson & Corroon LLP, Hercules

Plaza, 1313 North Market Street, 6th Floor, Wilmington, DE 19801, Attn: L. Katherine Good (kgood@potteranderson.com); (b) counsel to any statutory committee appointed in these Chapter 11 Cases; (c) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801; (d) counsel for Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, the "LPs"), Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com), and Debevoise & Plimpton LLP, 66 Hudson Boulevard, New York, NY 10001, Attn: Sidney P. Levinson (slevinson@debevoise.com) and (e) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. If no objections are timely filed, this Court may enter the Final Order without further notice or a hearing.

3. The Debtors are authorized, on an interim basis, to: (a) continue operating the Cash Management System, substantially as illustrated on Exhibit 1 attached hereto so long as, and at all times, in compliance with the LPA, the ELP Act, and all applicable state, federal, or foreign law, (including but not limited to Cayman Islands law); (b) honor their pre-petition obligations related thereto; and (c) continue to perform Intercompany Transactions in a manner subject to and compliant at all times with the LPA, the ELP Act, and all applicable state, federal, or foreign law.

4. The Debtors are authorized, on an interim basis, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those Bank Accounts identified on Exhibit 2 attached hereto; (b) treat each Bank Account of each Debtor for all purposes as an account of that respective debtor in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (d) pay all pre-petition Bank Fees; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to

the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts.

5. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided* that once the Debtors have exhausted their existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "Debtor-In-Possession"; *provided*, *further*, with respect to any Business Forms that exist or are generated electronically, to the extent reasonably practicable, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor-In-Possession."

6. The Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, so long as, and at all times, in compliance with the LPA, the ELP Act, and all applicable state, federal, or foreign law.

7. All Banks provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors. The Debtors shall not authorize any bank payments if such authorization would violate the LPA, the ELP Act, and any applicable state, federal, or foreign law.

8. In the course of providing cash management services to the Debtors, the Banks

at which the Bank Accounts are maintained are authorized, without further order of the Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising pre-petition or post-petition, from the appropriate accounts of the Debtors, and further, to charge back to, and take and apply reserves from, the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services transactions or other electronic transfers of any kind, regardless of whether such items were deposited or transferred pre-petition or post-petition and regardless of whether the returned items relate to pre-petition or post-petition items or transfers.

9. Each Bank is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of the Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; (c) all undisputed pre-petition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System; and (d) all reversals, returns, refunds, and chargebacks of checks, deposited items, and other debits credited to Debtor's account after the Petition Date, regardless of the reason such item is returned or reversed (including, without limitation, for insufficient funds or a consumer's statutory right to reverse a charge).

10. Subject to compliance with the LPA, the ELP Act, and any applicable state, federal, or foreign law, the Debtors are authorized to open any new bank accounts or close any existing

Bank Accounts consistent with ordinary course and past practice; *provided* that in the event the Debtors open a new bank account they shall open one at an authorized depository and shall timely indicate the opening of such account on the Debtors' monthly operating report and shall provide five (5) business days advance notice of the opening of any new bank accounts (other than the new segregated bank account required to be opened immediately pursuant to Paragraph 14 of this Order) or closing of any Bank Account to the U.S. Trustee and to counsel for the LPs.

11. Each of the Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of the Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

12. Those agreements existing between the Debtors and the Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Banks, subject to applicable bankruptcy or other law, all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, offset rights and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with any Bank (including, for the avoidance of doubt, any rights of a Bank to use funds from the Bank Accounts to remedy any overdraft of another Bank Account to the extent permitted under the applicable deposit agreement), unless the Debtors and such Bank agree otherwise, and any other legal rights and remedies afforded to the Banks under applicable law shall be preserved, subject to applicable bankruptcy law.

13. The requirement to establish separate bank accounts for cash collateral and/or tax payments is hereby waived.

14. Notwithstanding anything to the contrary set forth herein, the Debtors are directed to immediately open a new segregated bank account at an authorized depository, which shall be used for the approximately $97 million in additional contributions to the Fund as ordered by the Delaware Court of Chancery on December 11, 2025 (the "Delaware Partial Final Judgment") and shall immediately provide notice of such new segregated bank account, together with wiring instructions, to the LPs. Any funds from this new segregated bank account shall not be withdrawn or otherwise used or encumbered pending further order of the U.S. Bankruptcy Court for the District of Delaware, and thereafter shall only be used in a manner consistent with the Delaware Partial Final Judgment, the LPA, the ELP, and applicable law.

15. The Debtors are authorized, but not directed, to undertake Intercompany Transactions arising from or related to the operation of their businesses in the ordinary course, provided that any such Intercompany Transactions (a) if involving a transfer to a portfolio company, may only be made by the GP, the Fund, or ATLS, and shall be in accordance with a budget therefor approved by the LPs, and (b) shall be made only to the extent authorized and permitted under the LPA, the ELP, and applicable law; provided that each Debtor shall (a) pay its own obligations with respect to Intercompany Transactions and related obligations, and in no event shall any of the Debtors pay for the pre- petition or post-petition obligations incurred or owed by any of the other Debtors in a manner inconsistent with past practices; and (b) beginning on the Petition Date, maintain (i) current records of intercompany balances; (ii) a Debtor by Debtor summary on a monthly basis of any post-petition Intercompany Transactions involving the transfer of cash for the preceding month (to be available on the 21st day of the following month); and (iii) reasonable access to the Debtors' advisors with respect to such records. For the avoidance of doubt, the Debtors shall not, absent written approval from the LPs: (x) authorize or permit any

transfer to or investment in any portfolio company without an approved budget, or in excess of an approved budget; (y) use capital called for a particular portfolio company for any purpose other than an investment in that portfolio company; or (z) permit transfers among the portfolio company Debtors (Apertor, Initial, Marlinspike, and Red Queen).

16. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

17. The Debtors shall maintain accurate and detailed records of all transfers, including but not limited to, all Intercompany Transactions, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions.

18. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

19. So long as such actions do not violate each of the LPA, the ELP Act, and any applicable state, federal, or foreign law, the Debtors and the Banks may, without further order of the Court, agree to and implement changes to the Cash Management System and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts; *provided* that in the event the Debtors open a new bank account they shall open one at an authorized depository; *provided, further*, that the Debtors shall give five (5) business days' notice of the opening of any new bank accounts (other than the new segregated bank account required to be opened immediately pursuant to Paragraph 14 of this Order) or closing of any Bank Account to the U.S. Trustee and counsel for the LPs.

20. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to pre-petition amounts owed in connection with any Bank Fees.

21. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

22. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

23. Nothing in this Interim Order shall modify or impair the ability of any party in interest, including the LPs, to raise any objections or exercise any rights and remedies with respect to any prepetition transactions including the use and transfer of cash and any Intercompany Transactions, or any of the relief requested herein, and the rights of all parties in interest with respect to any such transactions are fully preserved.

24. The Debtors shall have thirty (30) days, without prejudice to seeking an additional extension, from the entry of this Interim Order to either come into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

25. As soon as practicable after entry of this Interim Order, the Debtors shall serve a copy of this Interim Order on the Banks.

26. This Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied, and that the interim relief requested is necessary to avoid immediate and irreparable harm.

27. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

28. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

29. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

30. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

31. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

32. For banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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|---|---|
| In re:<br><br>Apple Tree Life Sciences, Inc., *et al*.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 25-12177 (LSS)<br><br>(Joint Administration Requested)<br><br>**Re: Docket No. ___** |

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PRE-PETITION OBLIGATIONS RELATED THERETO, AND (C) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POST-PETITION INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"): (a) authorizing, but not directing, the Debtors to (i) continue to operate their cash management system (the "Cash Management System"); (ii) honor certain pre-petition obligations related thereto; and (iii) ~~continue to~~ perform Intercompany Transactions[3] in a manner consistent with ~~historical practice; (b) granting administrative expense status to post-petition intercompany balances~~the Amended and Restated Limited Partnership Agreement dated November 1, 2012 as amended (the "LPA") and the Cayman Islands Exempted Limited Partnership Act (the "ELP Act"); and (~~e~~b) scheduling a final hearing to consider approval of the Motion on a final basis, all

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

[3] As used herein, "Intercompany Transactions" shall mean solely receivables and payables made in the ordinary course of business.

as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, entered February 29, 2012; and that this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing with respect to this Motion shall be held on _____, **2025 at __: _____.m.** (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before**__: _____.m (prevailing Eastern Time) on ____ _____, 2025** and served on the following parties: (a) proposed co-counsel to the Debtors, (i) Quinn Emanuel Urquhart & Sullivan, LLP, 700 Louisiana Street, Suite 3900, Houston, TX 77002, Attn: Patricia B. Tomasco (pattytomasco@quinnemanuel.com) (ii) Quinn Emanuel Urquhart & Sullivan, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn:

Eric D. Winston (ericwinston@quinnemanuel.com), and (ii) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, Wilmington, DE 19801, Attn: L. Katherine Good (kgood@potteranderson.com); (b) counsel to any statutory committee appointed in these Chapter 11 Cases; (c) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801; ~~and~~ (d) counsel for Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, the "LPs"), Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, DE 19801, Attn: Michael J. Merchant (Merchant@RLF.com), and Debevoise & Plimpton LLP, 66 Hudson Boulevard, New York, NY 10001, Attn: Sidney P. Levinson (slevinson@debevoise.com) and (e) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. If no objections are timely filed, this Court may enter the Final Order without further notice or a hearing.

3. The Debtors are authorized, on an interim basis~~ and in their sole discretion~~, to: (a) continue operating the Cash Management System, substantially as illustrated on Exhibit 1 attached hereto so long as, and at all times, in compliance with the LPA, the ELP Act, and all applicable state, federal, or foreign law, (including but not limited to Cayman Islands law); (b) honor their pre-petition obligations related thereto; and (c) continue to perform Intercompany Transactions ~~consistent with historical practice~~in a manner subject to and compliant at all times with the LPA, the ELP Act, and all applicable state, federal, or foreign law.

4. The Debtors are authorized, on an interim basis, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those Bank Accounts identified on Exhibit 2 attached hereto; (b) treat ~~the~~each Bank ~~Accounts~~Account of each Debtor for all purposes as ~~accounts of the Debtors as debtors~~an account of that respective debtor in possession; (c) deposit funds in and withdraw funds from the Bank Accounts by all

usual means, including checks, wire transfers, and other debits; (d) pay all pre-petition Bank Fees; and (e) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, irrespective of whether such fees arose prior to the Petition Date, and to otherwise perform their obligations under the documents governing the Bank Accounts.

5. The Debtors are authorized, but not directed, to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; *provided* that once the Debtors have exhausted their existing stock of Business Forms, the Debtors shall ensure that any new Business Forms are clearly labeled "~~Debtor-In-Possession~~Debtor-In-Possession"; *provided*, *further*, with respect to any Business Forms that exist or are generated electronically, to the extent reasonably practicable, the Debtors shall ensure that such electronic Business Forms are clearly labeled "Debtor-In-Possession."

6. The Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, and ACH transfers issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, so long as, and at all times, in compliance with the LPA, the ELP Act, and all applicable state, federal, or foreign law.

7. All Banks provided with notice of this Interim Order maintaining any of the Bank Accounts shall not honor or pay any bank payments drawn on the listed Bank Accounts, or otherwise issued before the Petition Date, absent further direction from the Debtors. The Debtors

shall not authorize any bank payments if such authorization would violate the LPA, the ELP Act, and any applicable state, federal, or foreign law.

8. In the course of providing cash management services to the Debtors, the Banks at which the Bank Accounts are maintained are authorized, without further order of the Court, to deduct the applicable fees and expenses associated with the nature of the deposit and cash management services rendered to the Debtors, whether arising pre-petition or post-petition, from the appropriate accounts of the Debtors, and further, to charge back to, and take and apply reserves from, the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, merchant services transactions or other electronic transfers of any kind, regardless of whether such items were deposited or transferred pre-petition or post-petition and regardless of whether the returned items relate to pre-petition or post-petition items or transfers.

9. Each Bank is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of the Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of the Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; (c) all undisputed pre-petition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System; and (d) all reversals, returns, refunds, and chargebacks of checks, deposited items, and other debits credited to Debtor's account after the Petition Date, regardless of the reason such item is returned or

reversed (including, without limitation, for insufficient funds or a consumer's statutory right to reverse a charge).

10. ~~The~~Subject to compliance with the LPA, the ELP Act, and any applicable state, federal, or foreign law, the Debtors are authorized to open any new bank accounts or close any existing Bank Accounts ~~as they may deem necessary and appropriate in their sole discretion~~consistent with ordinary course and past practice; *provided* that in the event the Debtors open a new bank account they shall open one at an authorized depository and shall timely indicate the opening of such account on the Debtors' monthly operating report and shall provide five (5) business days advance notice of the opening of any new bank accounts (other than the new segregated bank account required to be opened immediately pursuant to Paragraph 14 of this Order) or closing of any Bank Account to the U.S. Trustee and to counsel for the LPs.

11. Each of the Banks may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this or any other order of the Court, and such Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

12. Those agreements existing between the Debtors and the Banks shall continue to govern the post-petition cash management relationship between the Debtors and the Banks, subject to applicable bankruptcy or other law, all of the provisions of such agreements, including the termination, fee provisions, rights, benefits, offset rights and remedies afforded under such agreements shall remain in full force and effect absent further order of the Court or, with respect to any such agreement with any Bank (including, for the avoidance of doubt, any rights of a Bank to use funds from the Bank Accounts to remedy any overdraft of another Bank Account to the

extent permitted under the applicable deposit agreement), unless the Debtors and such Bank agree otherwise, and any other legal rights and remedies afforded to the Banks under applicable law shall be preserved, subject to applicable bankruptcy law.

13. The requirement to establish separate bank accounts for cash collateral and/or tax payments is hereby waived.

14. Notwithstanding anything to the contrary set forth herein, the Debtors are directed to immediately open a new segregated bank account at an authorized depository, which shall be used for the approximately $97 million in additional contributions to the Fund as ordered by the Delaware Court of Chancery on December 11, 2025 (the "Delaware Partial Final Judgment") and shall immediately provide notice of such new segregated bank account, together with wiring instructions, to the LPs. Any funds from this new segregated bank account shall not be withdrawn or otherwise used or encumbered pending further order of the U.S. Bankruptcy Court for the District of Delaware, and thereafter shall only be used in a manner consistent with the Delaware Partial Final Judgment, the LPA, the ELP, and applicable law.

~~14. Notwithstanding anything to the contrary set forth herein, the~~15. The Debtors are authorized, but not directed, to ~~continue~~undertake Intercompany Transactions arising from or related to the operation of their businesses in the ordinary course, provided that any such Intercompany Transactions (a) if involving a transfer to a portfolio company, may only be made by the GP, the Fund, or ATLS, and shall be in accordance with a budget therefor approved by the LPs, and (b) shall be made only to the extent authorized and permitted under the LPA, the ELP, and applicable law; provided that each Debtor shall (a) ~~continue to~~ pay its own obligations ~~consistent with such Debtor's past practice~~ with respect to Intercompany Transactions and related obligations, and in no event shall any of the Debtors pay for the pre- petition or post-petition

obligations incurred or owed by any of the other Debtors in a manner inconsistent with past practices; and (b) beginning on the Petition Date, maintain (i) current records of intercompany balances; (ii) a Debtor by Debtor summary on a monthly basis of any post-petition Intercompany Transactions involving the transfer of cash for the preceding month (to be available on the 21st day of the following month); and (iii) reasonable access to the Debtors' advisors with respect to such records. For the avoidance of doubt, the Debtors shall not, absent written approval from the LPs: (x) authorize or permit any transfer to or investment in any portfolio company without an approved budget, or in excess of an approved budget; (y) use capital called for a particular portfolio company for any purpose other than an investment in that portfolio company; or (z) permit transfers among the portfolio company Debtors (Apertor, Initial, Marlinspike, and Red Queen).

~~15~~16. All Intercompany Claims arising after the Petition Date owed by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code.

~~16~~17. The Debtors shall maintain accurate and detailed records of all transfers, including but not limited to, all Intercompany Transactions, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions.

~~17~~18. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

~~18.~~ ~~The~~19. So long as such actions do not violate each of the LPA, the ELP Act, and any applicable state, federal, or foreign law, the Debtors and the Banks may, without further

order of the Court, agree to and implement changes to the Cash Management System and procedures in the ordinary course of business, including, without limitation, the opening and closing of bank accounts; *provided* that in the event the Debtors open a new bank account they shall open one at an authorized depository; *provided, further*, that the Debtors shall give five (5) business days' notice of the opening of any new bank accounts (other than the new segregated bank account required to be opened immediately pursuant to Paragraph 14 of this Order) or closing of any Bank Account to the U.S. Trustee and counsel for the LPs.

~~19~~20. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to pre-petition amounts owed in connection with any Bank Fees.

~~20~~21. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Interim Order

is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

~~21~~22. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

~~22~~23. Nothing in this Interim Order shall modify or impair the ability of any party in interest ~~to contest how the Debtors account~~, including~~, without limitation, the validity or amount set forth in such accounting for~~ the LPs, to raise any objections or exercise any rights and remedies with respect to any prepetition transactions including the use and transfer of cash and any Intercompany ~~Transaction or Intercompany Balance. The~~Transactions, or any of the relief requested herein, and the rights of all parties in interest with ~~the~~ respect ~~thereto~~to any such transactions are fully preserved.

~~23~~24. The Debtors shall have thirty (30) days, without prejudice to seeking an additional extension, from the entry of this Interim Order to either come into compliance with section 345(b) of the Bankruptcy Code or to seek appropriate relief from the Court.

~~24~~25. As soon as practicable after entry of this Interim Order, the Debtors shall serve a copy of this Interim Order on the Banks.

~~25~~26. This Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied, and that the interim relief requested is necessary to avoid immediate and irreparable harm.

~~26~~27. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

~~27~~28. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

~~28~~29. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

~~29~~30. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

~~30~~31. For banks at which the Debtors hold bank accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), within fifteen (15) days of the date of entry of this Order the Debtors shall (a) contact each bank, (b) provide the bank with each of the Debtors' employer identification numbers and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

~~31~~32. For banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

# Exhibit B

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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|---|---|
| In re:<br><br>Apple Tree Life Sciences, Inc., *et al*.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 25-12177 (LSS)<br><br>(Joint Administration Requested)<br><br>**Re: Docket No. ___** |

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE EMPLOYEE BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), (a) authorizing, but not directing, the Debtors to continue employee benefits programs in the ordinary course; and granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, entered February 29, 2012; and that this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Rules, and that no other or further notice is necessary; and objections (if any)

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing with respect to this Motion shall be held on **_____, 2025 at __: ____.m.** (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before **__: ____.m (prevailing Eastern Time) on _____, 2025** and served on the following parties: (a) proposed co-counsel to the Debtors, (i) Quinn Emanuel Urquhart & Sullivan, LLP, 700 Louisiana Street, Suite 3900, Houston, TX 77002, Attn: Patricia B. Tomasco (pattytomasco@quinnemanuel.com) (ii) Quinn Emanuel Urquhart & Sullivan, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric D. Winston (ericwinston@quinnemanuel.com), and (ii) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, Wilmington, DE 19801, Attn: L. Katherine Good (kgood@potteranderson.com); (b) counsel to any statutory committee appointed in these Chapter 11 Cases; (c) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801; and (d) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. If no objections are timely filed, this Court may enter the Final Order without further notice or a hearing.

3. The Debtors are authorized, but not directed, to continue to honor and pay in the ordinary course and in accordance with the Debtors' pre-petition policies and pre-petition practices, any obligations on account of the Employee Compensation and Benefits.

4. Notwithstanding any other provision of this order, the Debtors are authorized, but not directed, to pay and honor, prepetition obligations on account of Employee Benefits and Compensation, in the aggregate amount not to exceed $30,000 prior to the entry of the Final Order.

5. Notwithstanding any other provision of this order, no payments to or on behalf of any individual employee on account of pre-petition obligations shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

6. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any pre-petition amounts owed to their Employees.

7. Nothing in this Interim Order authorizes the Debtors to accelerate any payments, including outstanding claims with respect to Reimbursable Expenses, not otherwise due prior to the date of the Final Hearing.

8. The Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to their Employees or any insiders (as such term is defined in section 101(31) of the Bankruptcy Code) ("Insider") without further order of this Court. For the avoidance of doubt, no bonus, incentive, or severance payments nor any payments on account of prepetition obligations shall be made to any Insider without further order of this Court. Nothing in the Motion or this Interim Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to this Interim Order is or is not an "insider"

as that term is defined in section 101(31) of the Bankruptcy Code. Nothing in the Motion or this Interim Order should be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code; provided that nothing herein shall prejudice the Debtors' ability to seek approval for such relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Nothing herein shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code.

10. The automatic stay of section 362(a) of the Bankruptcy Code, to the extent applicable, is hereby lifted to permit, without further order of this Court: (a) current or former Employees to proceed with their claims (whether arising prior to or subsequent to the Petition Date) under the Workers' Compensation Programs in the appropriate judicial or administrative forum; (b) insurers and third-party administrators to handle, administer, defend, settle, and/or pay workers' compensation claims and direct action claims; (c) the Debtors to continue the Workers' Compensation Programs and pay any amounts relating thereto in the ordinary course; and (d) insurers and third-party administrators providing coverage for any workers' compensation or direct action claims to draw on any and all collateral and/or prefunded loss accounts provided by or on behalf of the Debtors therefor, if and when the Debtors fail to pay and/or reimburse any insurers and third-party administrators for any amounts in relation thereto. The modification of the automatic stay in this paragraph pertains solely to claims under the Workers' Compensation Programs and direct action claims.

11. Nothing herein (a) alters or amends the terms and conditions of the Workers' Compensation Programs; (b) relieves the Debtors of any of their obligations under the Workers' Compensation Programs; (c) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy, and/or scope of available coverage under the Workers' Compensation Programs; or (d) creates a direct right of action against any insurers or third-party administrators where such right of action does not already exist under non-bankruptcy law.

12. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding and Deduction Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' pre-petition policies and practices.

13. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Compensation and Benefits obligations, including all administrative and processing costs and payments to outside professionals.

14. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits obligations.

15. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

16. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the

validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any pre-petition amounts owed to their Employees.

17. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

| | |
|---|---|
| In re:<br><br>Apple Tree Life Sciences, Inc., *et al*.,[1]<br><br>Debtors. | Chapter 11<br><br>Case No. 25-12177 (LSS)<br><br>(Joint Administration Requested)<br><br>**Re: Docket No. ___** |

**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE EMPLOYEE ~~BENEIFTS~~BENEFITS PROGRAMS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an interim order (this "Interim Order"), (a) authorizing, but not directing, the Debtors to continue employee benefits programs in the ordinary course; and granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, entered February 29, 2012; and that this Court having the power to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number include: Apple Tree Life Sciences, Inc. (4506); ATP Life Science Ventures, L.P. (8224); ATP III GP, Ltd. (6091); Apertor Pharmaceuticals, Inc. (3161); Initial Therapeutics, Inc. (2453); Marlinspike Therapeutics, Inc. (4757); and Red Queen Therapeutics, Inc. (8563). The location of the Debtors' service address in these chapter 11 cases is 230 Park Avenue, Suite 2800, New York, NY 10169.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

in accordance with the Bankruptcy Rules and the Local Rules, and that no other or further notice is necessary; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted on an interim basis as set forth herein.

2. The final hearing with respect to this Motion shall be held on _____, **2025 at __: _____.m.** (prevailing Eastern Time). Any objections or responses to entry of the proposed Final Order shall be filed on or before**__: _____.m (prevailing Eastern Time) on ____ _____, 2025** and served on the following parties: (a) proposed co-counsel to the Debtors, (i) Quinn Emanuel Urquhart & Sullivan, LLP, 700 Louisiana Street, Suite 3900, Houston, TX 77002, Attn: Patricia B. Tomasco (pattytomasco@quinnemanuel.com) (ii) Quinn Emanuel Urquhart & Sullivan, LLP, 865 S. Figueroa Street, 10th Floor, Los Angeles, CA 90017, Attn: Eric D. Winston (ericwinston@quinnemanuel.com), and (ii) Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, Wilmington, DE 19801, Attn: L. Katherine Good (kgood@potteranderson.com); (b) counsel to any statutory committee appointed in these Chapter 11 Cases; (c) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801; and (d) to the extent not listed herein, those parties requesting notice pursuant to Bankruptcy Rule 2002. If no objections are timely filed, this Court may enter the Final Order without further notice or a hearing.

3. The Debtors are authorized, but not directed, to continue ~~and/or modify, change, or discontinue the Employee Compensation and Benefits and~~ to honor and pay~~,~~ in the ordinary course and in accordance with the Debtors' pre-petition policies and pre-petition practices, any obligations on account of the Employee Compensation and Benefits.

4. ~~The~~Notwithstanding any other provision of this order, the Debtors are authorized, but not directed, to pay and honor, prepetition obligations on account of Employee Benefits and Compensation, in the aggregate amount not to exceed $30,000 prior to the entry of the Final Order.

5. Notwithstanding any other provision of this order, no payments to or on behalf of any individual employee on account of pre-petition obligations shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5) ~~unless applicable state law requires payments upon termination of an Employee that, in combination with the other payments authorized by this Interim Order, would exceed the limits of 11 U.S.C. §§ 507(a)(4) and 507(a)(5)~~.

6. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any pre-petition amounts owed to their Employees.

7. Nothing in this Interim Order authorizes the Debtors to accelerate any payments, including outstanding claims with respect to Reimbursable Expenses, not otherwise due prior to the date of the Final Hearing.

8. The Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to their Employees or any insiders (as such term is defined in section 101(31) of the Bankruptcy Code) ("Insider") without further order of this Court. For the

avoidance of doubt, no bonus, incentive, or severance payments nor any payments on account of prepetition obligations shall be made to any Insider without further order of this Court. Nothing in the Motion or this Interim Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to this Interim Order is or is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code. Nothing in the Motion or this Interim Order should be construed as approving any transfer pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy Code; provided that nothing herein shall prejudice the Debtors' ability to seek approval for such relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

9. Nothing herein shall be deemed to authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code.

10. The automatic stay of section 362(a) of the Bankruptcy Code, to the extent applicable, is hereby lifted to permit, without further order of this Court: (a) current or former Employees to proceed with their claims (whether arising prior to or subsequent to the Petition Date) under the Workers' Compensation Programs in the appropriate judicial or administrative forum; (b) insurers and third-party administrators to handle, administer, defend, settle, and/or pay workers' compensation claims and direct action claims; (c) the Debtors to continue the Workers' Compensation Programs and pay any amounts relating thereto in the ordinary course; and (d) insurers and third-party administrators providing coverage for any workers' compensation or direct action claims to draw on any and all collateral and/or prefunded loss accounts provided by or on behalf of the Debtors therefor, if and when the Debtors fail to pay and/or reimburse any

insurers and third-party administrators for any amounts in relation thereto. The modification of the automatic stay in this paragraph pertains solely to claims under the Workers' Compensation Programs and direct action claims.

11. Nothing herein (a) alters or amends the terms and conditions of the Workers' Compensation Programs; (b) relieves the Debtors of any of their obligations under the Workers' Compensation Programs; (c) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy, and/or scope of available coverage under the Workers' Compensation Programs; or (d) creates a direct right of action against any insurers or third-party administrators where such right of action does not already exist under non-bankruptcy law.

12. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding and Deduction Obligations to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' pre-petition policies and practices.

13. The Debtors are authorized, but not directed, to pay costs and expenses incidental to payment of the Employee Compensation and Benefits obligations, including all administrative and processing costs and payments to outside professionals.

14. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Employee Compensation and Benefits obligations.

15. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the pre-petition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this

Interim Order without any duty of further inquiry and without liability for following the Debtors' instructions.

16. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any particular claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. Any payment made pursuant to this Interim Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim. The Debtors are authorized to issue post-petition checks, or to effect post-petition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to any pre-petition amounts owed to their Employees.

17. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

19. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

**EXHIBIT C**

APPLE TREE PARTNERS IV, L.P.

(A Cayman Islands Exempted Limited Partnership)

FIRST AMENDED AND RESTATED
LIMITED PARTNERSHIP AGREEMENT

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF APPLE TREE PARTNERS IV, L.P. AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM, AND, IN CERTAIN CASES, WITH THE APPROVAL OF THE GENERAL PARTNER. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

**NON-U.S. RESIDENTS ONLY:** NO ACTION HAS BEEN OR WILL BE TAKEN TO COMPLY WITH THE SECURITIES LAWS IN ANY JURISDICTION OUTSIDE THE UNITED STATES OF AMERICA THAT WOULD PERMIT AN OFFERING OF THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, IN ANY COUNTRY OR JURISDICTION WHERE ACTION FOR THAT PURPOSE IS REQUIRED. IT IS THE RESPONSIBILITY OF ANY PERSON WISHING TO PURCHASE THE LIMITED PARTNER INTERESTS REPRESENTED BY THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT TO SATISFY HIMSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE THE UNITED STATES OF AMERICA IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

*Proprietary and Confidential*

APPLE TREE PARTNERS IV, L.P.
First Amended and Restated
Limited Partnership Agreement

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THIS FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT (as amended and/or restated from time to time, the "Agreement"), dated this 1st day of November, 2012, by and among ATP III GP, Ltd., a Cayman Islands exempted company, as general partner (in its capacity as a general partner of the Partnership, the "General Partner"); Daniel P. Finkelman, as the withdrawing limited partner ("Finkelman"); and the Persons (as defined in Paragraph 18(j)) whose Subscription Agreements (as defined in Paragraph 1(e)) with the Partnership (as defined below) and the General Partner dated the date hereof for the purchase of limited partner interests in the Partnership have been accepted and who have executed (directly or by power of attorney) a counterpart to this Agreement, as limited partners (the "First Closing Limited Partners"). The First Closing Limited Partners, any additional limited partners admitted to the Partnership after the date of this Agreement, and any substituted limited partners admitted to the Partnership after the date of this Agreement, each in its capacity as a limited partner of the Partnership, are sometimes referred to herein collectively as the "Limited Partners". The General Partner and the Limited Partners are sometimes referred to herein collectively as the "Partners".

PRELIMINARY STATEMENT

The General Partner and Finkelman formed Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership (the "Partnership") by executing the Initial Exempted Limited Partnership Agreement of the Partnership, dated October 29, 2012 (the "Original Agreement"), and by registering the Partnership as an exempted limited partnership with the Registrar of Exempted Limited Partnerships under the laws of the Cayman Islands on October 29, 2012.

The First Closing Limited Partners desire to be admitted to the Partnership as limited partners.

The General Partner and the First Closing Limited Partners desire to amend the Original Agreement as hereinafter provided, and in consideration of the premises and the agreements herein contained and intending to be legally bound hereby, agree as follows:

A. Immediately following the admission to the Partnership of the First Closing Limited Partners, Finkelman shall hereby withdraw from the Partnership as a limited partner, his contribution to the Partnership's assets (if any) as a limited partner shall be returned and he shall have no further interest in or obligation to the Partnership.

B. On the date first above written, upon execution of a counterpart to this Agreement by or on behalf of such Persons, (i) ATP III GP, Ltd. hereby continues as general partner of the Partnership and (ii) the First Closing Limited Partners are hereby admitted to the Partnership as limited partners of the Partnership.

C. The Original Agreement is hereby amended and restated in its entirety to read as follows:

The Partners agree to carry on an exempted limited partnership subject to the terms of this Agreement in accordance with the provisions of the Exempted Limited Partnership Law (2012 Revision) of the Cayman Islands (as the case may be amended from time to time, the "ELP Law").

1. Firm Name; Registered Office; Purposes; Powers; Specific Authorization; Currency.

(a) Firm Name. The name of the Partnership is Apple Tree Partners IV, L.P.

(b) Registered Office. The initial address of the Partnership's registered office in the Cayman Islands is at the offices of Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. The General Partner may change the Partnership's registered office to any other address in the Cayman Islands from time to time without the consent of any other Person. The General Partner shall provide notice of such change (and of any change in the registered office of the General Partner in the Cayman Islands) to the Limited Partners.

(c) Purposes. The sole purpose of the Partnership is to invest, through one or more entities directly or indirectly owned by the Partnership (each such entity, an "Intermediary"), in equity securities issued by Apple Tree Consolidated, SPRL, a to-be-formed Belgium private limited liability company ("ATC"), whose equity securities shall be owned, directly or indirectly through an Intermediary, by the Partnership. The sole purpose of ATC shall be to invest in pharmaceutical,

medical device and other medically-related business projects. Subject to the two preceding sentences, the Partnership and ATC shall have such other purposes that are necessary, convenient or related to the foregoing. Each Intermediary and ATC shall be wholly-owned, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(d) Powers. Subject to the terms and provisions hereof, the Partnership shall have all the powers available to it as an exempted limited partnership under the laws of the Cayman Islands.

(e) Specific Authorization. Notwithstanding any other provision of this Agreement, without the consent of any Limited Partner or other Person being required, the Partnership is hereby authorized to execute, deliver and perform, and the General Partner on behalf of the Partnership is hereby authorized to execute and deliver, (i) a subscription agreement with each Limited Partner, or the equivalent thereof in the case of a Limited Partner who will not have a Contingent Subscription (as defined in Paragraph 5(a)), for the purchase of such Limited Partner's interest in the Partnership (each, a "Subscription Agreement") and (ii) any agreement, document or other instrument contemplated thereby or related thereto, and (subject to any approvals expressly required by any such agreement, document or instrument or by this Agreement) any amendments thereto, and any such actions heretofore taken by the General Partner are hereby ratified. The General Partner is hereby authorized to enter into the agreements, documents and instruments described in the preceding sentence on behalf of the Partnership, but such authorization shall not be deemed a restriction on the power of the General Partner to enter into other documents on behalf of the Partnership.

(f) Functional Currency. The functional currency of the Partnership is the United States dollar. All capital contributions and cash distributions shall be made in United States dollars, and the Partnership's income, gains, losses and expenses will be calculated and reported in United States dollars.

2. General Partner.

(a) Name; Address. The name and address of the General Partner are set forth in the List of Partners (as defined in Paragraph 16(b)). The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the name or address of the General Partner.

(b) Control. The management, policies and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner. The General Partner and Apple Tree Venture Management, LLC (the "Management Company") shall, at all times prior to any removal of the General Partner as general partner of the Partnership pursuant to Paragraph 4(a), be owned exclusively by Dr. Seth L. Harrison ("Dr. Harrison").

(c) Management Agreement. The General Partner shall cause ATC to enter into a management agreement with the Management Company, in the form attached hereto as Schedule A (as amended from time to time, the "Management Agreement"). The Management Agreement shall not be terminated prior to the time set forth in Paragraph 5 thereof or amended, and none of its provisions shall be waived, in each case without the prior written consent of the holders of a majority of the Preferred Units (as defined in Paragraph 6(c)).

(d) Fees and Commissions. So long as the Management Agreement is in effect, any director's fees, consulting fees and other remuneration paid to the General Partner, the Management Company, Dr. Harrison, the members and employees of the Management Company or any of their respective affiliates in cash, securities or otherwise by an Intermediary, ATC or any direct or indirect subsidiary of ATC, including any Operating Company (as defined in Paragraph 2(l)) (a "Subsidiary"), shall only be received by them on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by Apple Tree Pharmaceuticals, Inc., a Delaware corporation ("ATPharma"), for services rendered to an Operating Company, rather than the gross amount thereof,

reduced by any ATPharma governance-related costs that are not borne by any such entity, shall be received by ATPharma on behalf of the Management Company, shall be remitted to the Management Company and shall reduce the Management Fee as provided in the Management Agreement; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board (as defined in Paragraph 2(n)); and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

(e) Salaries. Without the prior written approval of the holders of a majority of the Preferred Units, while the Management Agreement is in effect, neither the General Partner, the Management Company, Dr. Harrison nor any of their respective affiliates shall receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary and the employees of the Management Company shall not receive fees, commissions, compensation or other remuneration from the Partnership, an Intermediary, ATC or any Subsidiary, in each case other than the Management Fee, fees or other remuneration paid to ATPharma as described in Paragraph 2(d) or with the prior written approval of the holders of a majority of the Preferred Units; provided, however, that the General Partner shall be entitled to an annual fee of US $500 from the Partnership.

(f) Cayman Islands Registration Statement. The General Partner has filed a registration statement pursuant to Section 9 of the ELP Law to register the Partnership as an exempted limited partnership (the "Registration Statement") and shall file any required amendments thereto.

(g) Standard of Care. It is recognized that decisions concerning investments or potential investments involve exercise of judgment and the risk of loss. To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any such

investment or any other action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner or such affiliate.

(h) Guarantees. The Partnership shall not guarantee or agree in any other manner to become liable with respect to any indebtedness or obligation of any other Person without the prior written consent of the holders of a majority of the Preferred Units.

(i) Borrowing. The Partnership shall not borrow money except with the prior written consent of the holders of a majority of the Preferred Units.

(j) U.S. Trade or Business. The General Partner shall use its reasonable best efforts to conduct the affairs of the Partnership and its subsidiaries so that no Foreign Limited Partner realizes income that is "effectively connected with the conduct of a trade or business within the United States" within the meaning of Sections 871, 882 or 897 of the U.S. Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder (such Act, together with such rules and regulations, being referred to in this Agreement as the "Code"), solely by virtue of being a Limited Partner. Notwithstanding the foregoing, payments (or adjustments thereto) specifically provided for in this Agreement or the Management Agreement shall not be deemed to violate this undertaking. For purposes of this Agreement, the term "Foreign Limited Partner" shall mean any Limited Partner that (A) either (1) is a "nonresident alien" within the meaning of Section 7701(b)(1)(B) of the Code, a foreign corporation or partnership within the meaning of Section 7701(a)(5) of the Code, or a foreign trust or estate within the meaning of Section 7701(a)(31) of the Code, or (2) is treated as a partnership or flow-through entity for United States Federal income tax purposes and that has any partners, members or beneficiaries that would be a Foreign Limited Partner under clause (1) of this sentence if

they were Limited Partners and (B) has notified the General Partner of such status in the Subscription Agreement or transfer documentation pursuant to which it acquired its interest in the Partnership.

(k) Letter Agreement. Dr. Harrison shall, on the date first written above, execute and deliver to the holders of the Preferred Units a letter agreement in the form attached hereto as Schedule B (as amended from time to time, the "Letter Agreement").

(l) Co-investments. The General Partner shall not permit any Intermediary, ATC or any Subsidiary to purchase any Operating Company Securities (as defined below), debt, royalty arrangement or other economic interest issued by a prospective Operating Company in which the General Partner, the Management Company or any of their respective affiliates has a preexisting investment or is investing at the same time as ATC unless such purchase has been approved by the holders of a majority of the Preferred Units. Securities intended to achieve ATC's investment purpose are sometimes referred to herein as "Operating Company Securities". An entity in which ATC has a direct or indirect investment in Operating Company Securities is sometimes referred to herein as an "Operating Company". Except with the prior written consent of the holders of a majority of the Preferred Units, each Operating Company shall be wholly-owned, directly or indirectly, by ATC, except for a de minimis number of equity securities owned by third parties to avoid unlimited liability, to comply with directors' qualifying share requirements, and the like.

(m) Tax Classification. Except with the prior written consent of Ezbon International Limited ("Ezbon"), the General Partner shall (i) not cause or permit the Partnership to elect (A) to be excluded from the provisions of Subchapter K of the Code or (B) to be treated as a corporation for United States Federal income tax purposes; (ii) cause the Partnership to make any election reasonably necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for United States Federal income tax purposes; (iii) cause the Partnership to file any required tax returns in a manner consistent with its treatment as a partnership for United States Federal income tax purposes; and (iv) not take any action that would be inconsistent with the treatment of the Partnership as a

partnership for such purposes. Except with the prior written consent of the holders of a majority of the Preferred Units, the Partnership shall use its best efforts to cause ATC to be treated as a corporation for United States Federal income tax purposes.

(n) ATC Board. The board of directors of ATC (the "Board") shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in pharmaceutical, medical device and other medically-related projects and related activities (each, a "Project"), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC's management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the "Operating Agreement"); provided that no compensation shall be paid by ATC to

the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts (including, without limitation, cash and publicly-traded securities) received by ATC from Subsidiaries (including, without limitation, Operating Companies) which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received from Subsidiaries, including, without limitation, the Operating Companies). The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Intermediaries and Subsidiaries (including, without limitation, the Operating Companies) substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Intermediary or Subsidiary (including, without limitation, any Operating Company), such Intermediary or Subsidiary (including, without limitation, any Operating Company) shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Intermediary or Subsidiary (including, without limitation, any Operating Company) rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board.

3. Limited Partners.

(a) Names; Addresses; Contingent Subscriptions. The names and addresses of the Limited Partners and their respective Contingent Subscriptions (if any) and numbers and classes of Units (as defined in Paragraph 6(c)) are set forth in the List of Partners. Except as otherwise provided in this Agreement, the Contingent Subscription of Dr. Harrison (together with his permitted transferees) shall at all times prior to a Removal Event be equal to 5.26315% of the sum of the

Contingent Subscriptions of the other holders of the Preferred Units. The List of Partners shall be revised by the General Partner from time to time, without the consent of any other Person, to reflect any change in the Contingent Subscription or number or class of Units of any Limited Partner, the withdrawal of any Limited Partner, the admission of any additional or substituted Limited Partner, the transfer of all or any part of the interest of any Limited Partner and any change in the name or address of any Limited Partner, provided such revision is, in each case, in accordance with the terms of this Agreement. The General Partner shall also maintain a Register of Partners, as required by the ELP Law.

(b) Limited Liability. No Limited Partner, in its capacity as such, shall be liable for the debts or obligations of the Partnership; provided that nothing in this sentence shall limit the liability of a Limited Partner (i) to make the capital contributions which it agreed to make to the Partnership pursuant to Paragraph 5, (ii) to return distributions that it is required to return to the Partnership pursuant to this Agreement or the ELP Law, or (iii) to pay any other amount that it is required to pay to the Partnership pursuant to this Agreement or its Subscription Agreement. None of the Limited Partners, in their capacity as such, shall take any part in the conduct of the business of the Partnership or have any power to sign for or to bind the Partnership.

(c) Additional Admissions. Subject to the provisions of this Agreement, including but not limited to Paragraphs 3(a) and 6(d), (e) and (f), the General Partner is authorized, but not obligated, to accept additional subscriptions from the Limited Partners, select and admit additional Limited Partners to the Partnership, and issue Incentive Common Units and Tracking Units (each as defined in Paragraph 6(c)) to the Limited Partners and additional Limited Partners. Each Limited Partner who is to make an additional subscription or receive additional Incentive Common Units or Tracking Units shall execute a Subscription Agreement (or the equivalent thereof) and each Person who is to be admitted as an additional Limited Partner shall execute a counterpart to this Agreement and, if such Person makes a subscription, a Subscription Agreement (or the equivalent thereof).

4. Removal of General Partner.

(a) Removal. Following the occurrence of a Removal Event (as defined in Paragraph 4(c)), the holders of a majority of the Preferred Units may, upon ten days' prior written notice to the General Partner, remove the General Partner as general partner of the Partnership and select a successor general partner. The successor general partner shall agree in writing to be bound by this Agreement and assume all of the obligations of the General Partner under this Agreement. The exculpation and indemnification of the General Partner pursuant to Paragraphs 2(g) and 15 shall survive for actions or omissions occurring prior to such removal (subject to the conditions described therein); the Management Agreement, the Letter Agreement and the Operating Agreement shall terminate (except that the Management Company shall continue to be entitled to receive the Management Fee for an additional 45 days and shall reimburse the Partnership to the extent (if any) that it was paid Management Fee for more than 45 days in advance); and the successor general partner shall file an amendment to the Registration Statement reflecting the change in the general partner of the Partnership.

(b) Substitution of Successor General Partner. The successor general partner shall be deemed admitted to the Partnership as general partner immediately upon the filing of the section 10 notice pursuant to the ELP Law in respect of such change of general partner.

(c) Removal Event. For purposes of this Paragraph 4, "Removal Event" means the occurrence of any of the following:

(i) The criminal conviction for a felony entered by a court of competent jurisdiction against Dr. Harrison in respect of, or in relation to, the Partnership's affairs;

(ii) Any act of willful fraud, willful misconduct or Gross Negligence by Dr. Harrison in respect of, or in relation to, the Partnership's affairs; or

(iii) Any violation by Dr. Harrison of his obligations under Section 4 of the Letter Agreement including, without limitation, upon his death or disability.

(d) Consequences of General Partner's Removal. If the General Partner is removed as general partner of the Partnership pursuant to Paragraph 4(a):

(i) The number of Founder Common Units (as defined in Paragraph 6(c)) held by Dr. Harrison (taken together with his permitted transferees) shall be reduced as follows:

(A) If such removal was the result of Dr. Harrison's death or disability, then such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 60 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 60, or

(B) In all other instances, such number of Founder Common Units shall be reduced by a fraction, not less than zero, the numerator of which is 120 minus the number of full calendar months beginning July, 2011 through and including the date of removal, and the denominator of which is 120;

Furthermore, if the General Partner is removed pursuant to Paragraph 4(a) as a result of (1) a Removal Event described in Paragraph 4(c)(i) or (2) willful and material fraud by Dr. Harrison within the context of Paragraph 4(c)(ii), as determined by a court of competent jurisdiction, then Ezbon shall have the option to purchase the remaining Founder Common Units held by Dr. Harrison (taken together with his heirs or legal representatives) at an aggregate price equal to $1. Such option may be exercised by Ezbon within 30 days following the removal date by written notice thereof by Ezbon to Dr. Harrison (or his heirs or legal representatives, as applicable), accompanied by payment in full of the purchase price therefor. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Founder Common Units to Ezbon.

(ii) At Dr. Harrison's election, his Contingent Subscription in respect of Preferred Units shall be reduced to the aggregate amount of capital contributions theretofore made by him to the Partnership in respect of such Preferred Units, in which case the number of his Preferred Units and Investment Common Units shall also be reduced by the same percentage by which Dr. Harrison's Contingent Subscription in respect of Preferred Units was reduced and future distributions in respect of Dr. Harrison's Preferred Units and Investment Common Units shall be adjusted to the extent necessary so that, as quickly as possible, aggregate distributions in respect of those Units, net of contributions, are what they would have been if Dr. Harrison had at all times held the reduced number of such Units. Such election right, and the consequences thereof, shall also apply to Dr. Harrison's heirs and legal representatives.

(iii) For the avoidance of doubt, the foregoing adjustments shall be applicable for purposes of determining Dr. Harrison's (and each of his heirs' and legal representatives') share of allocations and distributions only prospectively from the date of removal, and Dr. Harrison (and each of his heirs and legal representatives) shall not, as a result of this Paragraph 4(d), have any obligation (pursuant to Paragraph 15(e), or otherwise) to return to the Partnership or any Partner any distributions that Dr. Harrison (or such heirs and legal representatives) received prior to such date (but, for the further avoidance of doubt, this Paragraph 4(d)(iii) shall not relieve Dr. Harrison (or such heirs and legal representatives) of any obligation he (or they) would otherwise have under Paragraph 15(e) with respect to distributions made prior to the General Partner's removal).

(iv) So long as Dr. Harrison (taken together with his heirs and legal representatives) continues to own in the aggregate the greater of at least (Y) 50,000 Units (appropriately adjusted for any splits or combinations of, or dividends with respect to, Units occurring after the date of this Agreement or (Z) 20% of the Units owned by him (taken together with his heirs and legal representatives) following the Removal Event, after giving effect to all

adjustments (1) arising from such Removal Event (including, without limitation, adjustments pursuant to Paragraph 4(d)(i), (ii) and (vi)) and (2) pursuant to Paragraph 6(f)(i), neither the Partnership, any Intermediary, ATC nor any Subsidiary (including any Operating Company) shall enter into any transaction or agreement with Ezbon, Blue Horizon Enterprise Ltd. ("Blue Horizon") or any of their respective affiliates without the prior written consent of Dr. Harrison (or his heirs or legal representatives, if applicable); provided, however, that the Partnership may continue to issue additional Preferred Units and Investment Common Units to Ezbon, Blue Horizon or any of their respective affiliates, (i) at or above the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations or (ii) below the purchase prices per Unit specified in Paragraph 6(d) and in the ratio of one Preferred Unit for each Investment Common Unit, for the purpose of financing the Partnership's operations, provided that in the case of this clause (ii), (A) a third party investor who is not affiliated with either Ezbon or Blue Horizon and who is not a Limited Partner, but who comes within the definition of a "qualified purchaser" for purposes of the U.S. Investment Company Act of 1940, as amended, participates in such financing and purchase at least one-third of the Preferred Units and Investment Common Units sold in such financing and (B) the combined percentage ownership by Ezbon, Blue Horizon and their affiliates of Preferred Units and Investment Common Units immediately following such financing is less than their combined percentage ownership of such Units immediately prior to such financing. So long as Dr. Harrison (or his heirs or legal representatives) continues to own any Units, all such transactions or agreements with Ezbon, Blue Horizon or any of their respective affiliates shall be on "arms-length" terms or as otherwise approved by Dr. Harrison (or his heirs or legal representatives, if applicable).

(v) Dr. Harrison (or his heirs or legal representatives, if applicable) shall have a preemptive right, exercisable for a minimum period of 30 days and a maximum period of

60 days, to subscribe for his pro rata share of any additional Preferred Units and Investment Common Units offered by the Partnership (based on the percentage of the total number of outstanding Units of such class owned by Dr. Harrison (or his heirs or legal representatives)), on the most favorable terms and conditions offered to any third party (including, without limitation, Ezbon, Blue Horizon or their respective affiliates).

(vi) If the General Partner is removed pursuant to Paragraph 4(a) as a result of a Removal Event described in Paragraph 4(c)(ii) (other than for willful and material fraud as determined by a court of competent jurisdiction) or Paragraph 4(c)(iii), then Dr. Harrison (or his heirs or legal representatives) shall have the option to require Ezbon to purchase a percentage of his (or their) Preferred Units equal to the product of (A) the aggregate capital called in respect of such Preferred Units divided by the aggregate Contingent Subscriptions of his (or their) Preferred Units and (B) the quotient of (1) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by the then balance due under the Loan Arrangement divided by (2) the aggregate capital contributed or deemed contributed (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units. The purchase price for such Preferred Units shall be an amount equal to the sum of the capital contributions made or deemed made (to the extent such deemed contributions reduced the Management Fee) in respect of such Preferred Units, reduced by (x) amounts then outstanding under the Loan Arrangement and (y) distributions to Dr. Harrison (or his heirs or legal representatives), in each case in respect of such Preferred Units. Such option may be exercised by Dr. Harrison (or his heirs or legal representatives) within 30 days following the removal date by written notice thereof by Dr. Harrison (or his heirs or legal representatives) to Ezbon. If Dr. Harrison (or his heirs or legal representatives) elects to exercise such option, Ezbon shall purchase such Preferred Units by payment of the purchase price therefor in four equal installments, with the first installment due within ten days following the date of

exercise and each subsequent installment due on the three-month anniversary of the due date for the prior installment; provided, however, that the entire amount shall be payable in full within ten days following the date of exercise if the aggregate purchase price does not exceed US $10 million. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Preferred Units to Ezbon. In the event of a sale of Preferred Units pursuant to this clause (vi), the provisions of Section 3 of Part A to Schedule D hereto shall no longer apply to any remaining Preferred Units owned by Dr. Harrison (or his heirs or legal representatives). In no event shall a sale of Preferred Units pursuant to this clause (vi) insulate the General Partner from any claim against it for willful misconduct or gross negligence giving rise to such removal.

5. Capital of the Partnership.

(a) Capital Contributions; General.

(i) Subject to the terms of this Agreement, each of the Partners shall contribute to the capital of the Partnership, in such installments as the General Partner may request, an amount equal to, but not in excess of, the total amount (if any) set forth opposite such Partner's name under the column marked "Contingent Subscription" in the List of Partners (the "Contingent Subscription"). A Partner may not make less than the full amount of any required capital contribution.

(ii) Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, the Intermediaries and ATC, as applicable, to (A) pay Partnership and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership and Intermediary non-discretionary items (such as taxes and tax distributions by the Partnership) and satisfy other Partnership and Intermediary expenses and obligations incurred in the ordinary course of business and (C) make capital contributions (directly or indirectly through one or more Intermediaries) to ATC to allow ATC to (I) pay the

Management Fee for the next 12-month period and other ATC expenses then existing or reasonably anticipated to be incurred within the next six-month period, (II) invest in Projects approved by the Board in accordance with a Board-approved budget therefor and (III) pay ATC non-discretionary items (such as taxes) and satisfy other ATC expenses and obligations incurred in the ordinary course of business. Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (X) capital calls in respect of Partnership, Intermediary and ATC expenses and obligations incurred in the ordinary course of business for legal, audit, accounting and tax services, insurance, business development (including the identification, investigation and evaluation of prospective Projects), and other general and administrative matters (other than the Management Fee) shall be limited to the amount therefor set forth in a budget presented by the General Partner and approved by the holders of a majority of the Preferred Units in writing or the Board, whose approval shall not be unreasonably withheld or delayed, (Y) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (1) 20% of the Partnership's contributed capital or (2) $50 million, and (Z) in the case of a capital call pursuant to clause (C) of the preceding sentence that is made on a basis accelerated from that set forth in a Board-approved budget, the General Partner (1) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (2) provided the Board with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the holders of Preferred Units or the Board shall be required with respect to organizational expenses of the Partnership and its related entities.

(iii) Not less than ten business days' prior written notice shall be given to each Partner by the General Partner as to the date for each capital contribution. The amount of capital required to be contributed by each Partner on each occasion of a capital contribution shall

be computed by the General Partner so that each Partner contributes that portion of the aggregate capital contribution to be made by all Partners at such time which such Partner's Contingent Subscription bears to the total Contingent Subscriptions of all Partners, or in such other proportions as may be determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. All capital contributions shall be made in cash.

(iv) The General Partner may at any time, with the prior written consent of Ezbon, reduce on a pro rata basis or terminate, in their entirety, the outstanding commitments of the Partners to make further capital contributions to the Partnership, in which instance the obligation of the Partners to contribute additional capital to the Partnership shall be so reduced or terminated, as applicable, the number of Units held by each Partner shall be adjusted on an equitable basis and the List of Partners shall be revised to reflect such occurrence. A portion of the capital contributions to be made by Dr. Harrison shall be financed by Ezbon, and repaid to Ezbon by Dr. Harrison, as described in Schedule D attached hereto.

(b) Anti-Money Laundering. Each capital contribution made by a Limited Partner shall constitute a representation and warranty by such Limited Partner that, to such Limited Partner's knowledge:

(i) None of the cash that such Limited Partner has contributed or is contributing to the Partnership has been derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law; and

(ii) No contribution by such Limited Partner to the Partnership shall cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the Proceeds of Crime Law 2008, the Terrorism Law (2009 Revision) or the Money Laundering Regulations (2011 Revision), in each case, such statute

as amended to date and any successor statute thereto and including all regulations promulgated thereunder (the "Anti-Money Laundering Laws").

Each Limited Partner shall promptly notify the General Partner if it becomes aware that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws. Each Limited Partner shall use commercially reasonable efforts to provide promptly to the General Partner any additional information regarding such Limited Partner or its beneficial owners that the General Partner reasonably deems necessary or advisable to determine or ensure compliance with all applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges that if at any time it is discovered that such Limited Partner has made a contribution to the Partnership of money derived from, or related to, any activity that is deemed criminal under United States or Cayman Islands law or that could cause the Partnership, the Management Company, the General Partner or any of their directors, officers or employees to be in violation of the Anti-Money Laundering Laws, any of such Limited Partner's foregoing representations and warranties is incorrect, or if otherwise required by applicable law or regulation related to money laundering and similar activities, the General Partner may undertake appropriate actions to ensure compliance with such applicable law or regulation. Actions that may be taken by the General Partner in the circumstances described in the previous sentence include, but are not limited to, the following:

(x) The General Partner, upon delivery of notice to that effect to the affected Limited Partner, may "freeze" such Limited Partner's interest in the Partnership and, in that event: (A) shall not permit the Partnership to accept any additional capital contributions from such Limited Partner so long as the interest is frozen; (B) shall not request any additional capital contributions from such Limited Partner so long as the interest is frozen; (C) shall not permit the Partnership to

allocate any items of Partnership income or gain to such Limited Partner's Capital Account with respect to any fiscal period commencing on or after the date of delivery of such notice and for so long as the interest is frozen (although the General Partner may cause the Partnership to continue to allocate items of loss or expense to such Limited Partner's Capital Account to the same extent as if, with respect to such Limited Partner and through the date of the Partnership's final liquidating distribution, such Limited Partner had timely made all required capital contributions with respect to its Contingent Subscription); and/or

(D) shall not permit the Partnership to make any distributions to such Limited Partner in respect of its frozen interest after the delivery of such notice and for so long as the interest is frozen, other than liquidating distributions pursuant to Paragraph 11 in an amount equal to the positive balance in its Capital Account, after payment to each other Partner of its final liquidating distribution in accordance with Paragraph 11 and subject in all events to compliance with applicable law.

(y) In the alternative, the General Partner may cause the Partnership to redeem such Limited Partner's interest using Partnership funds at a price equal to the lesser of (A) the aggregate amount of capital contributions theretofore made by such Limited Partner, net of amounts previously distributed to such Limited Partner, (B) the positive balance in the Capital Account of such Limited Partner, or (C) the fair market value of such interest (as determined by the General Partner); provided, however, that the General Partner shall cause the Partnership to redeem such Limited Partner's interest at such price if required by law, regulation or government order.

Each Limited Partner further understands that the Partnership or General Partner may release

confidential information about such Limited Partner and, if applicable, any of its underlying beneficial owners, to proper authorities if the General Partner, in its reasonable discretion, determines that it is required or otherwise in the best interests of the Partnership in light of the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities. Each Limited Partner acknowledges and agrees that the General Partner, without the consent of any Limited Partner and notwithstanding any other provision of this Agreement, may amend any provision of this Agreement in order to effectuate the intent of this Paragraph 5(b) and ensure compliance with the Anti-Money Laundering Laws or any other applicable laws concerning money laundering and similar activities.

(c) Defaults on Contributions. If a Limited Partner does not make a capital contribution required by this Paragraph 5 when due (or within five business days thereafter), interest will accrue on the outstanding balance of such unpaid capital contribution at a rate per annum equal to the lesser of (i) the prime rate (as published in The Wall Street Journal) plus 6% or (ii) the maximum rate permitted by law (the "Default Rate"), from and including the date the capital contribution was due until the earlier of the date of payment of such capital contribution by such Limited Partner (or a transferee) or such time, if any, as the General Partner imposes a Default Charge (as defined below).

If such Limited Partner fails to pay any such amount when due but pays such amount (together with any accrued interest thereon) prior to the time it becomes a Defaulting Partner (as defined below), the General Partner shall reflect in the records of the Partnership the amount paid by such Partner, with such amount treated as payment first of accrued interest to the extent thereof; provided, however, that no such payment of interest shall reduce the amount to be contributed to the Partnership by such Partner with respect to its Contingent Subscription.

A Limited Partner that has failed to make a payment in satisfaction of its Contingent Subscription (together with any accrued interest thereon) pursuant to this Paragraph 5 by the close of business on the date that is five business days after the relevant due date and has also failed to make such payment on or before the date that is 30 days after the General Partner has delivered, by certified or

registered mail or by nationally or internationally recognized "overnight" courier service, a notice (a "Default Notice") informing such Limited Partner of its failure to make such payment and notifying such Limited Partner that such Limited Partner will be considered a Defaulting Partner if payment is not received within such 30-day period, shall be deemed to be a "Defaulting Partner." The General Partner, in its sole discretion, may determine whether or not, or when, to deliver a Default Notice with respect to any Limited Partner that has failed to timely make a required payment pursuant to this Paragraph 5.

If a Limited Partner becomes a Defaulting Partner, the General Partner may, in its sole discretion, pursue one or more of the following alternatives:

(i) impose a Default Charge upon the Defaulting Partner;

(ii) assist the Defaulting Partner in selling its Preferred Units and Investment Common Units, with the full assumption by the buyer of the Defaulting Partner's Contingent Subscription, including any portion then due and unpaid;

(iii) accept a late contribution from the Defaulting Partner, with interest, in satisfaction of its then-outstanding obligation to contribute hereunder, if the General Partner determines in its sole discretion that such a late contribution will not jeopardize the activities and operations of the Partnership; or

(iv) pursue and enforce all of the Partnership's other rights and remedies against the Defaulting Partner under this Agreement, the relevant Subscription Agreement and Cayman Islands law, including, but not limited to, the commencement of a lawsuit to collect the unpaid capital contribution, interest and costs, and reimbursement of any other damages suffered by the Partnership (with interest on any such costs or other damages that are reimbursed).

If a Defaulting Partner's Preferred Units and Investment Common Units are sold in their entirety pursuant to (ii) above, or if the General Partner exercises its sole discretion to accept a late contribution pursuant to (iii) above, the General Partner shall not impose a Default Charge pursuant to (i) above. Otherwise, all such remedies, including the aforesaid damages provisions, shall be cumulative, and the

use by the General Partner of one or more of them against a Defaulting Partner shall not preclude the use of any other such remedy.

The Partners agree that the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy. To the maximum extent permitted by law, in connection with such failure (which remedy each Partner agrees is reasonable) and subject to the preceding paragraph of this Paragraph 5(c), the General Partner may cause such Defaulting Partner's number of Preferred Units and Investment Common Units to be reduced by up to 50% of such Defaulting Partner's corresponding number of Units of such class immediately prior to becoming a Defaulting Partner, which Units shall be allocated to the non-defaulting holders of Preferred Units in proportion to their respective number of Preferred Units (the "Default Charge"); provided, however, that if a Defaulting Partner (or any transferee(s) then holding the Defaulting Partner's interest) subsequently contributes the amount in arrears during such period, then in the sole discretion of the General Partner, the number of Preferred Units and Investment Common Units of the Partners (and the sharing of distributions among such Partners) shall be adjusted so that the Partners hold the same number of Units and receive the same of distributions as if such Defaulting Partner (together with such transferee(s), if any) had made all contributions with respect to such Defaulting Partner's interest on a timely basis.

The application of the aforesaid remedies and other damages provisions with respect to any Defaulting Partner shall not relieve such Defaulting Partner of his obligation to make (i) the capital contribution which resulted in the application of the aforesaid remedies and other damages provisions because of the failure of the Defaulting Partner to pay such capital contribution and (ii) all subsequent required capital contributions when due, or relieve such Defaulting Partner from designation as a Defaulting Partner and application of the aforesaid remedies and other damages provisions as to any such subsequent required capital contribution if he defaults with respect thereto. However, for the avoidance of doubt, the General Partner may not impose multiple Default Charges upon a Defaulting Partner with

respect to a single required capital contribution.

In connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made to the Defaulting Partner and the Partners to which the portions of the Defaulting Partner's Units are reallocated in accordance with this Paragraph 5(c) as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge. Without limiting the generality of the foregoing, the General Partner, in its sole discretion, may elect to retain any distributions that any Defaulting Partner would otherwise be entitled to receive pursuant to this Agreement (taking into account the effect of the imposition of any remedies and other damages provisions that have been applied) for use for any Partnership purpose, including for the purpose of applying such withheld amounts, first to any costs of collection incurred by the Partnership with respect to such Defaulting Partner's unpaid capital contributions and second, as payment of such Defaulting Partner's capital contributions that are due but unpaid (and interest thereon) in chronological order starting with the capital contribution that has been unpaid for the longest period. In the case of a distribution in kind, if the General Partner elects to withhold such distribution for application against such Defaulting Partner's unpaid capital contribution, the Partnership shall withhold securities otherwise distributable to the applicable Defaulting Partner and cause such securities to be sold for and on behalf of such Defaulting Partner (and such Defaulting Partner hereby irrevocably appoints the General Partner (with full power of substitution) as his agent and attorney in fact for purposes of effecting such sale) and remit the net proceeds of such sale to the Partnership for application as provided in this paragraph. Each Defaulting Partner with respect to which distributions are authorized to be withheld in accordance with this Paragraph 5(c) agrees to execute such other documents as the General Partner may reasonably request in order to effect the purposes of such withholding and the sale of any withheld securities on behalf and in the name of such Defaulting Partner. For purposes of maintaining such Defaulting Partner's Capital Account and all other purposes under this Agreement, such Defaulting Partner shall be deemed to have

received, at the time the distribution would otherwise have been made to such Defaulting Partner, any distribution that was withheld by the Partnership for application against such Defaulting Partner's unpaid capital contribution obligations and, in the case of a distribution in kind that was withheld, to have sold the withheld securities outside of the Partnership so that the Capital Accounts of, and economic arrangements among, the other Partners are not affected by the withholding of any such distribution. The value of any remaining withheld distributions that have not been applied to the Defaulting Partner's unpaid capital contribution obligations may be retained by the Partnership in cash or in kind, until the winding up of the Partnership, provided that the Partnership shall not be liable to such Defaulting Partner for any reduction in the value of any securities retained in kind and the Defaulting Partner shall not be entitled to the benefit of any appreciation in such retained securities.

6. Accounts; Units.

(a) Capital Accounts. There shall be established on the books of the Partnership a capital account ("Capital Account") for each Partner which shall consist of such Partner's initial capital contribution (if any) to the Partnership made pursuant to Paragraph 5, (i) increased by (A) any additional capital contributions by such Partner to the Partnership made pursuant to Paragraph 5 and (B) any amounts from time to time credited to the Capital Account of such Partner pursuant to Paragraph 7, (ii) decreased by (A) any distributions to such Partner and (B) any amounts from time to time charged to the Capital Account of such Partner pursuant to Paragraph 7, and (iii) adjusted pursuant to Paragraph 5(c).

(b) Distributions in Kind. For purposes of maintaining and determining Capital Accounts, all property distributed in kind by the Partnership to a Partner shall be charged to that Partner's Capital Account at the fair market value of such property on the date of distribution.

(c) Authorized Units. The Partnership is authorized to issue five classes of Limited Partner units (collectively, the "Units"), consisting of the following:

(i) up to 900,000 preferred units (the "Preferred Units"),

(ii) up to 900,000 investment common units (the "Investment Common Units"),

(iii) up to 225,000 founder units (the "Founder Common Units"),

(iv) up to 158,823 incentive common units (the "Incentive Common Units"), and

(v) tracking units with respect to any Project ("Tracking Units"), which shall not represent in the aggregate more than 5% of the Partnership's cumulative direct and indirect profits in such Project since its inception, and which "track" the profits (determined in accordance with GAAP, as defined in Paragraph 16(f)) of a particular Project.

(d) Purchase Price for Units. The purchase price for each Preferred Unit shall be US $1,666.66, to be contributed from time to time as described in Paragraph 5(a). The purchase price for each Investment Common Unit, Founder Common Unit, Incentive Common Unit and Tracking Unit (which may be US $0.00 in each case) shall be determined by the General Partner. Each Partner's Contingent Subscription shall be equal to the sum of the original issue purchase prices for its Units.

(e) Issuance of Units. On the date of this Agreement, (i) 436,050 Preferred Units and 436,050 Investment Common Units are being issued to Ezbon (ii) 418,950 Preferred Units and 418,950 Investment Common Units are being issued to Blue Horizon, and (iii) 45,000 Preferred Units, 45,000 Investment Common Units and 225,000 Founder Common Units are being issued to Dr. Harrison. Incentive Common Units and Tracking Units shall be issued from time to time as determined by the General Partner, in each case, subject to a vesting schedule as determined by the General Partner. Incentive Common Units shall only be issued to Persons providing bona fide services to ATPharma and Tracking Units in respect of a Project shall only be issued to Persons providing bona fide services directly related to the corresponding Project. No Incentive Common Units or Tracking

Units shall be issued to the General Partner, the Management Company, Dr. Harrison or their respective affiliates without the prior written approval of the holders of a majority of the Preferred Units. If any outstanding Preferred Units or Investment Common Units are redeemed by the Partnership or otherwise cancelled, they may only be reissued by action of the General Partner with the prior written consent of the holders of a majority of the Preferred Units.

(f) Reduction of Authorized and Issued Founder Common Units and Incentive Common Units. The number of authorized Founder Common Units and Incentive Common Units shall be automatically reduced (and each Partner's number of Founder Common Units and Incentive Common Units outstanding as of any date on which the number of authorized Founder Common Units or Incentive Common Units are reduced shall be reduced by the same percentage by which the authorized number of Units of the corresponding class were reduced as of such date), based on the amount of capital contributed to the Partnership in respect of the Preferred Units, as follows:

(i) Founder Common Units: reduced to 100,000 at such time as US $300 million has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Founder Common Units divided by the sum of the number of authorized Founder Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 20% to 10%, and

(ii) Incentive Common Units: reduced to 47,368 at such time as US $1 billion has been contributed to the Partnership in respect of the Preferred Units, with such reduction beginning after US $100 million has been so contributed and calculated so that the quotient of the number of authorized Incentive Common Units divided by the sum of the number of authorized Incentive Common Units and outstanding Investment Common Units is reduced, on a straight-line basis (calculated in $10 million increments), from 15% to 5%.

An example of how such authorized (and, similarly, issued and outstanding) Founder Common Units and

Incentive Common Units shall be reduced, and the manner in which distributions are apportioned pursuant to Paragraph 8(d)(ii), is attached hereto as Schedule E.

7. Allocations.

(a) Allocations Generally. Except as otherwise provided in this Agreement, the Profit or Loss (as defined in Paragraph 7(b)) for each fiscal quarter shall be allocated among the Partners in a manner that as closely as possible gives economic effect to the provisions of Paragraphs 5 and 8 and the other provisions of this Agreement, as determined in the reasonable discretion of the General Partner.

(b) Definitions. For purposes of this Agreement:

(i) "Carrying Value" shall mean, with respect to each Partnership asset, the asset's adjusted basis for United States Federal income tax purposes, adjusted to equal its fair market value, as determined by the General Partner, in accordance with the rules set forth in U.S. Treasury Regulations Section 1.704-1(b)(2)(iv)(f), except as otherwise provided herein, immediately prior to: (a) the date of the acquisition of any additional Partnership interest by any new or existing Partner in exchange for more than a de minimis capital contribution; (b) the date of the distribution of more than a de minimis amount of Partnership property (other than a pro rata distribution) to a Partner; or (c) such other dates as specified in U.S. Treasury Regulations under Section 704 of the Code; provided that adjustments pursuant to clauses (a), (b) or (c) above shall be made only if the General Partner determines in its sole discretion that such adjustments are necessary or appropriate to reflect the relative economic interests of the Partners. The Carrying Value of any Partnership asset distributed to any Partner shall be adjusted immediately prior to such distribution to equal its fair market value. In the case of any asset that has a Carrying Value that differs from its adjusted basis, Carrying Value shall be adjusted by the amount of depreciation calculated for purposes of the definition of "Profit" or "Loss" rather than the amount of depreciation determined for United States Federal income tax purposes.

(ii) "Profit" or "Loss" for each fiscal quarter means the sum of the taxable income or loss of the Partnership, or particular items thereof, determined in accordance with the accounting method used by the Partnership for United States Federal income tax purposes, with the following adjustments: (a) all items of income, gain, loss or deduction allocated pursuant to Paragraph 7(c) shall not be taken into account in computing such taxable income or loss; (b) any income of the Partnership that is exempt from United States Federal income taxation and not otherwise taken into account in computing Profit or Loss shall be added to such taxable income or loss; (c) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, any gain or loss resulting from a disposition of such asset shall be calculated with reference to such Carrying Value; (d) upon an adjustment to the Carrying Value of any asset (other than an adjustment in respect of depreciation), pursuant to the definition of Carrying Value, the amount of the adjustment shall be included as gain or loss in computing such taxable income or loss; (e) if the Carrying Value of any asset differs from its adjusted tax basis for United States Federal income tax purposes, the amount of depreciation, amortization or cost recovery deductions with respect to such asset shall for purposes of determining Profit or Loss be an amount which bears the same ratio to such Carrying Value as the United States Federal income tax depreciation, amortization or other cost recovery deduction bears to such adjusted tax basis (provided, that if the United States Federal income tax depreciation, amortization or other cost recovery deduction is zero, the General Partner may use any reasonable method for purposes of determining depreciation, amortization or other cost recovery deduction in calculating Profit or Loss); and (f) except for items in (a) above, any expenditures of the Partnership not deductible in computing taxable income or loss, not properly capitalizable and not otherwise taken into account in computing Profit or Loss pursuant to this definition shall be treated as deductible items.

(c) Regulatory Provisions. The following provisions of this Paragraph 7(c) are included in order to comply with United States Federal income tax laws and regulations. For purposes

of making allocations of Profit or Loss, if the Capital Account of any Limited Partner would be reduced below zero (or if an existing deficit in such Limited Partner's Capital Account would be increased) as a result of the allocation to it of any Loss, then such Loss shall first be allocated to such Limited Partner until such Limited Partner's Capital Account is reduced to zero; the remaining portion of such Loss shall be allocated to the remaining Partners in accordance with Paragraph 7(a) until the Capital Account of each remaining Limited Partner is reduced to zero; and any remaining portion of such Loss shall be allocated to the General Partner. In determining whether an allocation for a fiscal quarter would cause any Limited Partner's Capital Account to become negative or would add to an existing deficit in such Limited Partner's Capital Account for purposes of the preceding limitation, the following allocations and distributions shall be taken into account in determining such Limited Partner's Capital Account balance:

(i) allocations of loss and deduction that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner pursuant to Section 704(e)(2) of the Code (relating to allocations to a donee of a partnership interest), Section 706(d) of the Code (relating to allocations required in the case of a shift in a partner's interest in a partnership during a taxable year) and Treasury Regulation §1.751-1(b)(2)(ii) (relating to shifts in partners' interests in the inventory and unrealized receivables of a partnership, as those terms are defined in Section 751 of the Code, attributable to distributions from a partnership); and

(ii) distributions that, as of the end of such quarter, reasonably are expected to be made to such Limited Partner to the extent they exceed offsetting increases to such Limited Partner's Capital Account that reasonably are expected to occur during (or prior to) the Partnership fiscal quarters in which such distributions reasonably are expected to be made.

If any Limited Partner receives an allocation or distribution described in the preceding sentence which is not reasonably expected to occur, but which causes or increases a negative balance in such Limited Partner's Capital Account, such Limited Partner shall be allocated items of Partnership





 

income and gain in an amount and manner sufficient to eliminate such negative balance as quickly as possible. If any special allocation is made pursuant to the preceding sentence, subsequent allocations of loss, expenses or deductions shall be made to such Limited Partner so as to reverse the effect of such special allocation; provided, however, that no allocation of loss, expenses or deductions shall be made pursuant to this sentence which would cause such Limited Partner's Capital Account to become negative. The General Partner shall determine, in consultation with the Partnership's independent public accountants or auditors, whether any allocations or distributions described in this Paragraph 7(c) reasonably are expected to be made and the amount of any such allocations or distributions, and its determination shall be binding on all Partners. The provisions of this Paragraph 7(c) are intended to constitute a "qualified income offset" as defined in Treasury Regulation §1.704-1(b)(2)(ii)(d), and shall be so interpreted. All allocations with respect to any fiscal quarter pursuant to Paragraph 7(a) and any offsetting allocations pursuant to this Paragraph 7(c) shall be made on an interim basis, subject to adjustment when tax allocations are made pursuant to Paragraph 7(e) at the end of the fiscal year including such quarter.

(d) Changes in Partners' Interests. Notwithstanding the foregoing, with respect to any fiscal quarter during which any Partner's interest in the Partnership changes by reason of the admission of a Partner, the withdrawal of a Partner, non-pro rata contributions of capital to the Partnership, or any other event described in Section 706(d)(1) of the Code and any regulations issued thereunder, allocations of Profit or Loss made pursuant to this Paragraph 7 shall be adjusted appropriately to take into account the varying interests of the Partners in the Partnership during such quarter. The General Partner shall consult with the Partnership's accountants, auditors or other advisers and shall select the method of making such adjustments, which method shall be used consistently thereafter.

(e) Tax Allocations.

(i) For United States Federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocation of Profit and Loss pursuant to the other provisions of this Agreement, taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code. However, in the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.

(ii) If any Partners are treated for United States Federal income tax purposes as realizing ordinary income as the result of receiving interests in the Partnership (whether under Section 83 of the Code or under any similar provision of any law, rule or regulation) and the Partnership is entitled to any offsetting deduction (net of any income realized by the Partnership as a result of such receipt), the Partnership's net deduction will be allocated to and among the Capital Accounts of such Partners in such manner as to offset, as nearly as possible, the ordinary income realized by such Partners to the extent consistent with applicable law.

(f) Tax Withholding.

(i) If the Partnership incurs a tax withholding obligation with respect to the share of Partnership income or gains allocated or distributed to any Partner: (A) any amount that is (1) actually withheld from a distribution that otherwise would have been made to such Partner and (2) paid over to any taxing authority in satisfaction of such withholding obligation shall be treated under this Agreement for all purposes as if such amount had been distributed to such

Partner; and (B) to the extent that any amount paid over to any taxing authority by the Partnership in satisfaction of such withholding obligation exceeds the amount, if any, actually withheld from a distribution that otherwise would have been made to such Partner, such excess shall be treated as an interest-free advance to such Partner. Amounts treated as advanced to any Partner pursuant to this Paragraph 7(f) shall be repaid by such Partner to the Partnership within 30 days after the General Partner gives notice to such Partner making demand therefor, which notice shall be given promptly after such advance is made. The Partnership shall collect any unpaid amounts from any Partnership distributions to such Partner that otherwise would be made to such Partner and any unpaid amounts that exceed anticipated distributions to such Partner shall be subtracted from such Partner's Capital Account.

(ii) If the Partnership receives securities disposition proceeds or other investment returns with respect to which non-United States taxes have been withheld at the source, or the Partnership is otherwise required to pay any non-United States taxes, the aggregate amount of such taxes so withheld, paid or required to be paid shall be deemed for all purposes of this Agreement to have been received by the Partnership and then distributed by the Partnership to and among the Partners based on the amount of such withholding or other taxes attributable to each Partner, as determined by the General Partner after consulting with the Partnership's accountants, auditors or other advisers, taking into account any differences in the amount of such taxes attributable to each Partner because of such Partner's status, nationality or other characteristics. The intent of the preceding sentence is to ensure to the extent feasible that the burden of non-United States taxes withheld at the source, as required to be paid by the Partnership, are borne by those Partners to which such taxes are attributable. If the amounts deemed distributed to the Partners in accordance with such sentence do not comport with the provisions of this Agreement relating to the apportionment of distributions among the Partners,

then, notwithstanding such distribution provisions, subsequent distributions to the Partners shall be adjusted in an equitable manner by the General Partner to reflect the intent of such sentence.

(iii) Notwithstanding Paragraph 7(f)(i), such Paragraph shall not apply with respect to any withholding taxes in respect of a Net Tax Obligation of Ezbon or Blue Horizon in respect of its Preferred Units or Investment Common Units. Accordingly, the amounts distributed to the holders of Incentive Common Units and Founder Common Units shall be determined as if Net Tax Obligations were an expense of the Partnership, and the allocations, distributions, and related provisions of this Agreement shall be adjusted and applied in a manner consistent with such intention. For this purpose, a "Net Tax Obligation" with respect to the Preferred Units and Investment Common Units held by Ezbon or Blue Horizon shall mean the excess of (A) all United States Federal, state or local taxes imposed on Ezbon or Blue Horizon in respect of such Units, whether imposed by withholding or otherwise (taking into account any reduced tax rates to which Ezbon or Blue Horizon is entitled pursuant to any tax treaty, without regard to whether Ezbon or Blue Horizon avails itself of such reduced rates), over (B) the value of all refunds, tax credits and tax deductions to which Ezbon, Blue Horizon or their respective beneficial holders are entitled in respect of any amount described in clause (A) (without regard to whether Ezbon, Blue Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions). Ezbon and Blue Horizon shall each provide to the Partnership a properly completed Form W-8(BEN), and shall provide to the Partnership all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of United States Federal, state and local taxes imposed on Ezbon or Blue Horizon, as the case may be, in respect of its income from the Partnership. For the avoidance of doubt, the Net Tax Obligation of Ezbon or Blue Horizon shall not include any additional tax liability resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon, Blue

Horizon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon, Blue Horizon or their respective affiliates (including any such activities that cause Ezbon or Blue Horizon to have a permanent establishment in the United States) apart from Ezbon's or Blue Horizon's investment in the Partnership, (y) Ezbon's or Blue Horizon's failure to comply with the requirements of the previous sentence, and (z) Ezbon or Blue Horizon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of United States Federal, state or local taxes. Ezbon or Blue Horizon, as applicable, shall, as soon as reasonably practicable, provide the Partnership with such information as is reasonably necessary for the Partnership to determine the Net Tax Obligation with respect to Ezbon or Blue Horizon.

(g) Profits Interests. Except as specifically determined by the General Partner upon prior consultation with the holders of a majority of the Preferred Units, Units issued after the date hereof ("Additional Units") are intended to be a "profits interest" for United States Federal income tax purposes. In furtherance of such intent, notwithstanding any provision in this Agreement to the contrary: (i) no items of income, gain, loss, deduction or credit shall be allocated to any Partner in respect of such Partner's Additional Units to the extent such items relate to any unrealized income, gain, loss, deduction or credit of the Partnership as of the issuance date of such Additional Units; (ii) distributions by the Partnership to any Partner in respect of such Partner's Additional Units shall be limited to the minimum extent necessary to be consistent with the treatment of such Additional Units as a "profits interest" for United States Federal income tax purposes (and if any distributions are not made to any Partner pursuant to the provisions of this clause (ii), then to the extent there is sufficient subsequent appreciation in value of the assets of the Partnership, distributions shall be adjusted so that,

to the maximum extent possible, each Partner receives, on a cumulative basis, the same amount of distributions such Partner would have received as if no distributions in respect of any Units had been limited by reason of any Units constituting profits interests); and (iii) the General Partner shall consult with the Partnership's legal and tax advisors to determine the manner in which allocations and distributions should be made by the Partnership in respect of Additional Units. Following the promulgation, if any, of final regulations and associated guidance by the United States Treasury Department and Internal Revenue Service regarding the tax consequences associated with the issuance or transfer of partnership interests in exchange for the performance of services, the Partnership is authorized and directed to elect (on behalf of the Partnership and each of its Partners) to have the liquidation value safe harbor contemplated by proposed Section 1.83-3(l) of the Treasury Regulations and by the revenue procedure contemplated by IRS Notice 2005-43 (or the corresponding provisions of any such final Treasury Regulations or associated guidance) apply irrevocably with respect to all Units transferred in connection with the performance of services. The Partnership and each Partner (including any Partner obtaining an interest in exchange for the performance of services and any person to whom an interest in the Partnership is transferred) shall comply with all requirements associated with any such election.

8. Distributions.

(a) Tax Distributions. During each fiscal year, the General Partner shall cause the Partnership to distribute in cash to each Partner an amount equal to the aggregate United States Federal and state tax liability and non-United States tax liability attributable to items of income, gain, loss or deduction allocated to such Partner by the Partnership with respect to such year ("Hypothetical Tax Liability"), as determined in accordance with this Paragraph 8(a). Hypothetical Tax Liability shall be determined as if each Partner were a natural person resident in the State of New York, as follows:

(i) The Hypothetical Tax Liability of a Partner shall be computed based upon the items of income, gain, loss, deduction or credit allocated to such Partner by the

Partnership with respect to the fiscal year, without taking into account any other items of income, gain, loss, deduction or credit, and without taking into account the standard deduction or any loss carryovers or exemptions; provided that, if the General Partner determines, after consulting with the Partnership's accountants, auditors or counsel, that the actual tax liability of a Partner resulting from participation in the Partnership is reasonably likely to exceed the Hypothetical Tax Liability as so computed as a result of (A) the phaseout of, or limitation on, the deductibility of expenses allocated to such Partner, whether under Section 67 or Section 68 of the Code or otherwise, (B) the application of the alternative minimum tax or similar taxes, or (C) for any other reason, then, at the election of the General Partner, appropriate adjustments shall be made in computing the Hypothetical Tax Liability of each Partner on an equivalent basis so as to insure that each Partner will receive distributions sufficient to satisfy the actual tax liability attributable to its participation in the Partnership;

(ii) Hypothetical Tax Liability generally shall be determined using the highest marginal rates of Federal and state tax applicable to individuals for such fiscal year; provided, however, that (A) the determination of such marginal tax rates shall take into account the character of income, gain, loss or deduction (including net capital gain or loss) that is allocated and (B) if all or any portion of the Hypothetical Tax Liability is attributable to the alternative minimum tax, such marginal tax rates shall be determined using the highest rates applicable under the alternative minimum tax; and

(iii) Hypothetical Tax Liability for a Partner holding more than one class of Units shall be determined separately for each such class of Units, and without regard to tax items allocated to such Partner in respect of the other classes of Units held by such Partner.

To assist the Partners in paying estimated tax, amounts may be distributed during a fiscal year with respect to such year by using estimates of Hypothetical Tax Liability based upon results of the Partnership's operations for the fiscal year to date; to the extent that such estimates result in distributions

pursuant to this Paragraph 8(a) in excess of the Hypothetical Tax Liability determined after the close of the fiscal year, such excess distributions shall be deemed made pursuant to the other provisions of this Paragraph 8, and subsequent distributions shall be adjusted accordingly. Amounts distributed within 90 days after the end of a fiscal year may, at the option of the General Partner, be deemed to have been made during such fiscal year rather than during the fiscal year in which the distribution is actually made, solely to the extent necessary to satisfy the requirements of this Paragraph 8(a) and solely for such purpose. Distributions previously made to a Partner pursuant to the provisions of this Paragraph 8 during a fiscal year (but not including any tax distribution with respect to a prior fiscal year) in respect of any class of Units shall reduce dollar-for-dollar the amount of any tax distribution to which a Partner is entitled with respect to such fiscal year pursuant to this Paragraph 8(a) in respect of allocations to such Partner corresponding to such class of Units. Tax distributions to any Partner in respect of a class of Units shall be treated as an advance against amounts otherwise distributable to such Partner (or its successors in interest) in respect of such class of Units pursuant to the other provisions of this Agreement.

(b) Tracking Unit Distributions. In connection with any "liquidity event" (including the receipt of interest, dividends, redemption or sale proceeds, royalties and other distributions, an initial public offering, or as otherwise determined in the reasonable discretion of the General Partner and the holders of a majority of the Preferred Units) with respect to a Project for which Tracking Units are then outstanding, the Partnership shall distribute, out of available assets, to the holders of such Tracking Units an amount (on a cumulative basis together with any prior distributions in respect of such Tracking Units) equal to 5% of the Partnership's direct and indirect profits (determined in accordance with GAAP) in such Project; provided that an amount equal to the sum of the Partnership's aggregate cost with respect to such Project and the balance of such profits has been or is simultaneously received by ATC from such Project; provided, further that, in accordance with the granting documents relating to Tracking Units with respect to a Project, the cumulative profits actually distributed to holders of Tracking Units with respect to a Project as of any time shall be less than the

5% profit amount referred to above if and to the extent that Tracking Units for such full 5% profit amount have not been granted and remain outstanding. Such distribution shall be made in cash, or in the discretion of the General Partner and with the prior written approval of the holders of a majority of the Preferred Units, in securities of ATC or other property identified by the General Partner. If Tracking Units are outstanding with respect to more than one Project that has undergone a liquidity event, distributions pursuant to this Paragraph 8(b) shall be apportioned among such holders of Tracking Units in proportion to the fair market values thereof.

(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary (including, without limitation, each Operating Company), shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary (including, without limitation, each Operating Company) to distribute promptly to

ATC any amounts (including, without limitation, cash and publicly-traded securities) which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets).

(d) Apportionment of Other Distributions. Distributions pursuant to Paragraph 8(c) shall be made as follows:

(i) First, to the holders of Preferred Units, in proportion to their respective number of such Units, until the cumulative amount distributed pursuant to this Paragraph 8(d)(i) equals the sum of (A) the aggregate amount previously contributed in respect of the Preferred Units and (B) $10,006,000.

(ii) Second, among the holders of Investment Common Units, Founder Common Units and Incentive Common Units, as follows:

(A) To the holders of Incentive Common Units, in proportion to their respective number of such Units, the Incentive Percentage of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time. The "Incentive Percentage" at any time shall mean the number of Incentive Common Units outstanding at such time divided by the sum of the number of authorized Incentive Common Units at such time and the number of authorized Investment Common Units at such time.

(B) To the holders of Investment Common Units and Founder Common Units, in proportion to their respective number of such Units, the balance of the amounts proposed to be distributed pursuant to this Paragraph 8(d)(ii) at such time.

(e) Limitations on Distributions. Anything in this Agreement to the contrary notwithstanding, (i) no distribution shall be made to any Partner if and to the extent that such distribution

would not be permitted under the ELP Law or other applicable law and (ii) with respect to any distribution in respect of an interest intended to be a "profits interest", such distribution shall be limited as provided in Paragraph 7(g). For the avoidance of doubt, no Units issued to Ezbon or Blue Horizon as of the date hereof are intended to be treated as profits interests with respect to which distributions would be limited by reason of clause (ii) of the preceding sentence or Paragraph 7(g).

9. Valuation.

(a) Valuation by General Partner. Subject to Paragraph 9(d), the General Partner shall determine in good faith the fair market value of the assets owned directly and indirectly by the Partnership (including, without limitation, the assets held by ATC), in accordance with the Partnership's valuation methodology adopted by the General Partner and approved by the holders of a majority of the Preferred Units in writing. The General Partner shall submit all such valuations to the holders of a majority of the Preferred Units in writing.

(b) Fair Market Value. In general, but subject to the requirements of Paragraph 9(a), the fair market value of any security owned directly or indirectly by the Partnership which is freely tradeable shall be determined as of the close of trading on the date as of which the value is being determined by taking the last reported sale price of such security on such date on the exchange where it is primarily traded, or, if such security is not traded on an exchange, such security shall be valued at the last reported sale price on such date on the Nasdaq Stock Market, or, if such security is not reported on the Nasdaq Stock Market, such security shall be valued at the closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities. The determination of the fair market value of all other assets owned directly or indirectly by the Partnership shall be made in accordance with GAAP (as defined in Paragraph 16(e)). In making any such determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for goodwill or the name of the Partnership, the Partnership's office records, files and statistical data, or any other intangible assets of the Partnership.

(c) Freely Tradeable Securities. For purposes of this Agreement a security shall be deemed to be "freely tradeable" if (i) the Partnership's entire direct and indirect ownership of such security can be immediately sold by the Partnership to the general public and (ii) such security is either listed on a securities exchange or carried on the Nasdaq Stock Market and market quotations are readily available therefor. Notwithstanding the foregoing, in the case of a distribution of securities to the Partners, a security shall be deemed to be "freely tradeable" if the entire portion of such distribution made to the Limited Partners can be immediately sold by them and the condition provided for in clause (ii) of the preceding sentence is satisfied, assuming for purposes of this sentence that no Limited Partner is an affiliate of the issuer of such security. If only a portion of the Partnership's entire holding of such security satisfies the requirements of this Paragraph 9(c), that portion of the Partnership's entire holding of such security shall be deemed to be "freely tradeable."

(d) Disputed Valuations. If the General Partner determines a valuation for assets owned directly or indirectly by the Partnership which is objected to in writing by the holders of a majority of the Preferred Units within 15 days following the submission thereof in writing to the holders of a majority of the Preferred Units by the General Partner, and if the holders of a majority of the Preferred Units do not, within 45 days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted in writing by the General Partner, such valuation shall be determined by an independent chartered financial analyst selected by the General Partner and approved by the holders of a majority of the Preferred Units, whose determination shall be binding upon all Partners.

10. Term.

(a) Term of Partnership. The Partnership shall continue in perpetuity, unless it is sooner dissolved as provided in Paragraph 10(b) or by operation of law.

(b) Termination. The Partnership shall be wound up and dissolved (i) upon any event in respect of the General Partner specified in Section 15(5) of the ELP Law (subject to the

proviso thereto), (ii) at any time there are no limited partners of the Partnership, or (iii) upon the entry of a decree of judicial dissolution of the Partnership pursuant to the ELP Law.

11. Winding Up.

(a) General Provisions. Following termination pursuant to Paragraph 10(b), the Partnership shall be wound up in an orderly manner. The General Partner shall carry out the winding up of the affairs of the Partnership pursuant to this Agreement, provided that if the General Partner is no longer owned solely by Dr. Harrison, the holders of a majority of the Preferred Units shall appoint one or more liquidators to act as the liquidators in carrying out such winding up, subject to any contrary order of the court upon an application for a Partner or creditor pursuant to Section 15(4) of the ELP Law.

(b) Winding Up Distributions. The General Partner or the liquidators, as applicable, shall cause the Partnership to satisfy the Partnership's liabilities and obligations to creditors including Partners who are creditors (whether by payment or the making of reasonable provision for payment thereof). Any gain or loss incurred in connection with the winding up of the Partnership shall be allocated to and among the Partners in the manner provided in Paragraph 7 and the assets remaining after satisfaction of liabilities shall then be distributed among the Partners in cash or in kind in accordance with Paragraph 8. In performing their duties, the General Partner or the liquidators, as applicable, are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the General Partner or the liquidators, as applicable, shall determine to be in the best interest of the Partners.

(c) Expenses of Winding Up. The expenses incurred by the General Partner or the liquidators, as applicable, in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement and reasonable compensation for the services of the General Partner or the liquidators, as applicable, shall be borne by the Partnership, provided that if the General Partner is carrying out the winding up, no such

compensation shall be paid while the Management Agreement remains in effect. The General Partner or the liquidators, as applicable, shall use reasonable efforts to make final distributions following winding up of the Partnership before the later of (i) the end of the Partnership's taxable year in which the date of the completion of the winding up of the Partnership occurs, or (ii) 90 days after the date of the completion of the winding up of the Partnership; provided that at such point in time ATC has sold, distributed or otherwise disposed of all of its Operating Company Securities.

(d) Standard of Care. Neither the General Partner not any liquidator, as applicable, nor any of their respective affiliates shall incur liability to the Partnership or to any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or inaction on the part of such Person or any of its affiliates, provided that in any such case (i) such Person's or such affiliate's course of conduct was in good faith and reasonably believed by such Person or such affiliate to be in or not opposed to the best interests of the Partnership and (ii) such course of conduct did not constitute willful fraud, willful misconduct, Gross Negligence or an intentional and material breach of this Agreement on the part of such Person or affiliate.

(e) Return Obligation. Subject to the ELP Law, no Partner shall be obligated to restore to the Partnership the amount of any negative Capital Account.

(f) Dissolution. Upon completion of the winding up of the Partnership pursuant to this Paragraph 11, a notice of final dissolution shall be filed with the Cayman Islands Registrar of Exempted Limited Partnerships pursuant to the ELP Law and the Partnership shall dissolve thereon.

12. Transfer of Interests of Limited Partners.

(a) Conditions to Transfer. The prior written consent of the General Partner, in its sole and absolute discretion, shall be required for the assignment, pledge, mortgage, hypothecation, sale or other disposition or encumbrance (a "Transfer") by any Limited Partner of all or any part of its interest in the Partnership; provided, however, that such consent shall not be required for a transfer by Ezbon or Blue Horizon (or any subsequent transfer by a direct or indirect transferee of Ezbon or Blue

Horizon) of all or any part of its Limited Partner interest. The General Partner may require that any proposed Transfer be effective only as of the beginning or end of a fiscal quarter. Additionally, any Transfer shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership or of other counsel reasonably satisfactory to the Partnership (which opinion shall be obtained at the expense of the transferor) that such Transfer will not result in (A) the Partnership, the General Partner or the Management Company being required to register as an investment company under the U.S. Investment Company Act of 1940, as amended, (B) a violation by the Partnership of the ELP Law, (C) the Partnership being deemed terminated pursuant to Section 708 of the Code, or (D) the Partnership becoming subject to U.S. Federal income taxation at the entity level within the meaning of Section 7704 of the Code or otherwise being treated as a corporation for U.S. Federal income tax purposes; provided, however, that the condition of obtaining a written opinion of counsel may be waived (completely or as to particular matters) by the General Partner in its sole discretion with the prior written consent of the holders of a majority of the Preferred Units. Furthermore, any Transfer otherwise permitted hereunder shall, except in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon), be made only upon a determination by the General Partner that such Transfer will not result in a material adverse effect (including the cost of compliance) on the Partnership or any Partner as a result of the Partnership's obligations to make tax basis adjustments under Sections 734 or 743 of the Code; provided, however, that the General Partner may, in its sole discretion, waive the requirement to make such a determination. Each Limited Partner shall provide the General Partner with any information necessary to allow the Partnership to comply with its obligations to make tax basis adjustments under Section 734 or 743 of the Code. Except in accordance with the provisions of this Paragraph 12, each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership. To the fullest extent permitted by law, any attempted Transfer of a Limited Partner's interest without compliance with this Agreement shall be void. Every Transfer shall be

subject to all of the terms, conditions, restrictions and obligations of this Agreement.

(b) Substituted Limited Partners. Without the consent of the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon)), the aforesaid written opinion of counsel (unless waived by the General Partner with the prior written consent of the holders of a majority of the Preferred Units) and the aforesaid determination by the General Partner (other than in the case of a Transfer by Ezbon or Blue Horizon (or any direct or indirect transferee of Ezbon or Blue Horizon) or unless waived by the General Partner), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. Any transferee of a Partnership interest transferred in accordance with the provisions of this Paragraph 12 shall be admitted as a substituted Limited Partner (to the extent of the interest transferred) upon the date specified therefor in a document providing for such admission, which document shall be executed by the General Partner (including, without limitation, in its capacity as attorney-in-fact for and on behalf of existing Limited Partners), the transferor of the Partnership interest transferred in accordance with the provisions of this Paragraph 12 and the transferee of such interest (and shall include the transferee's written agreement to be bound by this Agreement), and which admission shall not require the consent of any other Partner. Any transferee of a Partnership interest shall execute such other documents as the General Partner may request to effectuate such Transfer and shall, by its admission as a substituted Limited Partner, be subject to all of the terms of this Agreement and be deemed to have executed a power-of-attorney as provided in Paragraph 18(b). Each Partner, by its execution of this Agreement, agrees and consents to the admission of any substituted Limited Partner pursuant to the terms of this Paragraph 12.

(c) Disclosure of Information. No Limited Partner (other than Ezbon, Blue Horizon or a direct or indirect transferee of either Ezbon or Blue Horizon) shall disclose any Partnership Information (as defined in Paragraph 16(d)) to any prospective transferee (or otherwise violate the provisions of Paragraph 16(d)) in connection with a Transfer or proposed Transfer without the written

consent of the General Partner. The Limited Partners acknowledge that as a condition to granting such a consent, the General Partner may require that any prospective transferee execute a confidentiality agreement with the Partnership which is satisfactory to the General Partner.

(d) Transfer Expenses. The Limited Partner requesting a Transfer shall, at the request of the General Partner, reimburse the Partnership for any expenses reasonably incurred by the Partnership, the General Partner or any of their affiliates in connection with such Transfer or proposed Transfer, including any legal, accounting and other expenses related thereto ("Transfer Expenses"), whether or not such Transfer is consummated. At its election, and in any event if the requesting Limited Partner has not reimbursed the Partnership for any Transfer Expenses incurred by the Partnership in preparing for or consummating a proposed or completed Transfer within 30 days after the General Partner has given to such Limited Partner written demand for payment, the Partnership shall be entitled to reimbursement from the transferee of such interest. If neither such requesting Limited Partner nor the transferee reimburses the Partnership for such Transfer Expenses within a reasonable time, the General Partner may charge the transferee's or the transferor's Capital Account in an amount equal to the Transfer Expenses. For avoidance of doubt, such Transfer Expenses shall include, without limitation, the additional accounting, tax preparation and other administrative expenses reasonably incurred (or to be incurred) by the Partnership in the case of a Transfer that results in tax basis adjustments to be made by the Partnership under Section 743 of the Code or related provisions. Each Limited Partner also agrees to reimburse the Partnership, at the request of the General Partner, for any cost or other expense reasonably incurred by the Partnership, the General Partner or any of their respective affiliates (and if such expenses are not so reimbursed, the General Partner may charge such Limited Partner's Capital Account for such expenses) in connection with any tax basis adjustments that the Partnership is required to make under Section 743 of the Code or related provisions as a result of the transfer of interests of such Limited Partner by its beneficial owners. In the case of a Transfer (or the transfer of interests of a Limited Partner by its beneficial owners) that is

expected to result in future expenses of the type described in the two preceding sentences, the General Partner may estimate the amount of such expenses in good faith, and such estimate shall be final.

(e) No Entity Level Taxation. The General Partner (i) shall not cause or permit any offering of Partnership interests to be registered under the U.S. Securities Act of 1933, as amended (the "Securities Act"), (ii) shall not cause or permit interests in the Partnership to become "traded on an established securities market," and (iii) shall withhold its consent to, and shall not "recognize", any Transfer of a "partnership interest" (or portion thereof) in the Partnership (Y) that, to the General Partner's knowledge after reasonable inquiry, would otherwise be accomplished by a trade on a "secondary market or the substantial equivalent thereof," in each case within the meaning of Section 469(k) or 7704 of the Code and any regulations promulgated thereunder that are in effect at the time of the proposed Transfer, or (Z) if and to the extent that such Transfer, if made, would cause the Partnership to fail to satisfy a "safe harbor" which it satisfied immediately prior to such Transfer, unless the General Partner determines that such Transfer would not otherwise cause the Partnership to be subject to U.S. Federal income tax at the entity level within the meaning of Section 7704 of the Code; for the purpose of the preceding clause, a "safe harbor" shall mean (1) the safe harbor for "transfers not involving trading" pursuant to Treasury Regulation §1.7704-1(e); (2) the safe harbor for "private placements" set forth in Treasury Regulation §1.7704-1(h); or (3) the "lack of actual trading" safe harbor set forth in Treasury Regulation §1.7704-1(j). The foregoing provisions of this Paragraph 12(e) shall not apply to the extent that the General Partner has determined with the consent of the holders of a majority of the Preferred Units that the Partnership shall be taxed as a corporation for U.S. Federal tax purposes.

(f) Representations and Warranties. The transferor and transferee shall provide the General Partner, in connection with any proposed Transfer, (x) with such written representations and warranties as it reasonably may request, including such representations and warranties as the General Partner may determine necessary in order to ensure that the Partnership will not be subject to U.S.

Federal income tax at the entity level within the meaning of Section 7704 of the Code and (y) with such other information as the General Partner reasonably may request, including tax basis information and the amount of gain or loss to be recognized upon such Transfer.

(g) Tag-Along Rights.

(i) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Preferred Units to any Person other than an affiliate (a "Buyer"), Dr. Harrison (taken together with his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same prices per Preferred Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the Preferred Units owned by Dr. Harrison (taken together with his heirs and legal representatives) as the Preferred Units to be sold by Ezbon or Blue Horizon represent with respect to the Preferred Units owned by Ezbon or Blue Horizon (as applicable) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If Dr. Harrison (or his heirs or legal representatives) wishes to participate in any sale under this Paragraph 12(g)(i), he (or they) shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him (or them) the opportunity to sell such Preferred Units to the Buyer, which written offer shall be made by Ezbon or Blue Horizon promptly after it decides to sell any or all of its Preferred Units to the Buyer. Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives, as applicable) shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Preferred Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to Dr. Harrison (and his heirs and legal representatives); provided, however, that any purchase of less than all of such Preferred Units by the Buyer shall be made from Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives)

pro rata based upon the relative number of Preferred Units that Ezbon or Blue Horizon and Dr. Harrison (and his heirs and legal representatives) are otherwise entitled to sell pursuant to this Paragraph 12(g)(i). Any sale by Dr. Harrison (and his heirs and legal representatives) pursuant to this Paragraph 12(g)(i) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(i) shall survive any transfer by Ezbon or Blue Horizon of Preferred Units to an affiliate.

(ii) If at any time Ezbon or Blue Horizon desires to sell, pursuant to a bona fide offer, all or any part of its Investment Common Units to a Buyer, each other Limited Partner (including, for the avoidance of doubt, Dr. Harrison and his heirs and legal representatives) shall have the right to sell to the Buyer, as a condition to such sale by Ezbon or Blue Horizon, at the same price per Investment Common Unit and, except as otherwise provided herein, on the same terms and conditions as involved in such sale by Ezbon or Blue Horizon, the same percentage of the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by such Limited Partner as the Investment Common Units to be sold by Ezbon or Blue Horizon represent with respect to the aggregate number of Investment Common Units, Founder Common Units and Incentive Common Units owned by all Limited Partners (including, for the avoidance of doubt, Ezbon or Blue Horizon) immediately prior to the sale by Ezbon or Blue Horizon to the Buyer. If any such other Limited Partner wishes to participate in any sale under this Paragraph 12(g)(ii), he shall notify Ezbon or Blue Horizon (as applicable) in writing of such intention within 20 days after his receipt of a written offer from Ezbon or Blue Horizon giving him the opportunity to sell such Investment Common Units, Founder Common Units and/or Incentive Common Units to the Buyer, which written offer shall be made by Ezbon

or Blue Horizon promptly after it decides to sell any or all of its Investment Common Units to the Buyer. Ezbon or Blue Horizon and each such other Limited Partner shall then sell to the Buyer all, or, at the option of the Buyer, any part of the Investment Common Units, Founder Common Units and/or Incentive Common Units proposed to be sold by them at not less than the price and upon other such terms and conditions, if any, not more favorable to the Buyer than those in the written offer provided by Ezbon or Blue Horizon to the other Limited Partners; provided, however, that any purchase of less than all of such Investment Common Units, Founder Common Units and/or Incentive Common Units by the Buyer shall be made from Ezbon or Blue Horizon and the other Limited Partners pro rata based upon the relative number of Investment Common Units, Founder Common Units and/or Incentive Common Units that Ezbon or Blue Horizon and each other Limited Partner are otherwise entitled to sell pursuant to this Paragraph 12(g)(ii). Any sale by each other Limited Partner pursuant to this Paragraph 12(g)(ii) shall be subject to the provisions of the fifth sentence of Paragraph 12(h). The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such tag-along sale other than as the General Partner deems necessary to ensure that the Buyer is bound in with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the tag-along rights established by this Paragraph 12(g)(ii) shall survive any transfer by Ezbon or Blue Horizon of Investment Common Units to an affiliate.

(h) Drag-Along Rights. Each Partner other than Ezbon and Blue Horizon (collectively, the "Holders") covenants and agrees that it shall, at the written request of Ezbon and Blue Horizon, consent to an Ezbon/Blue Horizon Sale (as defined below) and sell all of its Units pursuant to such Ezbon/Blue Horizon Sale and in accordance with this Paragraph 12(h). For purposes of this Paragraph 12(h), an "Ezbon/Blue Horizon Sale" shall mean the bona fide sale by Ezbon and Blue Horizon to an unaffiliated Person, for cash, of all of their Preferred Units and Investment Common Units (i) at an aggregate price equal to three times the price paid by Ezbon and Blue Horizon

for such Units, (ii) in a transaction which places an enterprise value on the Partnership of at least $3 billion or (iii) with the prior written consent of Dr. Harrison (or his heirs or legal representatives). Dr. Harrison (and his heirs or legal representatives, as applicable) shall sell all of his (or their) Preferred Units and Investment Common Units for the same consideration per Unit and, except as otherwise provided herein, on the same terms and conditions as Ezbon and Blue Horizon in the Ezbon/Blue Horizon Sale. Each Holder (including, without limitation, Dr. Harrison (and his heirs or legal representatives, as applicable)) shall sell, in connection with the Ezbon/Blue Horizon Sale, all other Units held by such Holder, at the then fair market value therefor established by the pricing for the Preferred Units and Investment Common Units in the Ezbon/Blue Horizon Sale, i.e., the then inherent value of the "profits interests" represented by the Founder Common Units and the Incentive Common Units after the then fair market values of the Tracking Units (if any) have been determined in the reasonable discretion of the General Partner. Notwithstanding anything herein to the contrary, in connection with an Ezbon/Blue Horizon Sale, any indemnification a Holder shall be required to provide will be made on a several, and not joint and several, basis, and pro rata to its share of the sale proceeds, no Holder shall be required to agree to any non-solicitation, non-competition or similar restrictive covenant or agreement, and no Holder's obligations for indemnification and similar obligations shall exceed the aggregate of the cash proceeds actually received by, and any amount deposited into escrow on behalf of, such Holder in connection with such Ezbon/Blue Horizon Sale. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with an Ezbon/Blue Horizon Sale other than as the General Partner deems necessary to ensure that the purchaser of the Units in respect of any such Ezbon/Blue Horizon Sale is bound with all Partners to the terms of this Agreement as amended or novated thereby. For the avoidance of doubt, the drag-along rights established by this Paragraph 12(h) shall survive any transfer by Ezbon or Blue Horizon of its Units to an affiliate.

(i) Further Restriction on Sales by Dr. Harrison. Dr. Harrison (and his heirs and

legal representatives) shall not sell any of his (or their) Units until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, without the prior written consent of the holders of a majority of the Preferred Units, except as otherwise expressly provided for in this Agreement and subject to the right of first negotiation provided in Paragraph 12(j) and the obligation of good faith negotiation provided in Paragraph 18(n). In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(i), the net after-tax sales proceeds to Dr. Harrison (and his heirs or legal representatives, as applicable) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto.

(j) Right of First Offer. If at any time Dr. Harrison (or his heirs or legal representatives) desires to sell all or any part of his (or their) Units to any Person (other than pursuant to Paragraphs 4(d), 12(g) or 12(h)), and is not prohibited from doing so under Paragraph 12(i), he (or they) shall submit a written offer (the "Offer") to sell such Units (the "Offered Units") to Ezbon and Blue Horizon on terms and conditions, including price, not less favorable to Ezbon and Blue Horizon than those on which Dr. Harrison (or his heirs or legal representatives) proposes to sell such Units to a third party. Each of Ezbon and Blue Horizon shall have the right to purchase its pro rata share of the Offered Units (based on their relative ownership of the type of Units to be sold), together with a right of oversubscription if either fails to exercise the Offer in full. If Ezbon or Blue Horizon desires to purchase all or any part of the Offered Units, it shall communicate in writing its election to purchase to Dr. Harrison (or his heirs or legal representatives) within 30 days of the date the Offer was made. Sales of the Offered Units shall be made at the principal office of the Partnership on the 45th day following the date the Offer was made (or if such 45th day is not a business day, then on the next succeeding business day.) If Ezbon and Blue Horizon do not purchase all of the Offered Units, the Offered Units not so purchased may be sold by Dr. Harrison (or his heirs or legal representatives) at any time within 120 days after the date the Offer was made, at not less than the price and upon other

terms and conditions, if any, not more favorable to the buyer than those specified in the Offer. In the event of any sale by Dr. Harrison (or his heirs or legal representatives) of his (or their) Units pursuant to this Paragraph 12(j), the net after-tax sales proceeds to Dr. Harrison (or his heirs or legal representatives) shall first be applied against any loans outstanding pursuant to Part A of Schedule D hereto. The provisions of Paragraphs 12(a), (c) and (d) shall not apply in connection with any such sale of Offered Units to either Ezbon and/or Blue Horizon.

13. Transfer of Interest of General Partner. The General Partner shall not assign, pledge, mortgage, hypothecate, sell or otherwise dispose of or encumber all or any part of its general partner interest in the Partnership, except in connection with an Ezbon/Blue Horizon Sale. To the fullest extent permitted by law, any attempted transfer of the General Partner's interest, except in connection with an Ezbon/Blue Horizon Sale, shall be void.

14. Withdrawal. Other than in respect of the withdrawal of Finkelman as contemplated by this Agreement, no Partner shall have the right to withdraw from the Partnership.

15. Indemnification.

(a) Indemnified Parties. To the fullest extent permitted by law, the General Partner, the Management Company, ATPharma, the Tax Matters Partner (as defined in Paragraph 18(i)), each member of the Board, each liquidator for the Partnership, and each member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma or the liquidator (herein referred to collectively as "Indemnified Parties" and singly as an "Indemnified Party") shall be indemnified by the Partnership (to the extent such party has not been indemnified by any other organization) against any loss, judgment, liability, expense and/or amount paid in settlement of any claim incurred by or imposed upon him in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which he may be made a party or otherwise involved or with which he shall be threatened, by reason of his being the General Partner, the Management Company, ATPharma, the Tax

Matters Partner, a member of the Board, a liquidator for the Partnership, or a member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or any organization in which the Partnership directly or indirectly owns or owned an interest or of which the Partnership is or was a creditor, which organization he serves or has served as a managing director, director, officer, employee or agent directly or indirectly at the request of the Partnership (in any case, whether or not he continues to be the General Partner, the Management Company, ATPharma, the Tax Matters Partner, a member of the Board, a liquidator for the Partnership, or member, partner, managing director, director, officer, employee, agent or controlling person of the General Partner, the Management Company, ATPharma, a liquidator or of such organization at the time such action, suit or proceeding is brought or threatened, provided that with respect to any former Operating Company of which the Partnership no longer directly or indirectly owns any Operating Company Securities, such Indemnified Party shall only be entitled to indemnification and advancement of expenses pursuant to this Paragraph 15 for causes of action that arose from facts and circumstances in existence on or prior to the first annual anniversary of the date that the Partnership directly or indirectly disposed of the last of its Operating Company Securities of such Operating Company, regardless of when such action, suit or proceeding was brought or threatened), provided that the Indemnified Party acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Partnership, except to the extent any such loss, judgment, liability, expense and/or amount paid in settlement of any claim was the result of willful fraud, willful misconduct, Gross Negligence or intentional and material breach of this Agreement on the part of the Indemnified Party or a dispute between or among the General Partner and one or more of its owners, the Management Company and one or more of its employees, ATPharma and one or more of its employees, two or more owners of the General Partner, two or more employees of the Management Company or two or more employees of ATPharma, and further provided that in the case of an owner of the General Partner or a member, partner, managing director, director, officer,

employee, agent or controlling person of the Management Company, ATPharma, a liquidator for the Partnership or such other organization, the action, suit or proceeding related directly or indirectly to the affairs of the Partnership. The General Partner is authorized to enter into such separate agreements or deed poll on behalf of the Partnership with or benefiting the Indemnified Parties on terms consistent with this Paragraph 15(a) as the General Partner in its reasonable discretion considers necessary or desirable to give full and complete effect to the indemnity provisions set forth herein. Notwithstanding anything to the contrary set forth in this Paragraph 15, holders of Tracking Units may only be indemnified by the Operating Company and/or Project with respect to which their Tracking Units relate, and not by the Partnership, ATP or any Subsidiary (including, without limitation, any Operating Company) or other Project.

(b) Indemnification Not Exclusive. The foregoing rights of indemnification shall be in addition to any rights to which an Indemnified Party may otherwise be entitled and shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such person.

(c) Expenses. The Partnership may pay the expenses incurred by an Indemnified Party in defending any action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by such Indemnified Party to repay such payment if he shall be determined not to be entitled to indemnification therefor as provided herein; provided that no such advance payment by the Partnership to an Indemnified Party shall be made with respect to expenses incurred as a result of any action, suit or proceeding initiated against such Indemnified Party by the holders of a majority of the Preferred Units.

(d) Ordering of Indemnification Obligations. Solely for purposes of clarification, and without expanding the scope of indemnification pursuant to this Paragraph 15, the Partners intend that, to the maximum extent permitted by law, as between (i) Operating Companies, (ii) the Partnership and (iii) the General Partner, the Management Company, ATPharma or a liquidator for the

Partnership, this Paragraph 15 shall be interpreted to reflect an ordering of liability for potentially overlapping or duplicative indemnification payments, with any applicable Operating Company having primary liability, the Partnership having only secondary liability, and (if applicable) the General Partner, the Management Company, ATPharma or a liquidator for the Partnership having only tertiary liability. The possibility that an Indemnified Party may receive indemnification payments from an Operating Company shall not restrict the Partnership from making payments under this Paragraph 15 to an Indemnified Party that is otherwise eligible for such payments, but such payments by the Partnership are not intended to relieve any Operating Company from any liability that it would otherwise have to make indemnification payments to such Indemnified Party and, if an Indemnified Party that has received indemnification payments from the Partnership actually receives duplicative indemnification payments from an Operating Company for the same claim, such Indemnified Party shall repay the Partnership to the extent of such duplicative payments. If, notwithstanding the intention of this Paragraph 15, an Operating Company's obligation to make indemnification payments to an Indemnified Party is relieved or reduced under applicable law as a result of payments made by the Partnership pursuant to this Paragraph 15, the Partnership shall have, to the maximum extent permitted by law, a right of subrogation against (or contribution from) such Operating Company for amounts paid by the Partnership to an Indemnified Party that relieved or reduced the obligation of such Operating Company to such Indemnified Party. Indemnification payments (if any) made to an Indemnified Party by the General Partner, the Management Company, ATPharma or a liquidator for the Partnership in respect of any claim for which (and to the extent) such Indemnified Party is otherwise eligible for payments from the Partnership under this Paragraph 15 shall not relieve the Partnership from its obligation to such Indemnified Party and/or the General Partner, the Management Company, ATPharma or a liquidator for the Partnership, as applicable, for such payments. As used in this Paragraph 15, "indemnification" payments made or to be made by an Operating Company shall be deemed to include (i) payments made or to be made by any successor to the indemnification

obligations of such Operating Company and (ii) equivalent payments made or to be made by or on behalf of such Operating Company (or such successor) pursuant to an insurance policy or similar arrangement.

(e) Partner Clawback. If (i) the Partnership incurs a liability or obligation under this Paragraph 15 and (ii) the Partnership does not have sufficient available cash on hand to satisfy such liability or obligation, then the General Partner, in its sole discretion, may require that each Partner make additional payments to the Partnership, upon no less than ten days' prior written notice from the General Partner, of its pro rata share (according to the amount by which such liability or obligation would have reduced the aggregate distributions received by each Partner (and its predecessors in interest) as of the time of such notice in respect of each class of Units then held by each Partner), after giving effect to any distributions returned by the Partners pursuant to this Paragraph 15(e) and any distribution of such returned amounts to the Partners, had such liability or obligation been incurred and paid by the Partnership prior to the time any distributions were made) of an amount up to the amount necessary to satisfy such liability or obligation; provided that (A) no Partner shall be required to contribute an aggregate amount pursuant to this Paragraph 15(e) that exceeds 20% of its aggregate capital contributions to the Partnership and (B) no Partner shall be required to contribute an amount that exceeds the aggregate amount of distributions made to such Partner (and such Partner's predecessors in interest) in respect of the applicable class of Units during the 24-month period preceding the date of such notice, except to fund any such liability or obligation (1) that the General Partner, the Partnership or an Indemnified Party was in the process of litigating, arbitrating or otherwise settling prior to the start of such 24-month period and (2) with respect to which the General Partner, the Partnership or an Indemnified Party delivered to the Partners written notice of such litigation, arbitration or settlement process prior to the start of such 24-month period. A Partner's obligation to make contributions to the Partnership under this Paragraph 15(e) shall survive the winding up and dissolution of the Partnership (and, to the fullest extent permitted by law, the General

Partner may require any payments made after the Partnership's dissolution to be made to the General Partner or directly to an Indemnified Party). The return obligations of the Partners pursuant to this Paragraph 15(e) shall be in addition to their capital contribution obligations with respect to their Contingent Subscriptions (if any). Amounts returned by a Partner pursuant to this Paragraph 15(e) in respect of a class of Units shall be treated as a reduction in the amount of distributions received by such Partner in respect of such class of Units, and amounts returned by such Partner pursuant to this Paragraph 15(e) shall not reduce such Partner's unfunded Contingent Subscription; provided that failure to make a required payment pursuant to this Paragraph 15(e) by any Partner may, in the General Partner's sole discretion, be treated for purposes of Paragraph 5(c) and the provisions and remedies therein as a failure by such Partner to make a required capital contribution with respect to its Contingent Subscription (if any). Amounts to be returned pursuant to this Paragraph 15(e) shall be payable in cash. For purposes of determining any applicable limit on a Partner's return obligation pursuant to this Paragraph 15(e), amounts distributed to a Partner in kind shall be valued at their fair market value on the date of distribution. The provisions of this Paragraph 15(e) shall not be construed or interpreted as inuring to the benefit of any creditor of (i) the Partnership (other than Indemnified Parties with respect to which the General Partner has elected to invoke the provisions of this paragraph), (ii) a Limited Partner, (iii) the General Partner or (iv) any Indemnified Party.

16. Fiscal Year; Records and Reports; Confidentiality; Organizational Expenses.

(a) Fiscal Year. Except as may be required by the Code, the fiscal year and the taxable year of the Partnership shall each be the calendar year.

(b) Partnership Records. At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership in accordance with the ELP Law. Such books of account, together with an executed copy of this Agreement and the Registration Statement (and any amendments thereto) and a list containing the names, addresses and Subscriptions of the Partners (the "List of Partners"), shall at all

times be maintained at a principal office of the Partnership, and shall be open to inspection by the Partners or their duly authorized representatives for purposes related to the inspecting Limited Partner's interest in the Partnership. Copies of all information and records referenced in the preceding sentence shall be provided to each holder of at least 25,000 Preferred Units promptly following its written request therefor. A copy of the List of Partners shall also be provided to each holder of at least 25,000 Preferred Units promptly after any change thereto.

(c) Audit. At any time while the Partnership continues and until its affairs have been wound up (but only during reasonable business hours), each Partner may fully examine and audit the Partnership books, records, accounts and assets, including bank balances, may make copies of such books and records (provided such Partner agrees to reimburse the Partnership or the Management Company, as applicable, for the reasonable costs incurred in making such copies), and may make, or cause to be made, any examination or audit at such Partner's expense. Notwithstanding the preceding sentence, the cost of any such audit, examination or copies made by or on behalf of the holders of a majority of the Preferred Units shall, in each case, be borne by the Partnership. Any such examination or audit may be undertaken by (i) such Limited Partner, or (ii) a designee of a Limited Partner (provided that the designee agrees in writing to the confidentiality provisions of Paragraph 16(d) or is otherwise subject (by the nature of its position, pursuant to written agreement, or otherwise) to substantially equivalent restrictions with respect to use and disclosure of Partnership Information as are set forth in Paragraph 16(d)). The Partnership shall ensure that the provisions of this Paragraph 16(c) apply with equal respect to the books and records of ATP and any Subsidiary (including, without limitation, any Operating Company).

(d) Confidentiality.

(i) A Limited Partner's rights to access or to receive any information about the Partnership, an Intermediary, ATC, the Operating Companies and their respective affairs, including, without limitation, (1) information to which a Limited Partner is provided access

pursuant to Paragraph 16(b) or (c), (2) financial statements, reports and other information provided pursuant to Paragraphs 16(e) and (f), and (3) this Agreement, any amendments hereto or any documents pursuant to which such Limited Partner acquired its interest in the Partnership and any other related agreements or materials (the "Partnership Information"), are conditioned on such Limited Partner's willingness and ability to assure that the Partnership Information will be used solely by such Limited Partner for purposes reasonably related to such Limited Partner's interest as a Limited Partner, and that such Partnership Information will not become publicly available as a result of such Limited Partner's rights to access or to receive such Partnership Information, and each Limited Partner agrees not to use Partnership Information other than for purposes of evaluating, monitoring or protecting its investment in the Partnership. For purposes of this Paragraph 16(d), Partnership Information (including information relating to an Operating Company or another Partner (or its respective partners, stockholders or members)) provided by one Partner to another shall be deemed to have been provided on behalf of the Partnership.

(ii) Each Limited Partner acknowledges the General Partner's belief that the Partnership Information includes trade secrets of the Partnership and the Operating Companies and that the release of any such Partnership Information would cause competitive harm to the Partnership, the General Partner, the Management Company, and/or the Operating Companies.

(iii) The Limited Partners acknowledge that the General Partner and the Management Company and their respective partners, members, managing directors, officers, and employees are expected to acquire confidential third-party information that, pursuant to fiduciary, contractual, legal or similar obligations, may not be disclosed to the Partnership or the Limited Partners without violating such obligations, and agree that none of such Persons shall be in breach of any duty under this Agreement or the ELP Law as a result of acquiring, holding or failing to disclose such information to the Partnership or the Limited Partners.

(iv) Each Limited Partner agrees to maintain any Partnership Information provided to it in the strictest confidence and not to disclose the Partnership Information to any Person including, without limitation, a prospective transferee of such Partner's interest in the Partnership, without the prior written consent of the General Partner. Notwithstanding the foregoing, the General Partner hereby consents to the disclosure by each Limited Partner of Partnership Information to such Limited Partner's accountants, attorneys, board members and similar advisors bound by a duty of confidentiality.

(v) With respect to any Limited Partner, the obligation to maintain any Partnership Information in confidence shall not apply to any Partnership Information: (A) that is required to be disclosed pursuant to applicable law or a securities exchange rule (but in each case only to the extent of such requirement and, to the fullest extent permitted by law, only if prompt notice is given to the Partnership so that the General Partner may seek an appropriate remedy with the reasonable cooperation of such Limited Partner; (B) that is required to be disclosed in order to protect such Limited Partner's interest in the Partnership (but only to the extent of such requirement and only after consultation with the General Partner); (C) that is publicly known or available in the absence of any improper or unlawful action on the part of such Limited Partner; (D) that is known or available to such Limited Partner other than through or on behalf of the Partnership, the General Partner or the Management Company; or (E) the disclosure of which has been consented to by the General Partner in writing.

(vi) Each Limited Partner shall promptly inform the General Partner if it becomes aware of any reason, whether under law, regulation, policy, securities exchange rule or otherwise, that it (or any of its equity holders) will, or might become compelled to, use the Partnership Information other than as contemplated by Paragraph 16(d)(i) or disclose Partnership Information in violation of the confidentiality restrictions in Paragraph 16(d)(iv) (disregarding Paragraph 16(d)(v)(A)).

(vii) Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, with the exception of the financial statements and reports to be provided to certain holders of Preferred Units and Dr. Harrison (or his heirs or legal representatives) pursuant to Paragraphs 16(e) and (f), the General Partner shall have the right not to provide any Limited Partner, for such period of time as the General Partner in good faith determines to be advisable, with any Partnership Information that such Limited Partner would otherwise be entitled to receive or to have access to pursuant to this Agreement or the ELP Law if: (A) the Partnership, the General Partner, an Intermediary, ATC, the Management Company or ATPharma is required by law or by agreement with a third party to keep such Partnership Information confidential; (B) the General Partner in good faith believes that the disclosure of such Partnership Information to such Limited Partner is not in the best interest of the Partnership or could damage the Partnership or the conduct of the affairs of the Partnership or the Operating Companies (which may include a determination by the General Partner that such Limited Partner (or any of its equity holders) is disclosing or may disclose such Partnership Information (or may be compelled to disclose such Partnership Information) or has not indicated a willingness to protect Partnership Information from being disclosed (or compelled to be disclosed) and that the potential of such disclosure by such Limited Partner (or any of its equity holders) is not in the best interest of the Partnership or could damage the Partnership, the Operating Companies or the conduct of the affairs of the Partnership or the Operating Companies) or (C) such Limited Partner has notified the General Partner of its election not to have access to, or to receive, such Partnership Information.

(viii) In addition to any other remedies available at law, the Partners agree that, to the fullest extent permitted by law, the Partnership shall be entitled to equitable relief, including, without limitation, the right to an injunction or restraining order, as a remedy for any

failure by a Limited Partner to comply with its obligations with respect to the use and disclosure of Partnership Information, as set forth in Paragraph 16(d)(i) and (iv).

(ix) Each Limited Partner agrees to cooperate with such procedures and restrictions as may be developed by the General Partner from time to time in connection with the disclosure of non-public Partnership Information, as determined by the General Partner to be reasonably necessary and advisable to maintain and promote compliance with legal and other regulatory matters applicable to the Partnership, the Limited Partners, the General Partner, an Intermediary, ATC and the Management Company, including securities laws and regulations.

(x) Each Limited Partner acknowledges and agrees that the General Partner may consider the different circumstances of Limited Partners with respect to the restrictions and obligations imposed on Limited Partners in this Paragraph 16(d) and the provision of information under this Agreement, and the General Partner in its reasonable discretion may agree to waive or modify any of such restrictions and/or obligations with respect to a Limited Partner with the consent of such Limited Partner. Each Limited Partner further acknowledges and agrees that any such agreement by the General Partner with a Limited Partner to waive or modify any of the restrictions and/or obligations imposed by this Paragraph 16(d) (or to withhold Partnership Information) shall not constitute a breach of any duty stated or implied in law or in equity to any Limited Partner, regardless of whether different agreements are reached with different Limited Partners.

(xi) Notwithstanding any other provision of this Agreement to the contrary, to comply with Treasury Regulation §1.6011-4(b)(3), each Limited Partner (and any employee, representative or other agent of such Limited Partner) may disclose to any and all Persons, without limitation of any kind, the U. S. Federal tax treatment and tax structure of the Partnership or any transactions contemplated by the Partnership, it being understood and agreed that, for this purpose (A) the name of, or any other identifying information regarding, (1) any existing or

future Partner (or any affiliate thereof), or (2) any investment or transaction entered into by the Partnership, (B) any performance information relating to the Partnership or its investments or to Operating Companies, and (C) any performance or other information relating to other investments sponsored by the General Partner, ATC or the Management Company do not constitute such tax treatment or tax structure information.

(xii) To the fullest extent permitted by law, the provisions of this Paragraph 16(d) shall survive the withdrawal of any Partner or the transfer or assignment of any Partner's interest in the Partnership and shall be enforceable against such Partner after such withdrawal, transfer or assignment.

(xiii) Notwithstanding anything to the contrary set forth in this Agreement, this Paragraph 16(d) shall not be applied to authorize any information to be withheld from, or any access to any information to be limited in respect of, Ezbon, Blue Horizon or their respective direct or indirect transferees or assignees.

(e) Annual Financial Statements. The General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 90 days after the close of each fiscal year the financial statements of the Partnership for such fiscal year. Such financial statements shall include statements of assets and liabilities, net assets represented by Partners' capital, operations, changes in net assets, cash flows and changes in such Partner's capital, shall be prepared and presented in accordance with generally accepted accounting principles in the U.S. ("GAAP"), except for such deviations as are required to implement the terms of this Agreement, and shall be audited by a firm of independent public accountants or auditors of national or international standing which has been approved by the holders of a majority of the Preferred Units. Notwithstanding anything in this Agreement to the contrary, the Partnership shall not be required to consolidate (or otherwise combine, including, without limitation, via the equity method of accounting) its financial results with those of Operating Companies whether or not U.S. generally accepted

accounting principles would require such consolidation (or other form of combination). The General Partner shall also use its best efforts to transmit to each Partner within 90 days after the close of each fiscal year a report indicating such Partner's share of all items of income, gain, loss or deduction of the Partnership for such year for U.S. Federal income tax purposes and such additional information with respect to the Partnership as he may reasonably request to enable him to complete any tax return or report he is required to file or otherwise to comply with applicable law. Without limiting the foregoing (i) the General Partner shall use reasonable efforts to determine whether any entity in which the Partnership invests (directly or indirectly) is a "passive foreign investment company" (a "PFIC") as defined in Section 1297 of the Code and will so advise the Partners and (ii) at the request of any Partner, the General Partner shall use reasonable efforts to cause each entity that the General Partner determines is a PFIC based on the advice of the Partnership's U.S. tax advisors to agree to provide on a timely basis to the Partnership or the Partners, as applicable, the financial information that is necessary to permit the Partnership or the Partners, as applicable, to make an election to treat any such PFIC as a "qualified electing fund" under Section 1295 of the Code (a "QEF Election"), and to permit the Partners to comply with their U.S. federal income tax reporting requirements relating to the PFIC. For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison within 90 days after the close of each fiscal year, (i) a list of the Partnership's direct and indirect investments, valued at fair market value as determined in accordance with Paragraph 9, as of the end of such fiscal year, and (ii) a brief narrative report as to status and operations of the Partnership. The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish annual financial statements of the type specified in this Paragraph 16(e) with respect to any Intermediary, ATC and any Subsidiary (including, without limitation, any Operating Company).

(f) Quarterly Financial Statements. Each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) shall be furnished, within 45 days after the end

of each of the first three quarters of each fiscal year of the Partnership, (i) an unaudited list of the Partnership's direct and indirect investments as of the end of such quarter, (ii) unaudited statements of assets and liabilities of the Partnership and net assets represented by Partners' capital as of the end of such quarter and (iii) unaudited statements of operations and changes in such holder or Dr. Harrison's (or his heirs' or legal representatives') capital (as the case may be) for the period from the beginning of such fiscal year through the quarter then ended. Such financial statements shall be prepared and presented in accordance with GAAP, except for such deviations as are required to implement the terms of this Agreement, the omission of certain information and footnote disclosures normally included in year-end financial statements prepared in accordance with GAAP and as otherwise provided in Paragraph 16(e). For information purposes, the General Partner shall transmit to each holder of at least 25,000 Preferred Units and Dr. Harrison (or his heirs or legal representatives) within 45 days after the end of each quarter, (i) a list of the Partnership's direct and indirect investments, valued at fair market value in accordance with Paragraph 9, as of the end of such quarter, and (ii) a narrative report as to status and operations of the Partnership (which shall include a discussion of operations compared to each then currently applicable budget). The holders of a majority of the Preferred Units may, in their sole discretion, require the Partnership to furnish quarterly financial statements of the type specified in this Paragraph 16(f) with respect to ATC, any Intermediary and any Subsidiary (including, without limitation, any Operating Company).

(g) Monthly Telephone Updates. At the request of the holders of a majority of the Preferred Units, the General Partner will make itself available to such holders by telephone for an update as to status and operations of the Partnership.

(h) Web Site. Notwithstanding Paragraph 18(a), the General Partner shall be deemed to have satisfied its obligations to transmit or furnish financial statements and reports pursuant to this Paragraph 16 if the General Partner posts such financial statements and/or reports on a web site and gives prompt written notice to the requisite Limited Partners, pursuant to Paragraph 18(a), of the

availability of such financial statements and/or reports, the URL address of the web site and a password for access to such web site, if necessary. Any such financial statements and reports posted to a web site and not delivered in hard copy to the requisite Limited Partners shall be maintained on such web site for a reasonable period of time. Any such web site shall provide for print capability for such financial statements and reports, provided that, with respect to any Limited Partner (except any holder of at least 25,000 Preferred Units or Dr. Harrison (or his heirs or legal representatives)), the General Partner may disable the print capability (or not allow print capability) if the General Partner exercises (or would be permitted to exercise) its right pursuant to Paragraph 16(d)(vii) not to provide such Limited Partner with Partnership Information, but only to the extent provided therein.

(i) Organizational Expenses. The organizational expenses of the Partnership shall be amortized for U.S. Federal income tax purposes to the extent permitted by Section 709 of the Code. The reasonable out-of-pocket legal expenses incurred by Ezbon and Blue Horizon in connection with the organization of the Partnership shall be reimbursed to Ezbon and Blue Horizon by the Partnership and treated as an organizational expense of the Partnership.

17. Amendment. Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived (on behalf of all Partners), modified or amended only with the written consent of the General Partner, the holders of a majority of the Preferred Units and Dr. Harrison (or his heirs or legal representatives) so long as Dr. Harrison (or his heirs or legal representatives) remain as Limited Partners; provided, however, that the consent of Dr. Harrison (or his heirs or legal representatives) shall not be required to (i) authorize additional Preferred Units and Investment Common Units, (ii) modify or delete any provision of this Agreement that becomes contrary to applicable law after the date of this Agreement, provided that such modification or deletion is to the minimum extent required to comply with such law, or (iii) modify any provision of this Agreement for bona fide tax structuring reasons, provided that such modification does not have a disproportionate adverse affect on Dr. Harrison (or his heirs or legal representatives). Upon obtaining all approvals required by this Agreement (if any)

and without further action or execution by any other Person, including any Limited Partner, (i) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the General Partner, and (ii) the Limited Partners shall be deemed a party to and bound by such amendment of this Agreement. The General Partner shall promptly furnish copies of any amendments to this Agreement to all Partners.

18. General Provisions.

(a) Notices. Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and shall be deemed to have been properly given two days after delivery by courier or being sent by e-mail, addressed in each case, if to the Partnership or the General Partner, at c/o Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, e-mail: seth@appletreepartners.com, and if to any Limited Partner, at the address set forth in the List of Partners or, in each case, to such other address or addresses as the addressee may have specified by written notice as aforesaid to the other parties. Sections 8 and 19(3) of the Electronic Transactions Law (2003 Revision) of the Cayman Islands shall not apply.

(b) Power of Attorney. To the fullest extent permitted by law, (i) each of the Limited Partners hereby irrevocably constitutes and appoints the General Partner as his attorney-in-fact with full power, proxy and authority in his name, place and stead to make, execute, sign, acknowledge and, if necessary, file (A) any required amendment to the Registration Statement; (B) any amendment to this Agreement that does not require, under the terms of this Agreement, the approval of all the Partners, including any amendment pursuant to Paragraph 5(b); provided that Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment have signed or otherwise approved such amendment and all other required signatures and approvals have been obtained; (C) any other instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the

Partner's assignee as a Partner; and (D) any other instrument, certificate or document as may be required or appropriate under the laws, regulations or procedures of the Cayman Islands, the U.S. or any state or governmental entity in any jurisdiction in which the Partnership is conducting or intends to conduct its affairs, provided all such instruments, certificates and other documents referred to in clauses (A), (B), (C) and (D) above are in accordance with the terms of this Agreement as then in effect. Copies of all such instruments, certificates and other documents executed pursuant to such power of attorney shall be sent to all Partners, except any instrument, certificate or document required from time to time to admit a Partner, to effect his substitution as a Partner or to effect the substitution of the Partner's assignee as a Partner.

(i) Each of the Partners is aware that the terms of this Agreement permit certain amendments to the Registration Statement and this Agreement to be effected and certain other actions to be taken by or with respect to the Partnership, in each case with the approval or by the vote of less than all the Partners. If, as and when (A) an amendment of the Registration Statement or this Agreement is proposed or an action is proposed to be taken by or with respect to the Partnership which does not require, under the terms of this Agreement, the approval of all of the Partners, (B) Partners holding the interest in the Partnership specified in this Agreement as being required for such amendment or action have approved such amendment or action in the manner contemplated by this Agreement, and (C) a Partner has failed or refused to approve such amendment or action (hereinafter referred to as a non-consenting Partner), each Partner agrees that (1) it is bound thereby, (2) any such amendment or action may be executed solely by the General Partner without any further action or execution by any other Person (including, without limitation, the non-consenting Partners), and (3) to the fullest extent permitted by law, the special attorney specified above, with full power of substitution, is hereby authorized and empowered to execute, acknowledge, make, swear to, verify, deliver, record, file and/or publish, for and on behalf of such non-consenting Partner, and in his name, place and stead, any and all instruments

and documents which may be necessary or appropriate to permit such amendment to be lawfully made or action lawfully taken. Each Partner is fully aware that he and each other Partner have executed this special power of attorney, and that each Partner will rely on the effectiveness of such powers with a view to the orderly administration of the Partnership's affairs.

(ii) To the fullest extent permitted by law, the foregoing grant of authority and that granted pursuant to Paragraph 5(c), (A) is each a special power of attorney coupled with an interest in favor of the General Partner, deemed to secure the proprietary interest of the General Partner and/or the performance of obligations owed to the General Partner, and as such shall be irrevocable and shall survive the death, disability or incapacity (or, in the case of a Partner that is a corporation, association, limited liability company, partnership, trust or other entity, shall survive the merger, dissolution or other termination of the existence) of the Partner and (B) shall survive the assignment by the Partner of the whole or any portion of his interest, except that in the case of an assignment of the Partner's whole interest, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect the substitution of his transferee.

(c) Additional Documents and Acts. Each Partner hereby agrees to execute and deliver all certificates, instruments or documents required by laws of the various states or other jurisdictions in which the Partnership conducts its affairs, to conform with the laws of such states or other jurisdictions governing limited partnerships.

(d) Binding on Successors. This Agreement shall be binding upon and it shall inure to the benefit of the respective heirs, successors, permitted assigns and legal representatives of the parties hereto. Without limitation as to the foregoing, the rights of Dr. Harrison specified in this Agreement and the Schedules hereto shall inure to the benefit of his heirs and legal representatives.

(e) Counterparts. This Agreement or any amendment hereto may be signed in any number of counterparts, each of which shall be an original, but all of which taken together shall con-

stitute one Agreement (or amendment, as the case may be).

(f) Voting. Any vote or other action required or permitted to be taken by this Agreement may be taken by written consent signed by not less than the requisite percentage in interest of parties required or permitted to take such vote or other action. Notwithstanding anything to the contrary set forth in this Agreement, a Defaulting Partner shall not have the right to vote on or grant or withhold consent or approval with respect to any matter, except as may otherwise be required by law, and any Units it may hold shall not be deemed outstanding for purposes of determining the parties required or permitted to take any vote or other action. The voting, consent, approval, appointment and other such rights granted to Ezbon and Blue Horizon pursuant to this Agreement (i) are personal to them and may not be assigned, transferred or otherwise disposed of without the consent of the General Partner, in its sole and absolute discretion, except in connection with a transfer by Ezbon and Blue Horizon of their entire interests as limited partners, and (ii) shall cease and be of no further force or effect if Ezbon or Blue Horizon becomes a Defaulting Partner, except as may otherwise be required by law or this Agreement.

(g) Applicable Law, Remedies for Breach and Jurisdiction.

(i) Notwithstanding the place where this Agreement may be executed by any of the parties hereto, the parties expressly agree that all the terms and provisions hereof shall be construed under the laws of the Cayman Islands without regard to principles of conflicts of laws and, without limitation thereof, that the ELP Law as now adopted or as may be hereafter amended shall govern this Agreement.

(ii) EACH LIMITED PARTNER AND THE GENERAL PARTNER, ON BEHALF OF ITSELF AND THE PARTNERSHIP, IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT BY OR AGAINST THE GENERAL PARTNER, THE MANAGEMENT COMPANY (OR THEIR RESPECTIVE

PARTNERS, MEMBERS, STOCKHOLDERS, MANAGERS, DIRECTORS, OFFICERS, CONSULTANTS OR EMPLOYEES, IN THEIR CAPACITY AS SUCH OR IN ANY RELATED CAPACITY) OR THE PARTNERSHIP, OR IN ANY WAY RELATING TO THIS AGREEMENT OR ANY SCHEDULE HERETO.

(iii) Except as otherwise specifically provided in this Agreement, the remedies set forth in this Agreement are cumulative and shall not exclude any other remedies to which a party may be lawfully entitled.

(iv) In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion) for the Partnership and the other Partners, and the General Partner, in its sole discretion, may take different actions with respect to multiple Limited Partners that breach the same provisions. To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.

(v) It is the intent of the parties that this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provisions hereof or by reason of the status of the respective parties.

(vi) To the extent not prohibited by applicable law, each Partner (A) agrees that any action, suit or other proceeding arising out of or based upon this Agreement or any Schedule hereto, the subject matter hereof or thereof or the dealings of any Partner or the Partnership in connection therewith shall be brought only in a court of applicable jurisdiction located in the Cayman Islands or a state or Federal court in the State of Delaware in the U.S., (B)

irrevocably submits to the jurisdiction of the courts of the Cayman Islands and the state and Federal courts in the State of Delaware in the U.S. and (C) waives and agrees not to assert in any such action, suit or proceeding brought in any of the above named courts, any claim that such Partner is not subject personally to the jurisdiction of such court or that such action, suit or proceeding is brought in an inconvenient forum or that the venue is improper.

(h) Securities Act Matters. Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, he must bear the economic risks of his investment for an indefinite period because the Partnership interests have not been registered under the Securities Act and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act or an exemption from such registration is available.

(i) Tax Matters Partner. The "tax matters partner" (as defined in Section 6231 of the Code) of the Partnership shall be the General Partner (the "Tax Matters Partner"). The Tax Matters Partner shall not take any action in its capacity as such that is adverse to the holders of the Preferred Units or Investment Common Units without the prior written consent of the holders of a majority of the Units of such class.

(j) Contract Construction. Where the context of this Agreement so permits, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa, and use of the word "Person" shall be deemed to mean or include natural persons, entities, trusts, limited partnerships, exempted limited partnerships, limited liability companies, corporations, general partnerships, joint ventures, associations and governmental bodies and agencies. The invalidity or unenforceability of any one or more provisions of this Agreement shall not impair the enforceability of the other provisions. If one or more of the provisions of this Agreement shall for any reason be held to be unenforceable, whether due to public policy, equitable considerations, because such provisions are excessively broad as to scope, activity or subject, or otherwise, such provision or provisions shall be construed by the appropriate judicial body by limiting or reducing it or them so as

to be enforceable to maximum extent compatible with the applicable law as it shall then appear. References in this Agreement to sections of the Code or the ELP Law shall be deemed to refer to such sections as they may be amended after the date of this Agreement. Definitions in this Agreement apply equally to both the singular and the plural forms of the defined terms.

(k) Fiduciary Duty of Indemnified Parties. Notwithstanding anything to the contrary in this Agreement, to the extent that at law or in equity an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Partnership or any Partner, such Indemnified Party acting under this Agreement shall, to the fullest extent permitted by law, not be liable to the Partnership or any Partner for breach of fiduciary duty for its good faith reliance on the provisions of this Agreement, and the provisions of this Agreement, to the extent that they restrict or eliminate the duties (including fiduciary duties) and liabilities relating thereto of an Indemnified Party to the Partnership or any Partner otherwise existing at law or in equity, are agreed by each Partner to so replace such other duties and liabilities of such Indemnified Party.

(l) Entire Agreement. This Agreement, the Schedules hereto, the related Subscription Agreements and any other written agreement between the General Partner, on its own behalf or on behalf of the Partnership, and any Limited Partner, shall constitute the entire agreement and understanding among the respective parties to such agreements with respect to the subject matter hereof and thereof. The Partners acknowledge that, notwithstanding any provision of this Agreement (including Paragraph 17) or of any Subscription Agreement, the General Partner, on its own behalf or on behalf of the Partnership, without any act, consent or approval of any other Partner or other Person, may enter into side letters or other writings to or with Ezbon, Blue Horizon or their respective direct or indirect transferees which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or any Subscription Agreement ("Side Letters"). The Partners agree that any rights established, or any terms of this Agreement or any Subscription Agreement altered or supplemented, in a Side Letter to or with Ezbon, Blue Horizon or their direct or indirect transferees

shall for the purposes of this Agreement or any Subscription Agreement be valid, binding and enforceable in accordance with their terms as between Ezbon, Blue Horizon or any such transferee, the General Partner and the Partnership.

(m) Partnership Counsel. The General Partner has retained Proskauer Rose LLP and Maples and Calder in connection with the formation of the Partnership and the offering of the limited partner interests and may retain Proskauer Rose LLP and Maples and Calder as legal counsel in connection with the management and operation of the Partnership, including, without limitation, making, holding and disposing of investments. Neither Proskauer Rose LLP nor Maples and Calder will represent any Limited Partner or prospective limited partner of the Partnership, unless, subject to applicable laws, the General Partner and such Limited Partner or prospective limited partner otherwise agree and such Limited Partner or prospective Limited Partner separately engages Proskauer Rose LLP or Maples and Calder, as applicable, in connection with the formation of the Partnership, the offering of limited partner interests, the management and operation of the Partnership or any dispute that may arise between any Limited Partner, on the one hand, and the General Partner and/or the Partnership on the other hand (the "Partnership Legal Matters"). Each Limited Partner, if it wishes to obtain counsel on any Partnership Legal Matter, may retain its own independent counsel with respect thereto and shall pay all fees and expenses of such independent counsel.

(n) Good Faith Negotiation. Ezbon and Blue Horizon, on the one hand, and the General Partner and Dr. Harrison, on the other hand, each agree that if the other party desires to terminate the Partnership or such party's participation therein, it shall negotiate in good faith with respect thereto.

(o) No Duty to Account. Other than as expressly provided for, or prohibited otherwise, in this Agreement, each Partner may engage in any other business (including being a partner of other partnerships, whether general or limited) and shall not be restrained from engaging in any other activity nor forego or be required to account for any profits from any such business,

notwithstanding that such business may compete with the Partnership's business.

19. Definitions. The respective Paragraphs or other locations in which capitalized terms used in this Agreement are defined are set forth below opposite such terms:

| | |
|---|---|
| Additional Units | 7(g) |
| Agreement | Preamble |
| Anti-Money Laundering Laws | 5(b) |
| ATC | 1(c) |
| ATPharma | 2(d) |
| Blue Horizon | 4(d)(iv) |
| Board | 2(n) |
| Buyer | 12(g)(i) |
| Capital Account | 6(b) |
| Carrying Value | 7(b)(i) |
| Code | 2(j) |
| Contingent Subscription | 5(a) |
| Default Charge | 5(c) |
| Default Notice | 5(c) |
| Default Rate | 5(c) |
| Defaulting Partner | 5(c) |
| Dr. Harrison | 2(b) |
| ELP Law | Preliminary Statement |
| Ezbon | 2(m) |
| Ezbon/Blue Horizon Sale | 12(h) |
| Finkelman | Preamble |
| First Closing Limited Partners | Preamble |
| Foreign Limited Partner | 2(j) |

| | |
|---|---|
| Founder Common Units | 6(c) |
| GAAP | 16(e) |
| General Partner | Preamble |
| Gross Negligence | 2(g) |
| Holders | 12(h) |
| Hypothetical Tax Liability | 8(a) |
| Incentive Common Units | 6(c) |
| Incentive Percentage | 8(d)(ii)(A) |
| Indemnified Party | 15 |
| Intermediary | 1(c) |
| Investment Common Units | 6(c) |
| Letter Agreement | 2(k) |
| Limited Partner | Preamble |
| List of Partners | 16(b) |
| Loss | 7(b)(ii) |
| Management Agreement | 2(c) |
| Management Company | 2(b) |
| Management Fee | Management Agreement |
| Net Tax Obligation | 7(f)(iii) |
| Offer | 12(j) |
| Offered Units | 12(j) |
| Operating Agreement | 2(n) |
| Operating Company | 2(l) |
| Operating Company Security | 2(l) |
| Original Agreement | Preliminary Statement |
| Partner | Preamble |

| | |
|---|---|
| Partnership | Preliminary Statement |
| Partnership Information | 16(d)(i) |
| Partnership Legal Matters | 18(m) |
| Person | 18(j) |
| PFIC | 16(e) |
| Preferred Units | 6(c) |
| Profit | 7(b)(ii) |
| Project | 2(n) |
| QEF Election | 16(e) |
| Registration Statement | 2(f) |
| Removal Event | 4(c) |
| Securities Act | 12(e) |
| Side Letters | 18(l) |
| Subscription Agreement | 1(e) |
| Subsidiary | 2(d) |
| Tax Matters Partner | 18(i) |
| Tracking Units | 6(c) |
| Transfer | 12(a) |
| Transfer Expenses | 12(d) |
| Units | 6(c) |

**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the undersigned have executed this Agreement as a deed on the day and year first above written.

GENERAL PARTNER

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

WITHDRAWING LIMITED PARTNER

Executed as a deed by:

_____
Daniel P. Finkelman

In the presence of:

_____
Witness

APPLE TREE PARTNERS IV, L.P.

Limited Partner Signature Page

IN WITNESS WHEREOF, the undersigned has executed this First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. as a deed.

Executed as a deed by:

Ezbon International Limited
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

Executed as a deed by:

Blue Horizon Enterprise Ltd.
By: ATP III GP, Ltd.,
attorney in fact pursuant to the power of attorney set forth in the Subscription Agreement with the Limited Partner dated November 1, 2012

By: _____
Seth L. Harrison
Director

In the presence of:

_____
Witness Rose Crone

SCHEDULE A

MANAGEMENT AGREEMENT

AGREEMENT dated November ___, 2012 (as amended from time to time, this "Agreement"), and effective as of November 1, 2012, between Apple Tree Venture Management, LLC, a Delaware limited liability company (the "Management Company"), and Apple Tree Consolidated, SPRL, a Belgium private limited liability company ("ATC").

In consideration of the premises and the agreements herein contained, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P., a Cayman Islands exempted limited partnership, of even date herewith (as the same may be amended from time to time, the "Partnership Agreement").

2. Management Company Duties. The Management Company shall (i) identify prospective Operating Companies for ATC to invest in and (ii) provide assistance to ATC in evaluating investment opportunities in prospective and existing Operating Companies, it being the expectation that such Operating Companies will primarily consist of the ownership by ATC (either directly as a division, or indirectly through one or more entities wholly owned by ATC but disregarded for U.S. federal income tax purposes) of pharmaceutical, medical device and other medically-related operating assets. Notwithstanding the services provided by the Management Company, the Management Company shall not be authorized to manage the affairs of, act in the name of, or bind ATC.

3. Payment of Expenses. The Management Company agrees to pay (a) all compensation of Dr. Harrison and his administrative assistant in their capacities as employees of the Management Company; and (b) a pro rata share of ATC's facilities and other overhead expenses, based on the portion of such facilities used by the Management Company. ATC shall pay all other expenses properly chargeable to its affairs which are not reimbursed by Operating Companies.

4. Management Fee. ATC shall pay the Management Company a management fee (the "Management Fee") each year for the services to be provided hereunder, in the amount of US $2 million or such greater amount as may be approved by the Board; provided, however that the Management Fee for the first year shall be US $1,694,000 or such greater amount as may be approved by the Board. The Management Fee for each year shall be reduced (but not below zero) by (i) any director's fees, consulting fees or other remuneration paid to the Management Company, the members and employees of the Management Company, the General Partner, Dr.

Harrison or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise for services rendered to Operating Companies; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by any such Operating Company, shall reduce the Management Fee; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, however, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities. Any securities or other property received in kind (with the prior written consent of the holders of a majority of the Preferred Units) shall be valued at the time they are reduced to cash or cash equivalents for purposes of the foregoing reduction to the Management Fee. The Management Fee for each year shall also be reduced (but not below zero) for "deemed contributions" as provided in Part B of Schedule D of the Partnership Agreement. Payments of the Management Fee shall be made in advance at the beginning of each calendar quarter in each year in an amount determined by the Management Company but not more than 25% of the maximum aggregate amount of the Management Fee for such year. Notwithstanding the preceding sentence, the first payment shall be due upon the date of this Agreement and shall be for the pro rata amount due until the beginning of the next succeeding calendar quarter. In no event shall fees or other remuneration referred to in the second sentence of this Paragraph 4 be paid in any calendar quarter in an aggregate amount that would exceed the amount of the next succeeding quarterly installment of the Management Fee. The amount of the fees and other remuneration paid or remitted to the Management Company, the General Partner, Dr. Harrison or any of their affiliates from Operating Companies shall be computed for each year, and any net amount due ATC from the Management Company or the Management Company from ATC shall be remitted within 30 days after such computation. If in any year any reductions described above would exceed, individually or collectively, the Management Fee otherwise payable, the excess amount of such reductions shall be carried forward on a year-by-year basis.

5. Term of Agreement. This Agreement shall terminate upon the earlier of (i) the completion of liquidation of ATC and (ii) the removal of the General Partner pursuant to Paragraph 4 of the Partnership Agreement; provided, however, that the Management Fee shall continue to be paid for an additional 45 days following any such removal of the General Partner.

6. Termination and Amendment. This Agreement shall not be terminated prior to the time set forth in Paragraph 5 or amended, and none of its provisions shall be waived, in each case without the written consent of the parties hereto and the holders of a majority of the Preferred Units.

7. Independent Contractor. The relationship of the Management Company to ATC is that of an independent contractor and neither this Agreement nor the services to be rendered

hereunder shall for any purpose whatsoever or in any way or manner create any employer-employee relationship between the parties.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of law principles.

9. Counterparts. This Agreement may be executed in counterparts, each of which, when so executed and delivered, shall be deemed an original instrument, but all of which together shall constitute a single agreement.

10. Severability. Each provision of this Agreement shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those provisions of this Agreement which are valid, enforceable and legal.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date first above written.

APPLE TREE CONSOLIDATED, SPRL

By: _____
Seth L. Harrison
Title: _____

APPLE TREE VENTURE MANAGEMENT, LLC

By: _____
Seth L. Harrison
Managing Member

*Proprietary and Confidential*

SCHEDULE B

LETTER AGREEMENT

Apple Tree Partners IV, L.P.
c/o Maples Corporate Services Limited
P.O. Box 309, Ugland House
Grand Cayman, KY1-1104
Cayman Islands

November 1, 2012

To the holders of Preferred Units:

Reference is made to the First Amended and Restated Limited Partnership Agreement of Apple Tree Partners IV, L.P. (the "Partnership"), of even date herewith (as amended from time to time, the "Partnership Agreement"). Capitalized terms used but not defined herein shall have the respective meanings given them in the Partnership Agreement. When the context of this letter agreement so requires, use of masculine gender pronouns shall be deemed to mean or include the feminine or neuter gender, and vice versa.

In consideration of your subscription for an interest in the Partnership as a Limited Partner, the undersigned hereby represents, warrants and agrees that, so long as ATP III GP, Ltd. is the general partner of the Partnership and you are not a Defaulting Partner:

1. So long as the Management Agreement is in effect, any director's fees, consulting fees or other remuneration paid to the General Partner, the Management Company, the members and employees of the Management Company, the undersigned or any of their respective affiliates (other than the Partnership or ATC) in cash, securities or otherwise by an Operating Company for services rendered to it shall be remitted to the Management Company; provided, however, that no remuneration shall be paid to any such Person other than in cash without the prior written consent of the holders of a majority of the Preferred Units. Notwithstanding the foregoing, only the amount of net after tax profit attributable to fees or other remuneration received by ATPharma for services rendered to an Operating Company, rather than the gross amount thereof, reduced by any ATPharma governance-related costs that are not borne by such Operating Company, shall be remitted to the Management Company; provided, however, that this sentence shall only apply if and to the extent that such fees or other remuneration were covered by a budget approved by the holders of a majority of the Preferred Units or the Board; and provided further, that such net after tax profit shall be limited to the amount necessary to comply with applicable tax rules governing transfer pricing between related entities.

2. So long as ATC continues to make investments, all investment opportunities in privately-held companies which come to his attention (including but not limited to follow-on investment opportunities), except for such opportunities which he believes in good faith are not within the purpose of or otherwise appropriate for ATC, shall be made available to ATC. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account (other than ATC) which he controls or in which he has a beneficial interest (unless he has no control) may (a) purchase a security of an Operating Company, (b) invest in or manage a private life science venture capital fund (except for preexisting investments in and management obligations to such funds on the date hereof), or (c) invest in any opportunity which has been presented to and rejected by ATC.

3. Without the prior written approval of the holders of a majority of the Preferred Units, neither he nor any account which he controls or in which he has a beneficial interest (unless he has no control) may borrow money from the Partnership or ATC.

4. He shall devote substantially all of his business time to the affairs of the Partnership, ATC, the Operating Companies, Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("ATP II – Annex") until the earlier of July 1, 2021 or such time as the audited value of the Partnership (including the value of prior dividends and other distributions) is at least $7.5 billion, and thereafter he shall devote such of his business time to the affairs of the Partnership and ATC as is reasonably required to manage the affairs thereof. So long as the terms of the preceding sentence remain applicable, he shall not permit ATP I, ATP II or ATP II-Annex to invest, after the date of this letter agreement, in entities that were not portfolio companies (or their successors or affiliates) of such partnerships on such date.

5. Without the approval of the holders of a majority of the Preferred Units, he shall not voluntarily permit any other Person to control the General Partner.

The terms and provisions of this letter agreement may be waived, modified or amended only by a writing signed by the undersigned and with the written consent of the holders of a majority of the Preferred Units.

This letter agreement shall be governed by and construed in accordance with the laws of the Cayman Islands, without regard to conflict of law principles.

Very truly yours,

Executed as a deed by:

_____

Seth L. Harrison

In the presence of:

_____

Witness

# SCHEDULE C

## BUDGETING PROCESS

At the beginning of each fiscal year, the Board will review and approve the overall annual budgets for the Partnership and ATC and the budget for each Project that has been approved by the Board. This approved budget will then become the basis for a quarterly rolling forecast process that will result in the quarterly financial reports referred to below. This rolling forecast process will be driven by Finance with the participation of operating management (Commercial and Research & Development). Revenue and expense budgets, and other items affecting cash flow, will be updated as part of this rolling forecast process. Management will implement a system of spending and other controls designed to ensure that Project budgets are not exceeded without further Board approval. Any new Projects that the General Partner recommends to be added to the ATC portfolio, and any discretionary extraordinary expense, will both require approval by the Board and a budget established (and approved by the Board) before spending can commence.

The General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter, on or before the tenth working day of the month following each quarter (or other period) end, in a format to be agreed upon between the General Partner and the holders of a majority of the Preferred Units. This financial report will cover all entities within the Partnership structure, and will include Project income and expenses and operating costs, along with at least the following:

- Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter (or other period) then ended and including explanations of major variances to budget. The report will also include a reconciliation of total expenditures and cash flows from inception through the reporting date.

- Detailed budget by major Project by quarter (or other period) for the next twelve months, including operating income and expenses by major category, and other items affecting cash flow (capital expenditures, upfront / milestone payments, deposits / advances).

- Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow.

In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets.

In addition to providing the quarterly (or other period) financial report, the General Partner will present in person the Partnership's financial results and budget to the holders of the Preferred Units twice per year, generally in January and July. The presentation will be made at a time and place to be decided by the holders of a majority of the Preferred Units and agreed with the General Partner. In addition to presenting the most recent quarterly (or other period) financial report, the General Partner will present additional material to provide the holders of the Preferred Units with a more complete understanding of the state of the Partnership's current operations and planned achievement of its goals. Members of the General Partner's core management team will be made available to assist in the presentation as required.

SCHEDULE D

FINANCING OF DR. HARRISON'S CAPITAL CONTRIBUTIONS

For the first $15 million of capital calls to Dr. Harrison in respect of his Preferred Units, 80% shall be funded from capital provided by Ezbon to him pursuant to an interest-free, limited-recourse loan (the "Loan Arrangement"), as described in Part A below, and 20% shall be funded by him as provided in Part B below. Any additional capital calls to Dr. Harrison in respect of his Preferred Units in excess of $15 million shall be funded from capital provided by Ezbon pursuant to the Loan Arrangement. Notwithstanding the foregoing, no additional capital shall be funded under the Loan Agreement if the General Partner has been removed pursuant to Paragraph 4(a) of the Agreement. Dr. Harrison's obligations under this Schedule D shall be binding upon his heirs and legal representatives.

Part A: Loan Arrangement.

Each portion of any capital call to Dr. Harrison to be funded through the Loan Arrangement shall be satisfied through a loan from Ezbon. Amounts shall be repaid under the Loan Arrangement as follows:

1. A pro rata portion of distributions to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions and distributions pursuant to Paragraph 4(d)(iv) of the Agreement), based on the then outstanding principal balance under the Loan Arrangement and the amount of capital for such Preferred Units funded by him in cash or by reductions in the Management Fee, shall be applied against the loans. By way of example only, if $15 million had been called from Dr. Harrison in total in respect of his Preferred Units, of which Dr. Harrison had funded $3 million as provided in Part B below and $12 million had been funded under the Loan Arrangement and remained outstanding, then 80% of amounts distributable to Dr. Harrison in respect of his Preferred Units (other than Tax Distributions) would be applied against the loans.

2. 100% of all other distributions, other than Tax Distributions and net of any other tax liabilities arising from such distributions, to Dr. Harrison from the Partnership, shall be applied against the loans.

3. 20% of the first $20 million of "after-tax" distributions to Dr. Harrison from Apple Tree Partners I, L.P. ("ATP I"), Apple Tree Partners II, L.P. ("ATP II") and Apple Tree Partners II – Annex, L.P. ("Annex") after the date of the Agreement, and thereafter 80% of any additional "after-tax" distributions to Dr. Harrison from ATP I, ATP II and Annex after the date of the Agreement, but only to the extent necessary to cause cumulative repayments of amounts borrowed under the Loan Arrangement to equal

$12 million, shall be applied against the loans. For purposes of this Section 3, "after-tax" distributions shall mean the gross amount of any such distributions received by Dr. Harrison, reduced by his tax liability in respect thereof (or the allocations giving rise to such distributions), calculated in a manner consistent with the determination of Hypothetical Tax Liability pursuant to Paragraph 8(a) of the Agreement and after any in-kind distributions have been reduced to cash.

4. If any distribution (whether from ATP I, ATP II, Annex or the Partnership) is made to Dr. Harrison in kind rather than in cash, repayment of the Loan Arrangement shall be due after such distribution has been reduced to cash, based on the after-tax amount so realized (calculated based on the product of the taxable gain, if any, so realized and the highest applicable marginal federal and state tax rates applicable to the character of such gain). In the case of any in-kind distributions of publicly-traded securities to Dr. Harrison from ATP I, ATP II, Annex and the Partnership, Dr. Harrison shall, as soon as practicable and legally permissible, put up to 20%, 80% or 100%, as required and as applicable based on Section A.1-3 above, of the shares received from such distribution into a Rule 10b5-1 Distribution Plan (the "Plan") that is designed to effectuate in a market-reasonable legal manner the sale of such shares at a price that is at or above the distribution price of such shares. Dr. Harrison shall cause his attorneys to deliver promptly to Ezbon a copy of the relevant portions of the Plan. If there are no sales of shares pursuant to the Plan, Dr. Harrison and Ezbon shall confer reasonably about the next steps to cause such shares to be liquidated.

Any failure or refusal by Ezbon to fund the Loan Arrangement may, at the sole discretion of the General Partner, subject Ezbon to the imposition of a Default Charge under the Agreement. The failure by Dr. Harrison to satisfy a capital call in respect of his Preferred Units due to the failure by Ezbon to fund the Loan Arrangement shall not result in Dr. Harrison being deemed to be a Defaulting Partner or otherwise subject to Dr. Harrison to a Default Charge.

Part B: Deemed Contributions.

With respect to the portion of any capital call to Dr. Harrison in respect of his Preferred Units that are not funded through the Loan Arrangement, 20% shall be made in cash and the balance shall be deemed to have been contributed by Dr. Harrison. All such deemed contributions shall reduce Dr. Harrison's unfunded Subscription and shall otherwise be treated as a capital contribution, except that such amounts shall not increase Dr. Harrison's Capital Account balance. Payments of the Management Fee shall be reduced as necessary until cumulative reductions in the Management Fee equal the cumulative deemed contributions by Dr. Harrison pursuant to this Part B. Dr. Harrison shall be entitled to receive distributions in respect of his Preferred Units as if all capital calls in respect of such Preferred Units had been contributed by Dr. Harrison in cash, except such distributions shall be limited, pursuant to the principles set forth in Paragraph 7(g), to the extent necessary to ensure that Dr. Harrison's interest in the Partnership by reason of such deemed contributions is respected as a "profits

interest" for United States Federal income tax purposes. If the General Partner is removed as the general partner of the Partnership pursuant to Paragraph 4(a) of the Agreement, then to the extent the cumulative deemed contributions exceed the cumulative reductions in the Management Fee (including any such reductions occurring within 45 days after the removal date), 95% of such excess amount shall be deemed to be a loan under the Loan Arrangement.

Part C: Tax Gross Up Provisions

If any payment to Ezbon under the Loan Arrangement is subject to a U.S. federal, state or local tax (whether imposed by withholding or otherwise), the amount of such payment shall be increased by the Gross Up Amount with respect to such payment. For these purposes, the "Gross Up Amount" with respect to any payment shall equal the amount of increase necessary so that after any such deduction or withholding in respect of taxes has been made (including such deductions and withholdings applicable to additional sums payable under this paragraph), Ezbon receives an amount equal to the amount it would have received had no such deduction or withholding in respect of taxes been made. Ezbon shall each provide to Dr. Harrison (or his heirs or legal representatives) a properly completed Form W-8(BEN), and shall provide all other withholding certificates and other documentation, and shall take all reasonable actions necessary to minimize the amount of U.S. federal, state and local taxes imposed on amounts due in respect of the Loan Arrangement.

Notwithstanding the foregoing, Gross Up Amounts shall not include any additional tax liability, deductions or withholdings resulting from (w) any withholding taxes pursuant to Sections 1471 through 1474 of the Code to the extent a refund, tax credit or tax deduction is otherwise available (without regard to whether Ezbon or their respective beneficial holders claim such refunds, tax credits or tax deductions), (x) any activities of Ezbon or its affiliates (including any such activities that cause Ezbon to have a permanent establishment in the United States) apart from Ezbon's investment in the Partnership and participation in the Loan Arrangement, (y) Ezbon's failure to comply with the requirements of the previous sentence, and (z) Ezbon becoming a "United States person" within the meaning of Section 7701 of the Code and the Treasury Regulations promulgated thereunder (or electing to be taxed as such), becoming subject to tax by operation of Section 871(a)(2) of the Code and the Treasury Regulations promulgated thereunder, or otherwise becoming subject to any similar classification for purposes of U.S. federal, state or local taxes. Ezbon shall, as soon as reasonably practicable, provide Dr. Harrison with such information as is reasonably necessary for Dr. Harrison to determine the Gross Up Amount with respect to Ezbon. In addition, with respect to a tax imposed on net income, the Gross Up Amount shall only be equal to the excess (if any) of (i) the amount of such tax over (ii) the value of all refunds, tax credits and tax deductions to which Ezbon or its respective beneficial holders are entitled in respect of any amount to be repaid under the Loan Arrangement (without regard to whether Ezbon or its beneficial holders claim such refunds, tax credits or tax deductions), in each case, including such taxes on, and refunds, tax credits or tax deductions arising from, the Gross Up Amount.

Without limiting the foregoing, at Dr. Harrison's request, the parties shall use commercially reasonable efforts to structure the Loan Arrangement in a tax efficient manner, including in a manner that minimizes any Gross Up Amount due pursuant to this Part C.

SCHEDULE E

UNIT REDUCTION SCHEDULE

The table below sets forth the number of authorized Incentive Common Units and Founder Common Units at various Preferred Unit capital contribution levels. Reductions will be made on a pro rata basis for each incremental $10 million of Preferred Unit capital contributions; provided, however, that no reductions shall be made until the aggregate Preferred Unit capital contributions reach $100 million; and provided further, that no further reductions to the authorized Incentive Common Units or authorized Founder Common Units shall be made after the aggregate Preferred Unit capital contributions reach $1 billion and $300 million, respectively.

| Preferred Unit Capital Contributions | Authorized Incentive Common Units | Authorized Founder Common Units |
|---|---|---|
| $ 100,000,000 | 158,823 | 225,000 |
| 140,000,000 | 146,512 | 197,561 |
| 180,000,000 | 134,483 | 171,429 |
| 220,000,000 | 122,727 | 146,512 |
| 260,000,000 | 111,236 | 122,727 |
| 300,000,000 | 100,000 | 100,000 |
| 440,000,000 | 89,011 | 100,000 |
| 580,000,000 | 78,261 | 100,000 |
| 720,000,000 | 67,742 | 100,000 |
| 860,000,000 | 57,447 | 100,000 |
| 1,000,000,000 | 47,368 | 100,000 |
| 1,100,000,000 | 47,368 | 100,000 |
| 1,200,000,000 | 47,368 | 100,000 |
| 1,300,000,000 | 47,368 | 100,000 |
| 1,400,000,000 | 47,368 | 100,000 |
| 1,500,000,000 | 47,368 | 100,000 |

Distributions pursuant to Paragraph 8(d)(ii) are apportioned among the holders of Units based, in part, on the number of authorized Incentive Common Units and Investment Common Units, which are determined in part based on the amount of capital contributions in respect of Preferred Units at the time of distribution. The following tables set forth two examples of distributions pursuant to Paragraph 8(d)(ii). The assumptions for both examples are the same, except that in example 1, 100% of the authorized number of Incentive Common Units are outstanding at all relevant times, and in example 2, 40% of the authorized number of Incentive Common Units are outstanding at all relevant times. These examples are for illustrative purposes only, and the actual apportionment of distributions as of any time will be governed by the terms of the Agreement.

Example 1: All authorized Incentive Common Units are outstanding at all relevant times:

| Preferred Unit Capital | Authorized Number of Common Units | | | Oustanding Incentive | 8(d)(ii)(A) Incentive Common | 8(d)(ii)(B) Class of Commcn Units | | Total Sharing of 8(d)(ii) Distributions Class of Common Units | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Contributions | Investment | Incentive | Founder | Common Units | Units | Investment | Founder | Incentive | Investment | Founder |
| $100,000,000 | 900,000 | 158,824 | 225,000 | 158,824 | 15.00% | 80.00% | 20.00% | 15.00% | 68.00% | 17.00% |
| 140,000,000 | 900,000 | 146,512 | 197,561 | 146,512 | 14.00% | 82.00% | 18.00% | 14.00% | 70.52% | 15.48% |
| 180,000,000 | 900,000 | 134,483 | 171,429 | 134,483 | 13.00% | 84.00% | 16.00% | 13.00% | 73.08% | 13.92% |
| 220,000,000 | 900,000 | 122,727 | 146,512 | 122,727 | 12.00% | 86.00% | 14.00% | 12.00% | 75.68% | 12.32% |
| 260,000,000 | 900,000 | 111,236 | 122,727 | 111,236 | 11.00% | 88.00% | 12.00% | 11.00% | 78.32% | 10.68% |
| 300,000,000 | 900,000 | 100,000 | 100,000 | 100,000 | 10.00% | 90.00% | 10.00% | 10.00% | 81.00% | 9.00% |
| 440,000,000 | 900,000 | 89,011 | 100,000 | 89,011 | 9.00% | 90.00% | 10.00% | 9.00% | 81.90% | 9.10% |
| 580,000,000 | 900,000 | 78,261 | 100,000 | 78,261 | 8.00% | 90.00% | 10.00% | 8.00% | 82.80% | 9.20% |
| 720,000,000 | 900,000 | 67,742 | 100,000 | 67,742 | 7.00% | 90.00% | 10.00% | 7.00% | 83.70% | 9.30% |
| 860,000,000 | 900,000 | 57,447 | 100,000 | 57,447 | 6.00% | 90.00% | 10.00% | 6.00% | 84.60% | 9.40% |
| 1,000,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |
| 1,100,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |
| 1,200,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |
| 1,300,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |
| 1,400,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |

| | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| 1,500,000,000 | 900,000 | 47,368 | 100,000 | 47,368 | 5.00% | 90.00% | 10.00% | 5.00% | 85.50% | 9.50% |

Example 2: 40% of authorized Incentive Common Units are outstanding at all relevant times.

| Preferred Unit Capital | Authorized Number of Common Units | | | Oustanding Incentive | 8(d)(ii)(A) Incentive Common | 8(d)(ii)(B) Class of Common Units | | Total Sharing of 8(d)(ii) Distributions Class of Common Units | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Contributions | Investment | Incentive | Founder | Common Units | Units | Investment | Founder | Incentive | Investment | Founder |
| $100,000,000 | 900,000 | 158,824 | 225,000 | 63,530 | 6.00% | 80.00% | 20.00% | 6.00% | 75.20% | 18.80% |
| 140,000,000 | 900,000 | 146,512 | 197,561 | 58,605 | 5.60% | 82.00% | 18.00% | 5.60% | 77.41% | 16.99% |
| 180,000,000 | 900,000 | 134,483 | 171,429 | 53,793 | 5.20% | 84.00% | 16.00% | 5.20% | 79.63% | 15.17% |
| 220,000,000 | 900,000 | 122,727 | 146,512 | 49,091 | 4.80% | 86.00% | 14.00% | 4.80% | 81.87% | 13.33% |
| 260,000,000 | 900,000 | 111,236 | 122,727 | 44,494 | 4.40% | 88.00% | 12.00% | 4.40% | 84.13% | 11.47% |
| 300,000,000 | 900,000 | 100,000 | 100,000 | 40,000 | 4.00% | 90.00% | 10.00% | 4.00% | 86.40% | 9.60% |
| 440,000,000 | 900,000 | 89,011 | 100,000 | 35,604 | 3.60% | 90.00% | 10.00% | 3.60% | 86.76% | 9.64% |
| 580,000,000 | 900,000 | 78,261 | 100,000 | 31,304 | 3.20% | 90.00% | 10.00% | 3.20% | 87.12% | 9.68% |
| 720,000,000 | 900,000 | 67,742 | 100,000 | 27,097 | 2.80% | 90.00% | 10.00% | 2.80% | 87.48% | 9.72% |
| 860,000,000 | 900,000 | 57,447 | 100,000 | 22,979 | 2.40% | 90.00% | 10.00% | 2.40% | 87.84% | 9.76% |
| 1,000,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |
| 1,100,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |
| 1,200,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |
| 1,300,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |
| 1,400,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |
| 1,500,000,000 | 900,000 | 47,368 | 100,000 | 18,947 | 2.00% | 90.00% | 10.00% | 2.00% | 88.20% | 9.80% |

**EXHIBIT D**

**GRANTED**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P., | ) | |
| Plaintiff, | ) | |
| v. | ) | C.A. No. 2025-0607-KSJM |
| RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, | ) | |
| Defendants. | ) | |

**[PROPOSED] PARTIAL FINAL JUDGMENT AND ORDER PURSUANT TO RULE 54(b)**

WHEREAS, the Court conducted a two-day trial on October 16 and 17, 2025;

WHEREAS, the Court issued its Post-Trial Memorandum Opinion (the "Opinion") on December 5, 2025;

WHEREAS, the Court did not resolve one of the pending claims; and

WHEREAS, the parties have agreed on a proposed form of order implementing the Opinion,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, this __ day of _____, 2025, as follows:

1. With respect to the Second Cause of Action of the Verified Complaint, as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76) ("Count II") judgment is hereby entered in favor of Plaintiff

ATP III GP Ltd. in its capacity as General Partner of ATP Life Science Ventures, L.P. ("ATP") and against Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP (collectively, "Defendants").

2. In respect of the judgement entered in Count II, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls (as defined in the Opinion) issued on May 30, 2025 for Aethon Therapeutics, Apertor Pharmaceuticals, Ascidian Therapeutics, Deep Apple Therapeutics, Evercrisp Biosciences, Initial Therapeutics, Marengo Therapeutics, Marlinspike Therapeutics, Red Queen Therapeutics, and ATLS fees and partnership expenses in the amount of $96,960,925.88.

3. Defendants, jointly and severally, shall make such payments to ATP Life Science Ventures, L.P. in satisfaction of the Capital Calls by paying $96,960,925.88 to a segregated account within 10 days of the entry of this Partial Final Judgment and Order. Such funds will remain in the segregated account pending further order of the U.S. Bankruptcy Court for the District of Delaware. The parties shall work in good faith to establish such segregated account.

4. Judgment is hereby entered in favor of Defendants and against Plaintiff ATP on the following counts: the First Cause of Action (Breach of Contract – Budget Approvals), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), and the Fourth Cause of Action (Global Default Charge).

5. The Court reserves decision on the Fifth Cause of Action (Declaratory Relief – Proper Actions of General Partner).

6. ATP's request for attorney's fees in connection with the above-captioned action is denied.

7. All other requests for relief are denied.

8. Court of Chancery Rule 54(b) provides this Court with discretion to enter a partial final judgment if: (1) the action involves multiple claims or parties; (2) at least one claim or the rights and liabilities of at least one party has been finally decided; and (3) there is no just reason for delaying an appeal.

9. The Post-Trial Opinion satisfies the requirements of Court of Chancery Rule 54(b).

10. This case involves multiple claims against multiple parties, and the Opinion resolved all of the claims except for one, on which the Court reserved judgment.

11. The unresolved claim involves issues being resolved in a pending litigation in the Cayman Islands and is "not a core dispute in this litigation." Accordingly, there is no just reason for delaying the finality of this Partial Final Judgment and Order pending appeal.

12. Pursuant to Court of Chancery Rule 54(b), the Court expressly directs (i) that this Partial Final Judgment and Order be entered as a final order and judgment

with respect to all proceedings to date regarding the First Cause of Action (Breach of Contract – Budget Approvals), the Second Cause of Action (Anticipatory Breach of Contract – Contributions for Budgeted Companies) (as modified by the conformed pleadings pursuant to the Stipulation and Pre-Trial Order (Dkt. 209, ¶ 76)), the Third Cause of Action (Obligation to Act Rationally and in Good Faith), the Fourth Cause of Action (Global Default Charge), and (ii) that this Partial Final Judgment and Order be immediately appealable.

Chancellor Kathaleen St. Jude McCormick

This document constitutes a ruling of the court and should be treated as such.

| | |
|---|---|
| **Court:** | DE Court of Chancery Civil Action |
| **Judge:** | Kathaleen St Jude McCormick |
| **File & Serve Transaction ID:** | 77974253 |
| **Current Date:** | Dec 11, 2025 |
| **Case Number:** | 2025-0607-KSJM |
| **Case Name:** | CONF REQ - ATP III GP, Ltd. v. Rigmora Biotech Investor One LP, et al. |
| **Court Authorizer:** | Kathaleen St Jude McCormick |

**/s/ Judge Kathaleen St Jude McCormick**

**EXHIBIT E**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P., | ) | |
| Plaintiff, | ) | |
| v. | ) | C.A. No. 2025-0607-KSJM |
| RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, | ) | |
| Defendants. | ) | |

**POST-TRIAL MEMORANDUM OPINION**

Date Submitted: December 3, 2025
Date Decided: December 5, 2025

Michael A. Barlow, Shannon M. Doughty, Morgan R. Harrison, QUINN EMANUEL URQUHART & SULLIVAN LLP, Wilmington, Delaware; Garrett B. Moritz, Roger S. Stronach, A. Gage Whirley, ROSS ARONSTAM & MORITZ LLP, Wilmington, Delaware; Andrew M. Berdon, Rachel E. Epstein, Kathryn D. Bonacorsi, Jonathan M. Acevedo, Taylor L. Jones, Jenny Braun, QUINN EMANUEL URQUHART & SULLIVAN, LLP, New York, New York; Jessica T. Reese, John F. Ferraro, QUINN EMANUEL URQUHART & SULLIVAN, LLP, Boston, Massachusetts; *Counsel for Plaintiff ATP III GP, Ltd.*

Blake Rohrbacher, Daniel E. Kaprow, Christine J. Chen, Zachary R. Greer, Benjamin O. Allen, RICHARDS, LAYTON & FINGER, P.A, Wilmington, Delaware; Shannon Rose Selden, William H. Taft V, Zachary Saltzman, Natascha Born, Carl Micarelli, Sebastian Dutz, DEBEVOISE & PLIMPTON LLP, New York, New York; *Counsel for Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP.*

**McCORMICK, C.**

The plaintiff is the general partner of a Cayman exempted limited partnership that holds a portfolio of Delaware life science companies. The plaintiff sued its limited partners to enforce capital calls, to force them to work in good faith to approve budgets for the portfolio companies, and to obtain declarations concerning the plaintiff's rights under the fund agreement. The funding freeze at issue here placed several of the portfolio companies at risk of insolvency, and so the court entered a highly expedited schedule leading to trial.

This post-trial decision orders specific performance of all but one of the capital calls and otherwise sides with the limited partners. The plaintiff's effort to force budget approvals rests on an implied contractual duty of good faith recognized under Cayman law, a duty that constrains the exercise of discretionary contractual rights when it is implied. Although Cayman law recognizes this implied duty, no court has implied the duty in the context of an exempted limited partnership. This court will not be the first. And the plaintiff's requested declarations that are ripe, which also implicate primarily Cayman law, do not relate to the capital call or budgeting issues that warranted expedition of this case. They relate mainly to issues pending parallel proceedings in a Cayman court. This court thus defers to the Cayman court on those issues.

That's a highly abbreviated summary of what follows. Given the precarious position of the affected portfolio companies, the court worked hard to issue this decision promptly.[1] Wasting no time on wordsmithing, this introduction foregoes an

[1] The plaintiff requested that the court issue this decision on or by December 5, 2025.

extensive and riveting account of the facts learned at trial—the deeply human story of a fund formed by two doctors-turned-businessmen motivated to develop drug therapies that improve human health, their many successful years of collaboration, the temporary surge in early stage biotech investment spurred by a global response to the pandemic, the geopolitical events and attendant adjustments to risk strategies that strained the parties' relationship, and the complex legal framework governing their dispute. Although the court streamlined the decision given the press of time, these details and more follow.

## I. FACTUAL BACKGROUND

Trial took place on October 16 and 17, 2025. The record comprises 1,930 trial exhibits, live testimony from five fact witnesses and three expert witnesses, deposition testimony from four fact witnesses, and 57 stipulations of fact.[2] These are the facts as the court finds them after trial.

[2] This decision cites to: C.A. No. 2025-0607-KSJM docket entries (by docket "Dkt." number); trial exhibits (by "JX" number); the trial transcript, Dkts. 277–79 ("Trial Tr."); and stipulated facts set forth in the Parties' Stipulation and Pre-Trial Order, Dkt. 209 ("PTO"). The parties called the following fact witnesses: Yuri Bogdanov (Rigmora CEO), Seth Harrison (ATP Founder and Managing Partner), Spiros Liras (ATP Venture Partner), Dmitry Rybolovlev (Rigmora Founder), and Joseph Yanchik (ATP Venture Partner). The parties called the following expert witnesses: Ilonna Rimm (Rigmora Biotechnology Investing Expert), Mark Robbins (ATP Biotechnology Investing Expert), and Ilya Strebulaev (Rigmora Venture Capital Expert). The parties submitted the deposition transcripts of the live witnesses and called the following witnesses by deposition only: Michael Ehlers (ATP Chief Scientific Officer, Venture Partner, and Portfolio Company Officer & Director), William Engels (ATP CFO), Daniel Finkelman (ATP General Counsel), and Alexey Yakovlev (Rigmora CFO). Depositions transcripts are cited using the witnesses' last name and "Dep. Tr."

### A. The Fund And The Limited Partnership Agreement

In 2012, Dr. Seth Harrison and Dr. Dimitry Rybolovlev formed Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund").[3]

Both Harrison and Rybolovlev were medical doctors. Harrison received his M.D. from Columbia Medical School[4] and worked as a surgeon at a New York City hospital for a year.[5] He then left the field of medicine to attend Columbia Business School.[6] After business school, in the 1990s, he joined a large venture capital firm and formed Apple Tree Partners I to hold his life-science investments.[7]

Rybolovlev received his medical degree in 1990 from Perm Medical Institute and practiced medicine for a year after.[8] He switched careers in the 1990s when the Soviet Union was privatizing.[9] Rybolovlev acquired stakes in multiple companies before consolidating his investments in the most successful, a fertilizer manufacturer named Uralkali.[10] Rybolovlev acquired voting control of Uralkali by 2000, instituted "western style" corporate governance mechanisms,[11] and took it public in 2007 on the

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[3] PTO ¶ 23.

[4] Trial Tr. at 7:22–8:1 (Harrison).

[5] *Id*. at 8:1–3 (Harrison).

[6] *Id*. at 8:2–16 (Harrison).

[7] *Id*. 8:13–21 (Harrison).

[8] *Id*. at 345:2–14 (Rybolovlev).

[9] *Id*. at 346:8–347:1 (Rybolovlev).

[10] *Id*. at 347:2–16 (Rybolovlev).

[11] *Id*. at 347:20–348:5 (Rybolovlev).

London Stock Exchange.[12] Rybolovlev sold his interests in Uralkali in 2010, personally earning around $5 billion through the transaction.[13]

Rybolovlev decided to invest the proceeds in companies addressing the "three major ways" in which, in his view, the future of "humanity will benefit the most": "health, . . . food, and entertainment."[14] He ultimately invested in a diverse array of companies intended to fulfill these goals, including a cellular-based meat producer and AS Monaco Football Club.[15] To promote human health, Rybolovlev met with fund managers in the U.S. "to find an optimal way to invest in biotech industry."[16] He ultimately determined to replicate the investment strategy that led to his success with Uralkali, creating a "family-owned pharma company" using the "apparatus" of "venture capital."[17]

In 2010, a biotech analyst at Merrill Lynch introduced Harrison to Rybolovlev.[18] Harrison liked Rybolovlev's investment strategy.[19] Harrison and Rybolovlev formed the Fund to invest in and develop biotechnology.[20]

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[12] *Id.* at 348:6–7 (Rybolovlev).

[13] *Id*. at 348:11–13 (Rybolovlev).

[14] *Id.* at 351:2–6 (Rybolovlev).

[15] *Id.* at 351:7–352:6 (Rybolovlev).

[16] *Id*. at 349:24–350:5 (Rybolovlev).

[17] *Id.* at 16:18–23 (Harrison); *id*. at 350:6–9 (Rybolovlev).

[18] *Id.* at 9:10–14 (Harrison).

[19] *Id*. at 350:14–17 (Rybolovlev).

[20] *Id*.; *id.* at 9:24–10:10 (Harrison); *id.* at 349:20–351:9 (Rybolovlev); JX-1 (LPA) at 3; JX-1574 ("Bloch Report") ¶ 15.

ATP III GP, Ltd. ("ATP") serves as the General Partner of the Fund, and Harrison is the manager of ATP.[21] The Fund's largest limited partners, contributing approximately 98% of the Fund's overall capital,[22] are Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP, both owned by Rybolovlev's family trust.[23] The Rigmora entities are successors-in-interest to the original limited partners Blue Horizon Enterprise Ltd. and Ezbon International Ltd. (together with the Rigmora entities, "Rigmora").[24]

On November 1, 2012, the parties entered into the First Amended and Restated Limited Partnership Agreement (the "LPA"), which governs the Fund's operations.[25] The LPA is governed by the law of the Cayman Islands.[26] The parties have amended the LPA twenty-two times.[27]

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[21] PTO ¶¶ 13, 15.

[22] JX-1237 at 4 (contributions through 2024); JX 1302 at 3–5 (showing Defendants' combined contributions accounted for about 98% of the Fund's ~$2.309 billion of capital contributions as of December 31, 2024); PTO ¶¶ 57, 59–61, 63 (contributions in 2025); Trial Tr. at 469:11–22, 470:12–17 (Yakovlev) (explaining how to navigate JX-1237 and calculate total contributions); *id.* at 208:10–18 (Strebulaev). Harrison and Les Pommes have contributed $54.7 million combined. JX-1400 ¶ 44; Trial Tr. 11:16–12:5 (Harrison).

[23] PTO ¶¶ 17–20; *see also* Trial Tr. at 270:12–271:3, 271:13–15 (Bogdanov).

[24] PTO ¶ 18; *see also* Trial Tr. at 11:4–7, 25:10–17 (Harrison).

[25] LPA; *see also* PTO ¶¶ 24–25.

[26] LPA ¶ 18(g).

[27] JX-1–JX-6 (LPA and LPA Ams. 1–5); JX-8–JX-17 (LPA Ams. 6–15); JX-19 (LPA Am. 16); JX-89 (LPA Am. 17); JX-126 (LPA Am. 18); JX-132 (LPA Am. 19); JX-222 (LPA Am. 20); JX-480 (LPA Am. 20); JX-1068 (LPA Am. 22).

At issue here, the LPA provides a framework for making capital calls and approving budgets.[28] Also relevant to this litigation, the LPA contains an "Exculpation Provision" that protects ATP from liability for actions taken in good faith that are not willful fraud, willful misconduct, gross negligence, or an intentional and material breach of the LPA.[29] It as well contains a "Discretionary-Action Provision" that grants ATP the discretion to take action against any limited partner who breaches the LPA.[30] The LPA's "Global Default Provision" authorizes ATP as General Partner to declare a Limited Partner who failed to honor its capital call obligations a "Defaulting Partner," and outlines a set of remedies that ATP can elect to pursue.[31] Those remedies include imposing a "Default Charge" by reducing the limited partner's preferred units.[32]

### B. The Historical Budgeting Process

The LPA authorizes the General Partner to call capital for "Projects approved by" the Limited Partners "in writing" and "in accordance with a budget therefor approved" by the Limited Partners.[33] The LPA thus granted Rigmora the right to approve budgets for projects before the General Partner can call capital for those projects.

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[28] LPA ¶ 5(a); LPA Am. 3 ¶ 3.

[29] LPA ¶ 2(g).

[30] *Id.* ¶ 18(g)(iv).

[31] *Id.* 5(c).

[32] *Id.*

[33] LPA Am. 3 ¶ 5(a)(iii).

Until late 2024, the process by which the parties agreed on budgets began with informal discussions among Rigmora's Chief Investment Officer (whoever occupied that position at the time), Harrison, and Rybolovlev.[34] For each new Series A investment, Harrison and Rybolovlev met—often in person, although Harrison lives in the United States and Rybolovlev lives in Switzerland—to discuss the opportunity, its prospects for commercial and scientific success, and funding needs.[35]

Rybolovlev personally approved every new investment informally.[36] Once he did so, ATP prepared a packet of materials to secure formal approval.[37] The packet included things like a CFIUS memorandum,[38] a request for formal budget approval,[39] and an investment memorandum.[40]

ATP employees drafted the investment memoranda,[41] which served as a "roadmap from the implementation of a project all the way to the delivery of value as measured by exits."[42] The investment memoranda included the investment thesis, the investment rationale, and an assessment of the quality of the company's

[34] Trial Tr. at 14:1–24 (Harrison).

[35] *Id.* at 31:15–32:4, 33:5–10 (Harrison); *id*. at 349:9–14, 355:4–12 (Rybolovlev).

[36] *Id.*

[37] *Id.* at 32:19–33:4 (Harrison).

[38] JX-310 at 6–7.

[39] Trial Tr. at 31:15–33:4 (Harrison); *id*. at 355:9–18 (Rybolovlev).

[40] *Id.* at 32:19–33:4 (Harrison); *id.* at 245:13–17, 251:3–13 (Liras).

[41] *Id.* at 132:8–12 (Harrison).

[42] *Id*. at 241:21–24 (Liras).

founders.[43] The memoranda also contained performance milestones by which ATP could "measure progress against stated goals."[44]

As Harrison explained, milestones supplied a useful starting point in projecting a portfolio company's performance, but the initial milestones identified in the investment memoranda became less important in middle and later stages of the investment.[45] As the portfolio companies were "developing drugs from new technologies" and "working with teams of scientists of various stripes," their progress could not easily be predicted from the outset and they would often pivot if their initial strategy was not progressing well.[46]

In this litigation, Rigmora argues that the milestones served as conditions to Rigmora's obligation to fund approved budgets.[47] For this purpose, Rigmora cites to evidence reflecting the significance that ATP placed on milestones.[48] But that

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[43] *See, e.g.,* JX-150 at 8.

[44] Trial Tr. at 242:1–6 (Liras). They also included risk mitigation strategies, which could involve analyses of comparable companies to assess the novelty of the science and its potential value to patients and investors. *Id*. at 242:6–10 (Liras).

[45] Trial Tr. at 134:5–135:13 (Harrison).

[46] *Id*.

[47] JX-1579 ("Rimm Report") Figs. 5–11; *see also, e.g.*, JX-243 at 32 (Evercrisp) (dividing funding into "six milestone-driven tranches"); JX-114 at 1, 7, 32–33 (Apertor) (establishing $50m financing in "milestone-driven tranches"); JX-269 at 27 (Red Queen) (establishing tranches "based on milestones and progress").

[48] *See* Dkt. 269 ("Rigmora Post-Trial Br.") at 8, 28 (citing investment memoranda explaining the significant of milestones, JX-243 at 32, JX-309 at 4, JX-269 at 27; Ehlers's testimony that milestones were valuable for focusing the company's management and protecting investors, Trial Tr. at 403:20–404:2 (Ehlers); and Harrison's investment deck characterizing the Fund's investing practices as "[d]iscipline funding" consisting of "[m]ilestone-based tranches infused over time," JX-2280 at 6).

evidence reflects that ATP viewed milestones as important tools for managing the portfolio companies. No evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[49] Rigmora lacked the substantive expertise to set or track performance milestones.[50] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[51] The fact that certain of the Rigmora approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda.

After formal budget approval, the Fund would enter into Series A stock purchase agreements with the relevant portfolio companies.[52] ATP viewed the Series A commitments as key to recruiting top scientists and staff.[53] This is because most of the Fund's portfolio companies rely on funding from the Fund exclusively.[54]

[49] *Id*. at 33:11–14 (Harrison).

[50] Bogdanov Dep. Tr. at 31:2–9; 45:23–46:10; 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–31.

[51] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[52] Trial Tr. at 34:19–35:2 (Harrison).

[53] JX-1174 at 2.

[54] Trial Tr. at 20:8–21:1 (Harrison).

### C. Rigmora's Capital Commitments

Since the inception of the Fund, Rigmora agreed to multiple capital commitments. The LPA limits ATP's right to call capital to the maximum amount of money each limited partner, including Rigmora, committed to the Fund, which the LPA refers to as a limited partner's "Contingent Subscription."[55] Rigmora's commitments began with an initial commitment of $1.425 billion alongside the November 2012 LPA and were followed by additional commitments negotiated in connection with amendments to the LPA.

#### 1. Rigmora Commits $1.425 Billion To Establish The Fund.

The parties agreed to capitalize the Fund with $1.5 billion initially.[56] Rigmora would supply $1.425 billion and Harrison would supply the remaining $75 million pursuant to a loan from Rigmora.[57] Rigmora made its initial capital commitments totaling $1.425 billion on November 1, 2012, under subscription agreements signed by Blue Horizon for $698.25 million and Ezbon for $726.75 million.[58] The

[55] LPA ¶ 5(a)(i).

[56] Trial Tr. at 350:18–23 (Rybolovlev).

[57] PTO ¶¶ 26–27; Trial Tr. at 23:16–25:22 (testifying that Rigmora's total subscription at the time the parties executed the LPA was $1.425 billion when combining Blue Horizon's and Ezbon's subscriptions); JX-212 at 19–23; JX-213 at 19–23; JX-216 at 19–23; Trial Tr. at 25:18–26:3 (Harrison); *id*. at 354:12–19 (Rybolovlev); *see also* JX-1, Sch. D (describing Rigmora's financing of Harrison's capital contributions).

[58] JX-212 at 19–23 (signature pages); JX-213 at 19–23 (signature pages); Trial Tr. at 25:18–22 (Harrison).

subscription agreements were "[s]ubject to the terms and conditions set forth in . . . the [LPA]."[59]

Rigmora also agreed to "make such other capital contributions and payments to the Fund as provided for in the LPA, in the manner and at the times provided in the [LPA]," and to become "bound by the terms of the [LPA]."[60] ATP's right to call capital, in addition to being limited in amount to each partner's Contingent Subscription, was restricted to contractually specified purposes.

**2. The Parties Amend The LPA To Create Investment Pools.**

Amendment 13 to the LPA, dated February 4, 2019, introduced a Fund structure through which commitments, assets, and contributions would be allocated and tracked across separate "pools."[61] The aim of the pool concept was to segregate money so that profits on new investments would not leak to former Fund employees.[62] As Harrison explained, "we had old teams and new teams coming in that would found [sic] new deals. So we needed to segregate their deals in a pool out of fairness."[63] Pools also allowed the parties to increase capital commitments without having to establish new entities, thus avoiding potential know-your-customer roadblocks.[64]

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[59] JX-212 ¶ 1; JX-213 ¶ 1.

[60] *Id.*

[61] JX-15 (LPA Am. 13) ¶ 17(a).

[62] Trial Tr. at 27:11–28:9 (Harrison)

[63] *Id.* at 27:13–17 (Harrison).

[64] *Id.* at 27:11–28:9 (Harrison).

Amendment 13 established two pools: Pool A, which held the existing projects, and Pool B, which held the Fund's new projects.[65] Rigmora was responsible for funding 100% of capital called for Pool B.[66] Amendment 13 stated that expenses "directly attributable" to a particular pool would be allocated exclusively to that pool with other expenses apportioned between the pools based on the relative cost basis of the remaining assets in each pool.[67] Amendment 13 identified the "Management Fee" paid to Harrison, and the "Apple Tree Life Sciences, Inc. Fee, or "ATLS Fee" for Fund expenses incurred across the portfolio companies, as expenses attributable to both pools.[68]

Amendment 13 further provided that "separate and distinct records shall be maintained for each Pool, and capital contributions . . . shall also be accounted for separately on a Pool-by-Pool basis."[69]

### 3. Rigmora Commits An Additional $1 Billion.

Rigmora increased its commitment to the Fund as early-stage biotech investment surged in 2020 and 2021, spurred by the global response to the Covid-19

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[65] LPA Am. 13 ¶ 17(a).

[66] *Id.*¶ 17(b).

[67] *Id.* ¶ 17(d)).

[68] JX-9 (LPA Am. 7) Schedule A ¶ 3; JX-19 (LPA Am. 13) ¶ 17(d). ATLS is a wholly owned subsidiary of the Fund that covers Fund operational expenses like facility costs, leases, rents, and employee costs. JX-9 (LPA Am. 7) Schedule A ¶ 3; Trial Tr. at 17:17–18:4 (Harrison). The parties allocated the Management Fee and ATLS Fee between the pools according to fixed percentages. LPA Am. 20 ¶ 6.

[69] LPA Am. 13 ¶ 17(a).

pandemic.[70] Amendment 17 to the Limited Partnership Agreement, dated September 9, 2020, committed Rigmora to fund an additional $1 billion to be allocated between Pool B and a new Pool C.[71] Thereafter, Pool A would consist of Rigmora's original $1.425 billion capital commitment and all economics of the Fund not expressly allocated to Pools B or C. Pools B and C would split Rigmora's new $1 billion commitment.[72]

Amendment 17 further specified that Pool B would contain: Chinook Therapeutics U.S., Inc.; Nine Square Therapeutics Corporation; and Initial Therapeutics, Inc., along with a proportionate share of the Management Fee and ATLS Fee.[73] Pool C would contain Kynos Therapeutics Ltd and any new projects after the execution of Amendment 17, along with a proportionate share of the ATLS Fee and Management Fee.[74]

Each of these pools would be funded "exclusively" by Rigmora, and "[a]ll capital invested in the Pool C Projects . . . [would] be treated as contributed to [Pool C]."[75]

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[70] Trial Tr. at 362:7–12 (Rybolovlev); *see also id.* at 402:20–22 (Ehlers); JX-1579 ¶ 19.

[71] Trial Tr. at 29:1–19 (Harrison); JX-89 (LPA Am. 17).

[72] LPA Am. 17 ¶ 20(a)

[73] *Id.*

[74] *Id.*

[75] *Id.* ¶ 20(b).

After Amendment 17, the parties executed amended subscription agreements under which Blue Horizon and Ezbon committed to contributing $490 million and $510 million, respectively, to Pools B and C.[76]

In Amendment 19, dated November 27, 2020, the parties renamed Pools A, B, and C, as Pool ATP IV, Pool ATP V-1, and Pool ATP V-2, respectively.[77] In their testimony, the witnesses further shortened the Pool names to Pool IV, Pool V-1, and Pool V-2,[78] and this decision follows suit.

### D. Amendment 20 To The Limited Partnership Agreement

In 2021, while investments in early-stage biotech companies still surged, the parties decided to restructure the economic rights and obligations surrounding an existing Pool IV project called Braeburn Inc. The Fund founded Braeburn in 2012 as "a Phase 1 company."[79] By 2021, it was "market[ing] a drug for opioid addiction" and had around "$300 million in sales revenue."[80] Pool IV held Braeburn, but the company was "capital intensive."[81] So Rybolovlev agreed to fund the capital commitments to Braeburn, and ATP agreed to "change[] . . . carry economics in favor of [Rybolovlev]."[82] To facilitate this arrangement, the parties amended the LPA to

[76] Trial Tr. at 41:11–42:14 (Harrison); JX-99; JX-101.

[77] JX-132 (LPA Am. 19) ¶ 1; Trial Tr. at 28:22–24 (Harrison).

[78] *See, e.g.*, Trial Tr. at 40:19–23 (Harrison).

[79] Trial Tr. at 44:14–19 (Harrison).

[80] *Id.* at 44:13–21 (Harrison).

[81] *Id.* at 45:8–21 (Harrison).

[82] *Id*. at 45:8–24 (Harrison); LPA Am. 20 ¶ 21(b).

"segregate the investment in Braeburn."[83] Meanwhile, ATP had placed new executives in charge of existing projects.[84] This, coupled with changes at Braeburn, prompted a wholesale restructuring of Pool IV to allocate existing assets and liabilities to newly created pools and align managers' carried interests with their performance.[85]

In June 2021, the parties executed Amendment 20 to for this purpose.[86] Amendment 20 created two new pools.[87] The first, "Pool Braeburn," held Braeburn in a segregated fund for which Rigmora would be the exclusive source of capital.[88] The second, "Pool V-3," held seven companies formerly under Pool IV that "hadn't quite made it" and "would be managed by the members of our new team"[89]—Ascidian Therapeutics, Inc., Gala Therapeutics, Inc., Galary, Inc., Galvanize Therapeutics, Inc., Galaxy Medical, Inc., Intergalactic Therapeutics, Inc., and Marengo

[83] *Id.* at 44:22–45:2 (Harrison).

[84] *Id.* at 46:6–15 (Harrison).

[85] LPA Am. 20 ¶¶ 21(a), 22(a) (describing Pools V-3 and Braeburn as "consist[ing] of the assets, liabilities, income, gains, losses and expenses associated with the Partnership's investments" in the relevant portfolio companies); Trial Tr. at 44:22–45:11 (Harrison) (Pool Braeburn created to change "carry economics" for investment in Braeburn); *id.* at 39:21–41:10, 46:6–15 (Harrison) (Pool V-3 set up to segregate economics for new managers).

[86] Trial Tr. at 44:11–46:15 (Harrison).

[87] LPA Am. 20 ¶¶ 21, 22.

[88] LPA Am. 20 ¶ 21; *id.* ¶ 21(b) (stating that capital shall be called from Rigmora "exclusively" and that "[n]o other Partner shall be required to contribute capital to or in respect of Pool Braeburn").

[89] Trial Tr. at 46:6–15 (Harrison).

Therapeutics, Inc.[90] Amendment 20 also reduced Rigmora's funding commitments to Pool IV.[91]

The parties dispute whether Rigmora agreed to increase its overall capital commitments through Amendment 20. Before Amendment 20, Rigmora had committed a total of $2.425 billion: $1.425 billion to Pool IV and $1 billion to Pools V-1 and V-2.[92] Of that amount, Rigmora had contributed approximately $1.3 billion[93] to Pool IV and $58.5 million to Pools V-1 or V-2.[94] Rigmora's commitments thus left around $1.067 billion in head room in its Contingent Subscription to achieve the then contemplated projects.[95] In this litigation, Rigmora argues that $1.067 billion was

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[90] LPA Am. 20 ¶ 22(a).

[91] LPA Am. 20 ¶ 24.

[92] PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); -213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a) (committing an additional $1 billion to Pools B and C); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1 (renaming Pool A to Pool IV and Pools B and C to Pools V-1 and V-2 respectively).

[93] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840,047.14).

[94] *See id.*, Tab "Capital Calls – V-1 and V-2," Adding cells D23 and D47, the totals for Rigmora's contributions to V-1 and V-2, yields $58,486,530.

[95] As described in the legal analysis, immediately prior to Amendment 20's adoption, Rigmora committed $2.425 billion to the Fund. PTO ¶ 30; JX-212 at 19–23 (Blue Horizon SA signature pages); JX-213 at 19–23 (Ezbon SA signature pages); LPA Am. 17 ¶ 20(a); JX-99 ¶ 1; JX-101 ¶ 1; LPA Am. 19 ¶ 1. Rigmora's combined contributions to all pools immediately prior to Amendment 20's adoption was $1,358,326,577.14. JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (showing Rigmora's total contributions to Pool IV as $1,299,840,047.14); *id.*, Tab "Capital Calls – V-1 and V-2," Cells D23, D47 (showing Rigmora's total contributions to Pools V-1 and V-2 as $58,486,530). Subtracting Rigmora's capital contributions of $1,358,326,577.14 from its then current Contingent Subscription of $2.425 billion yields unfunded capital commitments of $1,066,673,422.86.

more than enough to accomplish anticipated projects. And the parties did not expressly amend the subscription agreements in connection with Amendment 20 as they had with prior LPA amendments.[96]

But Amendment 20 and communications leading up to it, all during the biotech boom, reflect that the parties anticipated unfunded commitments exceeding $1.067 billion, and total commitments from Rigmora exceeding $2.425 billion.

In May 2021, Harrison emailed a draft outline of the transaction to Rigmora's then-CEO and CIO Anna Kolonchina, who indicated Rigmora's assent to the outline a few days later.[97] The outline included a section titled "Remaining Unfunded Capital Commitments" of approximately $1.385 billion as follows: (1) $20 million for ATP IV; (2) $220 million for ATP V-1; (3) $664 million for ATP V-2; (4) $291 million for new Pool ATP V-3; and (5) $189.95 million for new Pool Braeburn.[98] Adding up Rigmora's obligation for those commitments (approximately $1.384 billion),[99] to its then-funded commitments ($1.3 billion) equals $2.684 billion.

On its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, more than those of the May 2021 outline.[100]

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[96] *See* PTO ¶¶ 26–27, 30 (listing amendments to subscription agreements).

[97] JX-195 at 1 (Kolonchina circulated a revised draft and stating it "make[s] sense to start drafting a long form" amendment).

[98] JX-195 at 4–5.

[99] Of that, Rigmora would be responsible for approximately $1.384 billion based on its agreement to fund 99.6028% of Pool IV and Pool V-3 and 100% of the remaining pools. JX-195 at 1, 4–5.

[100] LPA Am. 20.

Amendment 20 reflected anywhere from $304.6 to $309.2 million in contributions to Pool V-3[101] (more than the $291 million reflected in the outline). It also reflected a minimum of $189.9 million to Pool Braeburn plus a commitment to fund additional securities fees (thus likely more than the flat $189.9 million reflected in the outline).[102] Amendment 20 reduced the $1.425 billion commitment to Pool IV consistent with the email (subtracting approximately $92 million to even the

[101] As discussed in the legal analysis, to Pool V-3, Amendment 20 reflected a total commitment of $500 million. LPA Am. 20 ¶ 22(b). This included $189,544,660 in "deemed commitments" to the existing investments into the Pool V-3 companies and implied approximately $310.5 million in new commitments. *Id.* The new commitments expressly identify two new expenses totaling $305.8 million: $70,853,399 in previously approved, unfunded budgets and $235 million in additional commitments to those companies. *Id.* Amendment 20 further states that "Ezbon, Blue Horizon, Harrison, and Les Pommes shall contribute 50.7974%, 48.8054%, 0.1869%, and 0.2103%, respectively," to any unfunded remaining budgets. *Id.* Assuming the implied $310.5 million, then Rigmora would be required to contribute approximately $309.2 million. Assuming the expressly noted $305.8 million, then Rigmora would be required to contribute approximately $304.6 million. So Amendment 20 reflects anticipated additional capital commitments from Rigmora to Pool V-3 in a range of $304.6 million to $309.2 million.

[102] As discussed in the legal analysis, to Pool Braeburn, Amendment 20 reflected Rigmora's commitment of $189.9 million. LPA Am. 20 ¶ 21(a). Amendment 20 also committed Pool Braeburn to "any additional securities of Braeburn acquired by the Partnership after the date of Amendment 20" and fees and expenses related to Pool Braeburn. *Id.* ATP's former CFO Engels testified that the Braeburn later purchased $30.6 million in additional Series B shares for Braeburn and called approximately $9 million in expenses to Pool Braeburn. Engels Dep. Tr. at 355:3–15. The parties executed a settlement agreement in December 2024 to resolve a dispute that Rigmora initiated in Cayman. Trial Tr. at 71:5–10 (Harrison). Pursuant to that settlement, the parties waived the then-remaining $21.3 million in commitments to Pool Braeburn. Engels Dep. Tr. at 355:16–21; JX-1068 (LPA Am. 22); JX-1072.As Engels explained, these commitments "netted out to a total obligation of $208,355,000." Engels Dep. Tr. at 355:22–356:4. Even assuming that the parties did not know the precise costs of the additional securities, fees, and expenses at the time of executing Amendment 20, the Amendment anticipated $189.9 million in additonal funding to Braeburn.

commitment to the funds already contributed and adding the then-anticipated $20 million in fees)[103] but did not reduce the $1 billion commitment to Pools V-1/V-2.

And immediately following Amendment 20, ATP began calling committed capital from Rigmora and Harrison. On June 24, 2021, ATP transmitted a capital call to Rigmora for approximately $16.4 million, consisting of $2 million for Pool Braeburn, $1.6 million for Pool V-2, and $12.8 million in expenses charged to the pools, all split among Rigmora and Harrison in line with their commitment obligations to the pools.[104]

This capital call—and every call that followed—included as "Exhibit A" a tracker of the outstanding capital commitments.[105] The tracker included the amount of funds being called from each party on a pool-by-pool basis (including the breakdown of ATLS fees proportionately for each pool), and the amount of unfunded committed capital that would remain following the capital call.[106] Exhibit A to the June 2021 capital call evidenced a total remaining commitment of $1.447 billion.[107] Before this

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[103] The parties agreed to reduce Pool IV's remaining unfunded commitments from the initial $1.5 billion to approximately $20 million to be used to cover expenses, including the cost of litigating a then-ongoing portfolio company exit. JX-1061 (LPA Am. 20) ¶ 24. The actual cost of expenses related to that litigation, and what was ultimately paid into Pool IV after Amendment 20, totaled around $33.3 million. Engels Dep. Tr. at 321:20–322:22. Adding Rigmora's share of those costs to the amount Rigmora contributed to Pool IV prior to Amendment 20 equals $1,333,059,463.85. *See infra* § II.A.1.

[104] Trial Tr. at 47:10-48:3 (Harrison); JX-230 at 1–2.

[105] JX-230 at 4; Trial Tr. at 48:19–50:18 (Harrison).

[106] *Id.*

[107] JX-224 at 3.

litigation, no one at Rigmora (including then-CEO Kolonchina, who received these calls) ever objected to the accounting.[108]

### E. Amendment 22 To The Limited Partnership Agreement

Biotech markets retrenched in 2022,[109] and Russia invaded the Ukraine early that year.[110] Rigmora's investment strategy and risk appetite changed after these events,[111] and the parties' relationship began to strain.[112] By 2023, Rigmora had started conditioning its capital contributions on budget reductions.[113] Braeburn had achieved commercial success.[114] The FDA approved Braeburn's drug Brixadi, transforming Braeburn into a commercial-stage company with multi-billion dollar potential.[115] In July 2021, Braeburn entered into a royalty purchase agreement with ATP which gave ATP a license to Braeburn's IP and the associated royalty

[108] Trial Tr. at 48:19–51:1 (Harrison); *id.* at 474:22–476:10 (Yakovlev) (testifying that he was "not . . . aware" of anyone at Rigmora challenging these records)

[109] *Id.* at 382:10–19 (Rybolovlev).

[110] *Id.* at 199:2–3 (Strebulaev).

[111] JX-463 at 2–3; Trial Tr. at 51:15–52:12 (Harrison). At trial, Rybolovlev denied that the invasion of Ukraine played a part in Rigmora's decision making. Trial Tr. at 352:20–353:3 (Rybolovlev).

[112] *See* Trial Tr. at 51:15–52:12 (Harrison).

[113] JX-698.

[114] PTO ¶¶ 48–50.

[115] *Id.*

payments.[116] And Rigmora demanded immediate distributions from Braeburn.[117] ATP refused the demand.[118]

Ultimately, ATP sued in the Cayman Islands to compel Braeburn distributions.[119] In that litigation, Rigmora previewed the defense it would make in this litigation. On October 10, 2024, Kolonchina filed an affidavit in the Cayman court.[120] The LPA authorizes the General Partner to request capital calls in "an amount equal to, *but not in excess of*" the "Contingent Subscriptions" as that term is defined in the LPA.[121] In an October 10, 2024 affidavit, Kolonchina stated, for the first time, that Rigmora's "combined Contingent Subscriptions are US$2.425 billion."[122] Because Rigmora had already funded $2.6 billion, in Rigmora's view, "it is therefore impossible" that Rigmora had outstanding Contingent Subscriptions.[123]

Rigmora did not stand on its newly formed legal defense in the Cayman litigation but instead agreed to meet its capital obligations.[124] The day that she filed her affidavit, Kolonchina stated in an email to ATP that Rigmora would pay a

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[116] JX-586 at 2,

[117] Trial Tr. at 67:9–68:14 (Harrison); PTO ¶¶ 51, 53.

[118] PTO ¶ 52.

[119] PTO ¶ 54; Dkt 57 ("Answer") ¶¶ 98, 100.

[120] JX-1002.

[121] LPA ¶ 5(a)(i) (emphasis added).

[122] JX-1002 ¶¶ 23–26.

[123] *Id.*

[124] JX-998 at 1.

pending capital call although it was "not obligated to do so."[125] By October 2024, Rigmora was explicitly disclaiming any obligation to respond to capital calls for budgets already approved in writing, insisting that further payments would be made only "on a voluntary basis."[126]

During this time, ATP portfolio companies were nearing the end of their Series A commitments and initial budgets, making new budgets critical.[127]

Harrison flew to Monaco and suggested to Rybolovlev that they settle the Cayman litigation.[128] This led to a "couple of days of meetings" where they "agreed to the basic outline of a settlement in order to continue to work together."[129] On December 20, 2024, the parties implemented the settlement terms through Amendment 22 to the LPA.[130]

Through Amendment 22, Rigmora agreed to "discuss" budgets for ATP portfolio companies in exchange for distributions from a newly secured Braeburn royalty valued at approximately $700 million.[131] Amendment 22 provides:

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[125] *Id.*

[126] *Id.*

[127] Trial Tr. at 72:6–73:10 (Harrison).

[128] *Id.* at 68:22–69:1 (Harrison).

[129] *Id.* at 68:24–69:4 (Harrison).

[130] *See* LPA Am. 22 ¶ 26; Trial Tr. at 275:6–21 (Bogdanov).

[131] LPA Am. 22 ¶¶21, 26. By this time, Braeburn was a successful public company and the Braeburn royalty reflected the Fund's share of the company's cash flows. Trial Tr. at 64:18–65:12 (Harrison). ATP removed the Braeburn royalty from the Fund into a separate entity, ATP LLC. *Id.* Amendment 22 allowed Rigmora to receive distributions from the Braeburn royalty. LPA Am. 22 ¶ 21.

> From and after the date of [Amendment 22], the General Partner and [Rigmora] shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Bioscience, Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized . . . .[132]

Amendment 22 noted, on its face, the projected dates by which each company would run out of cash: January 2025 for Aulos, February 2025 for Replicate, April 2025 for Nereid, May 2025 for Nine Square, and first quarter 2026 for Ascidian.[133]

At the same time, Amendments 22 created a "Royalty Financing" contingency. It stated that "[i]f any approval of a new budget is given by [Rigmora], *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by [Rigmora] on a sale or financing of its interest in ATP LLC."[134] Put differently, no budget for entities identified in Amendment 22 would be approved, and thus subject to capital calls, absent a Royalty Financing.

Harrison expected that the parties would work together to obtain the Royalty Financing.[135] These expectations were consistent with the terms of Amendment 22, which mandates that, in pursuing the financing, as well as approving budget proposals, each party would "do and perform, or cause to be done and performed, all

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[132] LPA Am. 22 ¶ 26.

[133] *Id.* ¶ 26.

[134] *Id.* ¶ 26 (emphasis added).

[135] Trial Tr. at 77:24–78:3 (Harrison).

such further acts and things . . . as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation of the transactions contemplated hereby."[136]

### F. Rigmora's New Management Shifts Funding Priorities And Delays Budget Approvals.

In October 2024, Kolonchina left Rigmora,[137] and Rybolovlev promoted Yuri Bogdanov to CIO and co-CEO.[138] Rybolovlev had known Bogdanov for two decades.[139] Before Rigmora, Bogdanov had worked for Uralkali in Russia.[140] Prior to his elevation at Rigmora, Bogdanov worked as a special advisor for several years which entailed giving a "second opinion" and challenging management on investments and other matters.[141] Bogdanov was promoted due to his "general understanding" of Rigmora's operations.[142] But Rybolovlev identified drawbacks to his elevation. For one, "background i[n] auditing" made him "very, very, conservative."[143] Also, Bogdanov had no prior involvement in the Fund's company budgets nor any meaningful exposure to biotech.[144]

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[136] LPA Am. 22 ¶ Miscellaneous.

[137] Trial Tr. at 378:7–14 (Rybolovlev)

[138] *Id.* at 271:24–272:7 (Bogdanov).

[139] Trial Tr. at 273:20–274:1 (Bogdanov).

[140] *Id.*

[141] *Id.* at 272:14–20 (Bogdanov).

[142] Rybolovlev Dep. Tr. at 51:5–52:4.

[143] *Id.* at 50:17–51:3.

[144] Trial Tr. at 272:8–24, 316:24–13 (Bogdanov).

### 1. Bogdanov Proposes Drastically Reducing Rigmora's Investment In ATP.

Years before his elevation, Bogdanov was working as an investment analyst at Rigmora and recommended that Rigmora slash its investment in ATP.[145] By the fall of 2022, Rigmora's investment strategy and macroeconomic trends landed Rigmora in what Bogdanov described as a "liquidity crisis."[146] To address it, Bogdanov prepared an internal memorandum proposing a change in investment strategy.[147]

In the memorandum, Bogdanov observed that "two to three years ago" a crisis with similar characteristics had been "resolved by liquidating the private equity portfolio."[148] He warned that Rigmora's structure, with mainly "venture businesses (biotech [and] gaming) carries similar risks that had led to the current crisis: poorly predictable money inflows (divestments) and massive outflows (capital calls), which will grow exponentially if the divestments are delayed."[149]

Bogdanov's solution was straightforward: "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture."[150] Otherwise, Rigmora would remain trapped in "the same logic of

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[145] JX-446.

[146] *Id.*; *see also* Trial Tr. at 352:10–15 (Rybolovlev) (testifying that Rigmora did "not like to keep a lot of liquidity on hand" because "the money, whether it's cash, it has to work").

[147] JX-446; *see* Trial Tr. at 318:2–321:23 (Bogdanov).

[148] JX-446 at 1.

[149] *Id.*; Trial Tr. at 320:11–18 (Bogdanov).

[150] JX-463 at 2; Trial Tr. at 320:3–7 (Bogdanov).

shifting money from less risk (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time" to resolve periodic emergency cash shortages.[151]

According to Bogdanov, Rigmora would "most importantly" re-encounter emergency cash shortages due to "guaranteed obligations on . . . biotech venture projects."[152] "Biotech ventures" referred to the Fund.[153] And although the Fund could be "a source of capital gains," it could not "serve as a reliable source of cash for funding [Rigmora's] regular needs."[154] If Rigmora were to exit its biotech investments, it would gain a "buffer" of at least $300 million—enough to mitigate Rigmora's liquidity crisis and achieve a "stable position" long term.[155] Bogdanov concluded that the way "to start moving towards the cash buffer" was "to drastically reduce ATP payments."[156]

[151] JX-463 at 2; Trial Tr. at 320:19–24 (Bogdanov).

[152] JX-440 at 2 (emphasis added). This email was sent by Bogdanov's associate, but Bogdanov testified that he is "the author." Bogdanov Dep. Tr. 162:5–10.

[153] Trial Tr. at 320:8–10 (Bogdanov).

[154] JX-440 at 2.

[155] JX-446 at 1.

[156] JX-462 at 2 (emphasis added); Bogdanov Dep. Tr. at 174:14–21.

Bogdanov believed that Rigmora could achieve "drastic" payment reductions through "tight controls," including "clear rules for review and approval of new projects."[157] His "priority number one [was] to create the cash buffer."[158]

### 2. Bogdanov Delays Budget Approvals To Reduce Funding Commitments.

No one gave Bogdanov any "specific instructions" on his new priorities when he became CIO and co-CEO in late 2024.[159] All indications are that Bogdanov set his fall 2022 plans in motion and began implementing a shift toward reducing long-term investments and building a cash buffer by cutting funds to ATP.

Meanwhile, ATP was on the verge of crisis. That is what prompted Harrison to make settlement overtures to Rybolovlev, overtures that led to Amendment 22 and Rigmora's commitment to discuss new budgets. And ATP wasted little time after executing Amendment 22 before sending Rigmora proposed budgets.[160]

Bogdanov had negotiated Amendment 22 for Rigmora and remained ATP's point of contact.[161] On December 24, 2024, Harrison emailed Bogdanov budget requests for:[162] Auolos, "align[ing] with management's recommendation for the middle scenario of $28M"; Replicate, for "$11M"; and Nine Square, "with a budget

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[157] JX-462 at 2; Bogdanov Dep. Tr. at 173:16–22.

[158] JX-462 at 2.

[159] Trial Tr. at 342:20–343:3 (Bogdanov).

[160] JX-1079 at 1; Trial Tr. at 79:10–80:5 (Harrison).

[161] Trial Tr. at 271:24–272:7, 275:2–5 (Bogdanov).

[162] JX-1079 at 1.

request of $15M" (the "Budgeting Requests").[163] Harrison also explained that he had attached materials concerning budgets for: Nereid, which could merge with Marlinspike and "utilize Marlinspike's remaining budget" and therefore required no additional funds; and Ascidian, which would "require more discussion and time to understand" due to "contingent variables" expected to "emerge" in the coming year.[164]

Harrison provided a spreadsheet showing "expected tranching by quarter for 2025," plus access to data rooms with "supporting materials for the new budgets."[165] ATP had not historically provided this level of information when requesting budget approval.[166] Harrison testified at trial that ATP provided this information "to make sure [Rigmora] understood that after the settlement agreement we were being radically transparent."[167] Bogdanov forwarded Harrison's email to Rigmora's analyst, Zufar Iskhakov, exclaiming "Let's start. Merry Christmas!"[168] This seems like a positive response. Yet Bogdanov testified in deposition that he did not mean "let's start approving budgets."[169] And events that followed seem to suggest that he meant "let's start" imposing "tight controls."

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[163] *Id.*

[164] *Id.*

[165] *Id.*

[166] Trial Tr. at 80:18–81:7 (Harrison).

[167] Trial Tr. at 128:6–9 (Harrison).

[168] JX-1079 at 1.

[169] Bogdanov Dep. Tr. at 228:13–15.

Bogdanov prioritized Replicate, which Harrison had warned would "run out of cash by the third week of January."[170] Over the holidays, Bogdanov's team prepared a "list of the follow-up diligence questions,"[171] which Bogdanov sent to Harrison.[172]

Bogdanov testified that this was appropriate. He characterized the list as "basic diligence questions on the company's past performance" and "how the company executed its original plan."[173] The questions determine the "most important indicators before [] mak[ing] any decision on the new budget."[174]

Harrison, on the other hand, viewed Bogdanov's diligence questions as bizarre.[175] As he testified, Rigmora "already knew about" Replicate and had "approved the budget[.]"[176] Replicate had pivoted "from oncology to a rabies vaccine over the course of the fund's investment."[177] As Harrison explained: "this is a company that we founded I think in 2021 and on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with [Rybolovlev]."[178]

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[170] Trial Tr. at 291:11–16 (Bogdanov).

[171] *Id.* 291:17–20 (Bogdanov).

[172] JX-1107 at 1–5.

[173] Trial Tr. at 292:1–8 (Bogdanov).

[174] *Id.* at 292:9–15 (Bogdanov).

[175] Trial Tr. at 129:3–5 (Harrison).

[176] *Id.*

[177] *Id.* at 128:19–23 (Harrison); JX-1107 at 3.

[178] Trial Tr. at 82:23–83:3 (Harrison).

Rigmora's diligence requests ignored this history. Some of the requests were open-ended, seeking, for example, narratives explaining whether Replicate had "lost its differentiation," and how its "technology evolved over the past four years compared to its main peers."[179] When confronted on cross-examination about whether he knew if his diligence questions could "be answered in a reasonable amount of time," Bogdanov admitted: "I didn't know."[180]

Rigmora ultimately approved Replicate's budget.[181] But the budgeting experience for Replicate marked a departure from the parties' historically collaborative approach over the Fund's twelve-year history and, in that way, foretold events to come.

### 3. To Move Forward, Harrison Proposes Reallocating Committed Funds To Clinical-Stage Companies.

Additional meetings occurred in March 2025 in Monaco to discuss the budgeting efforts contemplated by Amendment 22, including Aulos, Ascidian, and Marengo.[182] Bogdanov continued to issue requests for extensive information in connection with the budgeting process.[183] And ATP continued responding to those requests.[184] The senior management teams for those budgets under review flew

[179] *Id.* at 130:4–16 (Harrison); JX-1107 at 3.

[180] *Id.* at 328:17–329:1 (Bogdanov).

[181] *Id.* at 87:4–17 (Harrison); *id.* at 295:13–18 (Bogdanov).

[182] *Id.* at 92:15–18 (Harrison).

[183] *Id.* at 293:3–19 (Bogdanov).

[184] *Id.* at 94:5–24 (Harrison); JX-1222 at 1.

overseas, as did consultant Bill Grossman, whom ATP engaged for Bogdanov's and Rybolovlev's benefit.[185]

The Monaco meetings, however, did not result in approved budgets for Aulos, Ascidian, or Marengo.[186] Nor had Rigmora made any progress toward Royalty Financing.[187] With the understanding that the only capital the Fund would receive from Rigmora would be capital called within approved budgets, Harrison proposed as a compromise that the parties reallocate funding to "move some of the clinical projects along."[188] He proposed reallocating some of the approved budget amounts from the preclinical companies to clinical companies.[189]

Harrison put the reallocation proposal forward although he believed that the preclinical projects had value.[190] He engaged Rigmora to "attempt to minimize any need for near-term cash funding."[191] He sought to neutralize Rigmora's "incessant refrain that it faced cash flow issues and that it either could not, or would not, meet the funding needs of the Pool V-1 and V-2 portfolio companies."[192]

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[185] Trial Tr. at 95:1–18 (Harrison). Grossman assessed courses of action for Aulos. *Id.* at 95:19–96:6. Eventually, Rybolovlev deferred to Harrison's expertise before agreeing, in Harrison's words, "we should do Aulos." *Id.* at 95:24–97:15 (Harrison).

[186] *Id.* at 97:16–18 (Harrison).

[187] *Id.* at 98:1–12 (Harrison).

[188] *Id.* at 97:19–98:20 (Harrison).

[189] *Id.* at 98:21–99:2 (Harrison).

[190] *Id.* at 101:19–102:7 (Harrison).

[191] JX-1336 at 1.

[192] *Id.*

#### 4. In Response To A Hostile Reaction From Rigmora, Harrison Withdraws The Reallocation Proposal.

Rigmora did not agree to Harrison's reallocation proposal.[193] At first, Rigmora seemed receptive to the approach. On May 9, Harrison held a Zoom call with Bogdanov, Rybolovlev, and Anna Batarina, an ATP partner.[194] At this meeting Harrison provided a brief introduction and then offered a more formal presentation.[195] In response, Bogdanov and Rybolovlev said that a presentation would be unnecessary because it is moving in the right direction, and the next step would be to speak with Rigmora's lawyers.[196]

Harrison spoke with Rigmora's lawyers on May 12, 2025.[197] Harrison characterized the call as an "ambush."[198] In his view, the lawyers distorted the purpose and meaning behind his reallocation proposal, saying to Harrison "it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation."[199] Harrison withdrew the proposal during the May 12 call.[200]

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[193] Trial Tr. at 99:3–6 (Harrison).

[194] *Id.* at 47:20–23, 99:7–15 (Harrison).

[195] *Id.*

[196] *Id.*

[197] *Id.* at 99:8–100:8 (Harrison).

[198] *Id.* at 100:18–21 (Harrison).

[199] *Id.* at 101:2–12 (Harrison).

[200] *Id.* at 305:2–20 (Bogdanov).

### G. Rigmora Disclaims Any Outstanding Capital Commitments To ATP.

Rigmora ratcheted up the parties' level of conflict further on May 15, 2025, when Bogdanov emailed ATP an alarming communication (the "May 15 Email").[201]

In the email, Bogdanov declared that the Fund should cease further funding of seven preclinical companies, which he referred to as the "Early-Stage Companies," and which all had approved yet unspent budgets.[202] He claimed those companies had "no way for a path to commercial success," had "failed to meet the milestones set out in the investment memoranda on which [Rigmora's] initial funding was premised," and there was "no third party interest."[203] In describing the companies as dead-ends, the May 15 Email contorted the purpose of Harrison's reallocation proposal, misstating that Harrison "hold[s] a similar view" that "further funding of those Early-Stage Companies will waste the ATP Fund's assets."[204]

Although Rigmora had already approved budgets for the preclinical companies, Bogdanov invited a "detailed explanation" of why, despite the companies' supposed unworthiness, Rigmora should "contribute further capital" to the preclinical companies.[205] Bogdanov stated Rigmora's intent to "comply" with the LPA but

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[201] JX-1319 at 1.

[202] *Id.*

[203] *Id.*

[204] *Id.*

[205] *Id.*

conditioned its cooperation on whether ATP could "demonstrate that the LPA allows" ATP to call further capital.[206]

And although the parties had just spent months discussing budgets for the four clinical-stage companies, and ATP had called capital for those companies on December 24, 2024, Bogdanov conditioned any further funding for those companies on ATP's agreement to "wind down or liquidate the Early-Stage Companies."[207]

Bogdanov gave ATP an ultimatum: liquidate the preclinical companies with already approved budgets to obtain funding for companies during clinical trials. Rigmora stated that it would not even "consider" the budgets for clinical-stage companies until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and abandon existing investments through liquidation or wind down.

The May 15 Email demanded "objective information" to "facilitate the discussion" of any "new budgets"— ignoring the past five months' of data and erecting new hoops for ATP to jump through.[208]

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[206] *Id.*

[207] *Id.* Bogdanov did not address the two preclinical companies Nereid and Nine Square that had already expended their initial Series A funding. *See id.*

[208] *Id.*

In the penultimate sentence, the May 15 Email stated that Rigmora did "*not presently have any outstanding capital commitments to ATP Fund* and therefore has full discretion on whether to agree to fund any new investment proposals."[209]

### H. ATP Calls Six Months Of Capital.

The May 15 Email ultimatum left ATP with very few options. ATP decided to lean on its contractual rights. On May 30 and June 1, the GP called $87.76 million in capital needed to maintain six months of research activity for ten companies—the seven preclinical companies as well as Replicate, Marengo, and Ascidian—and $19,371,099 in ATLS Fees and partnership expenses (the "Capital Calls").[210] The capital called and unfunded approved budgets are below:

[209] *Id*. (emphasis added).

[210] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* Trial Tr. at 110:8–21 (Harrison) (testifying that the figures were keyed to estimates for six months of budgets, with the goal of permitting company survival and "following forward on . . . research plans"); *id.* at 392:8–11 (Rybolovlev) (corroborating Harrison's view that six-months' worth of money permits a company's "normal functioning").

| Company | Pool | Capital Called | Unfunded Approved Budget[211] |
|---|---|---|---|
| Aethon | ATP V-2 | $5,000,000 | $8,000,000 |
| Apertor | ATP V-2 | $7,100,000 | $19,400,000 |
| Ascidian | ATP V-3 | $6,000,000 | $6,000,000 |
| Deep Apple | ATP V-2 | $9,000,000 | $9,000,000 |
| Evercrisp | ATP V-2 | $7,000,000 | $49,000,000 |
| Initial | ATP V-1 | $7,000,000 | $19,880,000 |
| Marengo | ATP V-3 | $29,960,000 | $29,960,000 |
| Marlinspike | ATP V-2 | $6,300,000 | $36,275,000 |
| Red Queen | ATP V-2 | $6,400,000 | $23,600,000 |
| Replicate | ATP V-2 | $4,000,000 | $13,000,000 |
| | **TOTAL**: | $87,760,000 | $214,170,000 |

Except for Replicate, for which the GP issued a revised capital call on June 1, 2025, the Capital Calls were due on June 13.[212] The revised Replicate capital call was due June 16, 2025.[213] ATP issued Default Notices on June 17, 2025.[214] With ATLS Fees and the June 1 revision, the Capital Calls totaled $101,103,759. Rigmora has never contributed capital in response to any of the Capital Calls.[215]

### I. ATP Files This Litigation.

Concurrently with sending the May 30 capital calls, ATP filed this suit.[216] The Verified Complaint (the "Complaint") asserts five Counts.

- In Count I, ATP claims that Rigmora breached the LPA and Amendments 17, 18, and 20 to the LPA, by refusing to engage in

[211] JX-1622.

[212] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

[213] JX-1415 at 1.

[214] *See, e.g.*, JX-1620.

[215] PTO ¶ 78.

[216] Dkt. 1, Verified Complaint ("Compl.") ¶¶ 23, 183–196.

substantive discussions of new budgets, imposing improper conditions to the occurrence of budget discussions, and repudiating any obligation to consider new budgets.

- In Count II, ATP claims that Rigmora breached or repudiated its obligations under the LPA to fund capital calls made consistent with the budgets it approved.
- In Count III, ATP claims that Rigmora breached its implied obligations under Cayman law to act rationally and in good faith in exercising discretionary rights (absent clear language to the contrary) by refusing to consider requests for new budgets for the Fund's clinical-stage portfolio companies.
- In Count IV, ATP seeks a declaration that the Global Default Provisions of the LPA warrant a Global Default penalty on Rigmora—not on a project-by-project or pool-by-pool basis, but across all of the Limited Partner's interests in the Fund.
- In Count V, ATP seeks a declaration that the Fund is entitled to exculpation, under Paragraph 2(g) of the LPA, for filing this action.

ATP moved to expedite proceedings due to the impending shutdown of several of the affected portfolio companies for lack of funding.[217] The court granted the motion to expedite over Rigmora's opposition and scheduled trial for September.[218]

### J. Rigmora Files Competing Litigation In The Cayman Islands.

On June 2, Rigmora filed a Writ of Summons against ATP in the Grand Court of the Cayman Islands.[219] Rigmora resurrected its argument debuted in the prior Cayman litigation—that Rigmora committed $2.425 billion in Contingent Subscription, Rigmora has already made capital commitments in excess of that amount, and thus Rigmora is not required to fund any further capital calls under the

[217] Dkt. 1, Pl.'s Mot. to Expedite Proceedings ¶ 1.

[218] Dkt. 31; Dkt. 39 at 43:8–22.

[219] PTO ¶ 11.

LPA.[220] Four days later, Rigmora filed a Winding Up Petition against ATP in the same court (together with the Writ of Summons, the "Cayman Litigation").[221] Rigmora argued that it had lost trust and confidence in ATP due to ATP's "mismanagement and lack of probity[.]"[222] And Rigmora sought to accomplish through the Cayman court what Bogdanov had unilaterally demanded in the May 15 Email—a liquidation.

**K. Forum Jockeying Ensues.**

Through motion practice in the competing lawsuits, the parties fought bitterly over the dominance of their preferred forums. On June 9, 2025, Rigmora moved to dismiss ATP's claims and a motion to stay this proceeding pending the resolution of the Cayman Litigation. Three days later, Rigmora filed an ex parte summons in the Cayman Litigation seeking an injunction barring ATP from declaring Rigmora in default of the LPA or issuing any further capital calls.[223] ATP responded by moving to stay the Cayman Litigation.[224]

This court denied Rigmora's motion to dismiss or stay these proceedings, concluding that its motion relied on convenience defenses that it waived in the LPA, and that ATP's allegations supported a finding of irreparable harm to multiple

[220] JX-1416 ¶¶ 4–5.

[221] PTO ¶ 11.

[222] JX-1417 ¶ 4.

[223] JX-1434.

[224] JX-1446.

Delaware entities absent expedition.[225] The Cayman court entered Rigmora's requested injunction and scheduled trial for January 2026 (the "Writ Injunction").[226] And ATP withdrew its motion to stay the Cayman Litigation.[227]

The parties began a sprint to trial in both fora.[228] The parties engaged in further motion practice in these proceedings, filing a combined five motions to compel in one month.[229] This court continued the September trial to October based on Rigmora's claim that ATP's late-produced documents prejudiced its ability to prepare for trial.[230] When seeking a continuance, Rigmora stated that its trial team "may not be able to review [the documents] in time to integrate them into their preparations for the trial[,]" and that "[t]here's no question that there's been actual prejudice" to Rigmora.[231]

Rigmora used its newfound time secured by the continuance to return to the forum fight. Rigmora filed an emergency motion in the Cayman court based on the late-produced documents, seeking the appointment of provisional liquidators to take

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[225] Dkt. 56 at 51:10–52:18. The LPA contains provisions (i) selecting both Delaware and the Cayman Islands as the exclusive forums for related suits, and (ii) waiving all venue and forum non conveniens defenses as to suits filed in Delaware or the Cayman Islands.

[226] JX-1439 ¶¶ 1–2; JX-1446.

[227] JX-1533 ¶ 5.

[228] *Id.* ¶¶ 6, 16.

[229] *See* Dkts. 92, 113, 141, 143, 186.

[230] Dkt. 225.

[231] Dkt. 215 ¶ 7; Dkt. 238 at 13:3–4.

control of the Fund.[232] The Cayman court scheduled a hearing on the emergency motion for October 31.[233]

ATP responded to Rigmora's new advances in the Cayman Litigation by petitioning this court for an emergency status quo order that would prevent Rigmora from pursuing relief in the Cayman court pending resolution of this action.[234] After an initial hearing on the motion for a status quo order,[235] Rigmora agreed not to pursue a hearing on the emergency application in the Cayman court before October 31 and would provide notice to this court of any change in position.[236] The parties ultimately reached a resolution on the status quo order that involved Rigmora withdrawing its emergency application in the Cayman Litigation. [237]

The court held a two-day trial from October 16, 2025 through October 17, 2025.[238] The parties completed post-trial briefing on November 12, 2025, presented post-trial arguments on November 21, 2025, and submitted the Schedule of Evidence on December 3, 2025.[239]

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[232] Dkt. 232 (Pl.'s Mot. for Status Quo Order Br.) at 5–6.

[233] *Id.* at 3.

[234] *Id.*

[235] Dkt. 261.

[236] Dkt. 267 at 7:13–8:13.

[237] Dkt. 267 at 7:13–8:13.

[238] Dkt. 259.

[239] Dkt. 265 (ATP Post-Trial Opening Br.); Dkt. 262 (Rigmora Post-Trial Br.); Dkt. 272 ("ATP Post-Trial Reply Br."); Dkt. 282 (Schedule of Evidence).

### L. The Current Status Of The Portfolio Companies

The Capital Calls and Budgeting Requests affect 13 portfolio companies—nine preclinical and four in clinical trials.[240]

The eight preclinical companies—Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Nine Square, and Red Queen—have shown merit in addressing a major unmet therapeutic need. In some instances, initial research and data provided pivot points for the preclinical companies to refocus their efforts on unexpected, more fruitful avenues. ATP personnel, including Harrison and Venture Partner Spiros Liras, Ph.D., testified to these facts, which were further expounded upon by ATP's expert, Robbins Dr. Mark Robbins, Ph.D, J.D.,[241] whose analysis of the preclinical companies, individually and in aggregate, indicated "significant

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[240] *See* JX-1390 (Aethon May 30 Capital Call); JX-1391 (Apertor May 30 Capital Call); JX-1393 (Deep Apple May 30 Capital Call); JX-1394 (Evercrisp May 30 Capital Call); JX-1395 (Initial May 30 Capital Call); JX-1397 (Marlinspike May 30 Capital Call); JX-1398 (Red Queen May 30 Capital Call); JX-1387 (Ascidian May 30 Capital Call); JX-1396 (Marengo May 30 Capital Call); JX-1415 (Replicate June Capital Call). To recap, ATP initially sent a capital call for Replicate on May 30, 2025 for $13 million (JX-1399), but it later issued a revised and superseding capital call for $4 million on June 1. JX-1415. ATP sent the Budgeting Requests for Replicate, Ascidian, Aulos, and Nine Square to Rigmora in a December 24, 2024 email. JX-1079. ATP never sent Rigmora a formal Budgeting Request to increase Marengo's budget. Marengo's management first sought additional money from the Fund in its presentation to Rybolovlev and Bogdanov in Monaco on March 12, 2025. JX-1222, at 147. They requested the Fund commit an additional $75 million to Marengo above what it had already budgeted for the company. *Id*. But Rigmora did not approve the request coming out of the Monaco meetings. Trial Tr. at 97:16-18 (Harrison). Later, on May 19, four days after Bogdanov refused to provide further funding or consider additional budgets unless certain "Early Stage Companies" were wound down, ATP asked Rigmora to discuss (in good faith) and approve a new budget for Marengo. JX-1349. ATP then estimated Marengo's additional funding needs to be $63 million. *Id*.

[241] *See, e.g.,* Trial Tr. at 74:13–20 (Harrison); *id.* at 246:23–247:16 (Liras).

scientific and clinical potential."[242] ATP offered Robbins as an expert on pharmaceutical and biotechnology industry custom and practice to evaluate the scientific and clinical potential of the treatments being developed by the Portfolio Companies.

The four companies in clinical trials—Aulos, Ascidian, Marengo, and Replicate—are similarly promising.[243] ATP has placed each under the direction of a talented group of founders and leaders, including past biotech CEOs who have sold their companies to pharma giants like Bristol Myers Squibb and Amgen for billions of dollars,[244] holders of several patents,[245] and seasoned pharma executives and scientific leaders.[246] The clinical stage companies are all currently engaged in active clinical trials[247] and have generated interest from potential third-party collaborators.[248]

The negative impacts of a funding default for early-stage life sciences companies are severe. These impacts include "[t]alent loss," "[d]elayed, abandoned,

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[242] JX-1573 (Robbins Opening) ¶¶ 23(iv), 38; Trial Tr. at 183:13–23 (Robbins).

[243] Robbins Report ¶¶ 15, 124–159,

[244] *Id.* ¶ 125.

[245] *Id.* ¶¶ 133–134.

[246] *Id.* ¶ 155.

[247] *Id.* ¶¶ 126–128; 137–142; 149–150; 157.

[248] *Id.* ¶ 131 (Aulos' developing partnerships with Pfizer, Regeneron), ¶ 143 (Replicate's partnership with leading Brazilian pharma company, and negotiations with Novo Nordisk), ¶ 152 (Marengo in partnerships with Ipsen and Gilead), ¶ 158 (Ascidian partnership with Roche, and discussions with Lilly, Regeneron, and Bayer).

disrupted R&D," [d]ifficulty in restarting halted or delayed [] trials," "[d]ifficulty attracting future investments or partners, and [n]egative market perception in general."[249] The sudden discontinuation of funding can lead creditors to trigger bankruptcy proceedings and force a sale of the companies for "a fraction of their actual value."[250]

ATP has kept the affected portfolio companies alive during this litigation by scaling down operations with the goal of preserving "critical projects" and "key employees," and trying to operate with a skeleton crew without destroying the company.[251] This has involved "mov[ing] companies [] out of facilities, heavy negotiations with landlords, sales of capital equipment, consolidations, reduction of research programs," and terminating approximately 70% of employees across all companies.[252] One company has been forced to cede platform technology back to the source institution.[253] Despite entering survival mode at great expense to the companies, ATP does not "believe [the creditors] will hold off for much longer" and that the Fund is "likely to lose the assets."[254]

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[249] JX-1572 ("Rao Report") ¶ 67; *see also* Trial Tr. at 60:19–61:10 (Harrison); *id.* at 165:5–21 (Yanchik).

[250] Robbins Report ¶ 162; *see also* Trial Tr. at 165:17–21 (Yanchik).

[251] Trial Tr. at 113:14–114:12 (Harrison); *id.* at 163:21–23 (Yanchik); *id.* at 266:3–7 (Liras).

[252] *Id.* at 113:14–20 (Harrison); *id.* at 162:23–163:6 (Yanchik).

[253] *Id.* at 113:21–114:1 (Harrison).

[254] *Id.* at 163:3–6, 165:17–21 (Yanchik).

Operationally, the companies are in a form of "stasis" and could be revived upon receipt of funding.[255] But the window for revival is closing, because "whenever you stop a research organization, it starts to deteriorate."[256]

## II. LEGAL ANALYSIS

In the Pretrial Order and in post-trial briefing, the parties narrowed their disputes to four issues. First, is ATP entitled to specific performance of the Capital Calls under the LPA? Second, did Rigmora breach a duty, implied by common law, to exercise its discretion to approve budgets in good faith?[257] Third, is ATP entitled to a declaration that it did not violate the LPA by bringing this action or that Rigmora is a Defaulting Partner as defined in the LPA? Fourth, is ATP entitled to attorney's fees and expenses incurred in connection with this lawsuit? ATP bears the burden of proof on each of its claims.[258]

### A. Capital Calls

The parties' dispute over the Capital Calls centers on two parts of Paragraph 5(a) of the LPA: Paragraph 5(a)(i), which allows the GP to call capital in amounts up to but not "in excess of" the Limited Partners "Contingent

[255] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[256] *Id.* at 164:18–167:2 (Yanchik).

[257] In the Pre-Trial Order, ATP sought a declaration that Rigmora waived or otherwise forfeited its voting and budget approval rights, but dropped this request after trial. *See generally* Dkt. 265 ("ATP Post-Trial Opening Br.").

[258] *See AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *49 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Subscriptions";[259] and Paragraph 5(a)(ii), which requires that any capital call be for a purpose stated in the LPA.[260] The parties' competing positions raise two sets of issues: Under Paragraph 5(a)(i), were the Capital Calls in excess of Rigmora's unfunded Contingent Subscriptions? Under Paragraph 5(a)(ii), were the Capital Calls for contractually specified purposes? If the first set of issues go ATP's way, the court must also determine whether ATP is entitled to specific performance of the Capital Calls. To obtain specific performance, ATP bears the burden of showing the existence of terms that it seeks to enforce by clear and convincing evidence.[261]

This contract analysis is governed by Cayman law, consistent with the LPA.[262] The parties dispute the LPA's meaning. Under Cayman law, a court interprets a written contract according to "the intention of the parties by reference to what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the

[259] LPA ¶ 5(a)(i).

[260] LPA ¶ 5(a)(ii).

[261] Which party bears the burden of proof is a procedural question governed by Delaware law, but the nature of the burden is arguably a substantive issue governed by Cayman law. *See In re IBP, Inc. S'holder Litig.*, 789 A.2d 14, 53 (Del. Ch. 2001). Yet Rigmora cited Delaware law on the nature of the burden. *See* Rigmora Post-Trial Br. at 29 (citing *Vill. Prac. Mgmt. Co. v. West*, 342 A.3d 295, 321 (Del. 2025)). And ATP did not brief it, so this decision applies Delaware law.

[262] LPA ¶ 18(g)(i) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands"); PTO ¶ 25. The elements to prove a breach are: (1) a valid contract, (2) a breach of that contract, and (3) damages arising from the breach. JX-1588 ("Phillips Report") ¶ 56 (citing *Chitty on Contracts* at [4-001] (35th ed. 2024); *accord Kuroda v. SPJS Hldgs.*, 971 A.2d 872, 883 (Del. Ch. 2009) (reciting the same elements for a claim of breach of contract under Delaware law)).

context to mean."[263] The goal is to "ascertain the objective meaning of the language which the parties have chosen to express their agreement."[264] The court employs "an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated."[265] But "[c]ommercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made."[266]

### 1. Paragraph 5(a)(i) – Funding Commitments

Rigmora argues that Rigmora has committed $2.45 billion on an aggregate basis as the Contingent Subscription and contributed $2.69 billion, and that the Capital Calls are thus necessarily "in excess of" the Contingent Subscription.[267] ATP argues that Rigmora made over $545.5 million in unfunded commitments to the pools and over $2.85 billion in total commitments across all pools, leaving head room for the Capital Calls. ATP also argues that Rigmora's $2.69 billion calculation double-counted pools of funds that were transferred or reallocated, such that Rigmora's

[263] Bloch Report ¶ 23 (quoting *Arnold v. Britton*, [2015] UKSC 36 at [15]).

[264] Bloch Report ¶ 23 (quoting *Wood v. Capita* [2017] UKSC 24 at [10]); Phillips Report ¶ 61 (same).

[265] Bloch Report ¶ 25 (citing *Wood*, [2017] UKSC 24 at [12]).

[266] Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]; *see also* Phillips Report ¶ 60 (also citing *Arnold*, [2015] UKSC at [15], [17]–[21]).

[267] *See* Rigmora Post-Trial Br. at 32, 38–40.

actual contribution is $2.3 billion. In all events, therefore, there is head room to meet the Capital Calls.[268]

The parties' dispute on the meaning and application of Paragraph 5(a)(i) thus raises three sub-issues: What is the Contingent Subscription amount, $2.425 billion as Rigmora contends or over $2.85 billion as ATP argues? What has Rigmora contributed to date, $2.65 billion as Rigmora contends or $2.3 billion as ATP argues? And do the Capital Calls of $101,103,759 fall within any delta between the Contingent Subscription and Rigmora's contributions?

**a. Rigmora's Contingent Subscription is $2.425 billion.**

The parties dispute both how to calculate the Contingent Subscription (in the aggregate by Limited Partner or pool-by-pool) and Rigmora's total commitments. The threshold issue concerning how to calculate the Contingent Subscription is largely beside the point because ATP has not proven that Rigmora committed over $2.85 billion.[269] ATP reaches the $2.85 billion by adding and deducting the amounts reflected in Amendment 20 to the $2.425 in subscription agreements.

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[268] ATP Post-Trial Opening Br. at 8–9, 54–58; ATP Post-Trial Reply Br. at 13–14.

[269] It bears noting that Amendment 13 to the LPA seems to mandate a pool-by-pool approach. Under the heading "Separate Pools," it provided that "all of the Partnership's assets and liabilities shall be divided into two separate pools" and "separate and distinct records shall be maintained for each Pool, and capital contributions, distributions, income, gains, losses and expenses *shall also be accounted on a Pool-by-Pool basis*." JX-15 ("LPA Am. 13") ¶ 17(a) (emphasis added). ATP satisfied its obligation to track the Contingent Subscription amount on a Pool-by-Pool basis by circulating a detailed "tracker" of funded and unfunded commitments each time it issued a capital call. *See, e.g.*, JX-230; *see also* Trial Tr. at 48:19–49:21 (Harrison).

Broken down by Pool, beginning with Pool IV, recall that the parties initially contributed $1.5 billion to Pool IV and Rigmora contributed $1.425 billion of that amount.[270] In Amendment 20, the parties agreed to reduce the Pool IV commitment to the amount already contributed, plus expenses.[271] By Amendment 20, Rigmora had contributed $1,299,840.047.14 to Pool IV.[272] The parties originally anticipated $20 million in expenses but ultimately incurred around $33,351,890.42.[273] Adding

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[270] *See* PTO ¶¶ 26–27; JX-212 at 19 (Blue Horizon $698,250,000 subscription); JX-213 at 19 (Ezbon $726,750,000); JX-216 at 18 (Harrison $75 million subscription); JX-1, Sch. D.

[271] LPA Am. 20 ¶ 24.

[272] *See* JX-221, Tab "Capital Contributions – ATP IV," Cells D163, E163 (stating Ezbon and Blue Horizon contributed $662,918,351.14 and $636,921,696.00 to ATP IV respectively, which combined equals $1,299,840.047.14).

[273] It was $33,351,890.42 and Rigmora's 99.6028% of that amount was $33,219,416.71. *See* JX-224 at 3 (capital call for $320,590 of expenses for Pool IV); JX-382, at 3 (capital call of 4,749,982.91 in expenses for Pool IV); JX-318, at 3 (capital call for $1,960,789.97 in expenses for Pool IV); JX-487 at 3 (capital call for $8,435,798.52 in expenses for Pool IV); JX-568 at 3 (capital call for $4,000,000 in expenses for Pool IV); JX-585 at 3 (capital call for $280,790.62 in expenses for Pool IV); JX-609 at 3 (capital call for $5,000,000 in expenses for Pool IV); JX-652 at 3 (capital call for $5,200,000 in expenses for Pool IV); JX-718 at 3 (capital call for $1,500,000 in expenses for Pool IV); JX-740 at 3 (capital call for $ 368,717.64 in expenses for Pool IV); JX-823 at 3 (capital call for $874,363.01 in expenses for Pool IV); JX-878 at 3 (capital call for $299,903.33 in expenses for Pool IV); JX-1185 at 3 (capital call for $24,533.02 in expenses for Pool IV). The limited partners also received two capital calls in December 2024 seeking funds relating to the ATLS Fee for the first half of 2025, partnership expenses for the second half of 2024, and the 2024 ATVM management fee. JX-1075 at 3; JX-1086 at 5. The calls sought $375,354.80 from Pool IV and about $15 million across all pools. *See id.* Rigmora initially refused to fund those calls. JX-1085. ATP later discovered that it overcharged the ATLS Fee due to an accounting error and it returned $599,225.46. JX-1172. It is unclear how that refund was allocated across the various pools, but later records indicate that the December calls were reconciled to $336,502.41 for Pool IV. *See* JX-1237, Tab "Pool V-4 Total," Cell E152.

Rigmora's share of the fee to the amount contributed by Rigmora equals $1,333,059,463.85.

Pools V-1 and V-2 are straightforward. Rigmora contributed $1,000,000,000 to Pools V-1 and V-2 in September 2020 in connection with Amendment 17.[274]

Pool V-3 requires some math. According to ATP, Rigmora contribute $310 million to Pool V-3 through Amendment 20. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that:

> ATP V-3 shall have capital commitments of $500,000,000, including without limitation (i) the $189,500,000 of capital deemed to have been contributed as provided below, (ii) the $70,853,399 of capital comprising the Prior Budgeted ATP V-3 Follow-on Investments and (iii) approximately $235,000,000 in investments anticipated to be made in new Portfolio Companies . . . .[275]

This language does not expressly reflect an additional $310 million capital commitment. To reach $310 million, ATP subtracts the "deemed" contributions of $189,544,660 from the total commitment of $500 million.[276] ATP ignores the $70,853,399 in previously approved unfunded budgets for Pool V-3 companies and $235 million, which add up to $305.9 million, not $310 million.

Last is Pool Braeburn. According to ATP, Rigmora contributed $189.9 million to Pool Braeburn through Amendment 20 and agreed to contribute capital sufficient

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[274] Trial Tr. at 29:1–19, 41:11–42:14 (Harrison); LPA Am. 17; JX-99; JX-101.

[275] LPA Am. 20 ¶ 22(b).

[276] *Id.* Here is the math: $500,000,000 – $189,544,660 = $310,455,340. Rigmora is responsible for 99.6028% of the capital contributions for Pool V-3. *See id.* So, Rigmora is responsible for $309,222,211.39 of the Pool V-3 commitments, which rounds up to $310 million.

to cover additional expenses, which Pool Braeburn ultimately incurred. ATP relies on new Paragraph 22(b) of Amendment 20, which provides that Pool Braeburn includes "$189,900,000 in unfunded previously approved budgets," as well as "additional securities of Braeburn acquired by the Partnership after the date of Amendment 20," and management fees and expenses discussed in the Amendment.[277] ATP adjusts the $189.9 million based on later events—ATP acquired $30.6 million in additional securities and was allocated $9 million in expenses, bringing the total commitment to $229.5 million.[278] Through Amendment 22, ATP distributed to Rigmora the royalty held in Pool Braeburn and thus Rigmora "no longer had an obligation to fund the remaining amounts on the royalty purchase agreement," which was $21.3 million.[279] ATP therefore "reduced the obligation to Pool Braeburn by that amount, which netted out to a total obligation $208,355,000."[280]

In summary, in a snapshot, here is how ATP builds to the "over $2.85 billion" figure:

| **Pool** | **Rigmora's Commitment** |
|---|---:|
| Pool IV | 1,333,059,463.85 |
| Pools V-1/V-2 | 1,000,000,000 |
| Pool V-3 | 309,222,211.39 |
| Pool Braeburn | 208,335,616.81 |
| **Total** | 2,850,617,292.05 |

[277] LPA Am. 20 ¶ 21(a).

[278] Engels Dep. Tr. at 94:3–10; JX-1565, Cell G8.

[279] Engels Dep. Tr. at 355:22–356:3, 355:16–355:21.

[280] Engels Dep. Tr. at 356:2–4; ATP Post-Trial Reply Br. at 11, although by the court's math, it nets out to $208,200.

Rigmora takes issue with ATP's interpretation of Amendment 20 as a capital commitment. Rigmora advances three main arguments to that effect: Rigmora first appeals to the commercial context. Rigmora next argues that interpreting Amendment 20 as a subscription agreement is inconsistent with ATP's contemporaneous representations.[281] Rigmora last contends that Amendment 20 does not read like a subscription agreement and is not sufficiently clear and convincing in its terms to be treated like one.[282]

Rigmora's first argument based on the commercial context of Amendment 20 is misguided. Rigmora argues that Amendment 20 "was entered into less than a year after the $1 billion increase in the LPs' Contingent Subscriptions, when the Fund had over $1 billion in uncalled Contingent Subscriptions remaining."[283] According to Rigmora, "there was no need to increase the capital commitment when Amendment 20 was executed, no reason to think the parties did so, and no reason to think they would have done so without following the same formalities used to increase the Contingent Subscriptions a few months earlier."[284]

Rigmora's commercial-context argument, however, ignores the plain text of Amendment 20. As discussed above, on its face, Amendment 20 reflects a minimum in unfunded commitments of approximately $2.814 billion, far more than the $2.425

[281] *Id.* at 35–36.

[282] *Id.* at 36–37.

[283] *Id.* at 37; *see* JX-1237 at 4 (schedule of capital activity).

[284] Rigmora Post-Trial Opening Br. at 37.

billion Rigmora conceded. This argument also ignores that biotech investment was booming in 2021 when the parties entered Amendment 20,[285] Rigmora had not yet entered what Bogdanov would later call a liquidity crisis,[286] Rybolovlev approved all of the budgets at issue in Amendment 20, and Rigmora was ATP's only source of capital.[287] If not Rigmora, who was expected to fund the approved budgets reflected in Amendment 20? This commercial context is *ATP's* strongest point.

Rigmora's second argument based on ATP's contemporaneous communications is neutral. Rigmora is correct that interpreting Amendment 20 as a subscription agreement runs contrary to many of ATP's contemporaneous representations.[288] Before the events that led to this litigation, ATP informed its banks, insurance companies, and portfolio-company landlords that its total committed capital was $2.5 billion, which is equal to Rigmora's $2.425 billion under their subscription agreements and Harrison and his family trust's $75 million.[289] And ATP's website for the Fund still lists its capital commitments as "$2.65 billion" as it has since 2020.[290] But other contemporaneous documents, like ATP's first post-Amendment 20

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[285] *See id.* at 7 ("[T]he biotech market peaked in 2020 and 2021, during the COVID pandemic[.]" (citing Trial Tr. at 402:20–22 (Ehlers))).

[286] *See* JX-446 at 1; Trial Tr. at 51:15–52:19 (Harrison).

[287] LPA Am. 20 ¶ 21.

[288] *See generally* Ehlers Dep. Tr. at 35:10–21.

[289] Trial Tr. at 460:12–461:3, 462:10–24, 463:13–464:16 (Engels); JX-834 (communicating to J.P. Morgan that "ATP has approximately $2.5 billion in committed capital").

[290] JX-128 (2020); JX-2128 (Sept. 8, 2025); *see also* About, Apple Tree Partners, https://www.appletreepartners.com/about (accessed Dec. 4, 2025).

capital call to the limited partners[291] and ATP's own accounting of capital contributions that it sent to Rigmora in March 2025,[292] suggests Rigmora did increase its Contingent Subscription through Amendment 20. These competing contemporaneous communications work neither for nor against either side. They suggest that ATP did not spend a lot of time worrying about the precise amount of Rigmora's total capital commitments in 2022. This is consistent with Harrison's testimony that the parties' enjoyed a collaborative relationship during that period.[293]

Rigmora's last argument based on the language of Amendment 20 is compelling. The parties did not execute any new or amended subscription

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[291] The first capital call issued shortly after the adoption of Amendment 20 shows unfunded capital commitments stood at $1,461,868,810 total across all limited partners and $1,460,556,241.39 for Rigmora alone. JX-224, at 3. This evidence supports ATP's position that Rigmora committed more capital through Amendment 20 as unfunded capital commitments immediately preceding Amendment 20 were $1.067 billion. *See supra* § I. D.

[292] *See* JX-1237; JX-1237, PX-513, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of 3,203,669,000.00). This accounting did not deduct deemed commitments from neither its contribution tabulations nor its tabulations on commitments, so they had no net effect on the limited partner's unfunded commitments. *See* JX-1237, PX-513, Tab "Pool V-3 Total," Cell B9 (including the $189,544,660 deemed contribution in Pool V-3's contributions); *id.*, Tab "Pool Braeburn Total," Cell B9 (including the $203,669,000 deemed contribution in Pool Braeburn's contribution's calculation); *id.*, Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (listing total capital commitments of $1,000,000,000 billion (Pools V-1 and V-2), $393,569,000 million (Pool Braeburn), $500,000,000 (Pool V-3), and $1,383,360,505.56 (Pool IV) for total commitments of $3,276,929,505.56 across all pools). The total commitments listed for Pools V-3 and Braeburn include the deemed commitments within Amendment 20, meaning their accounting in the capital contributions has no net effect on the amount of Rigmora's unfunded commitments. *See id.*, Tab "Amendment Summary," Cells N9, U11. Total commitments exceeding $3.2 billion indicates Amendment 20 increased Rigmora's Contingent Subscription.

[293] Trial Tr. at 51:21:52:4 (Harrison).

agreements with Amendment 20. And Amendment 20 does not expressly refer to the Contingent Subscriptions.[294] The absence of express language referencing Contingent Subscription stands in contrast to Amendments 17 and 18, which both explicitly refer to "Contingent Subscription."[295] This combination of factors is enough to suggest that the finer details of Rigmora's funding commitments were yet to be ironed out when the parties entered into Amendment 20.

Moreover, Amendment 20 does not make clear the amount of capital that Rigmora was to contribute. Amendment 20 does not expressly state that Rigmora commits to contributing its share of the $310 million to Pool V-3. Rather, ATP implies that number by deducting the "deemed contributions" from the contemplated $500 million.[296] Amendment 20 also does not state that Rigmora will contribute $208 million to Pool Braeburn. Rather, Amendment 20 states that Rigmora commits $189.9 million plus unspecified future expenses.[297]

In the end, ATP's interpretation of Amendment 20 leaves too much to interpretation. ATP must demonstrate the contractual terms that it seeks to specifically enforce by clear and convincing evidence.[298] ATP has not proven an overall Contingent Subscription amount of over $2.85 billion. Thus, regardless of

[294] LPA Am. 20.

[295] LPA Am. 17; LPA Am. 18.

[296] *See* ATP Post-Trial Opening Br. at 10, 13–14.

[297] LPA Am. 20 ¶ 21.

[298] *West*, 342 A.3d at 321.

whether calculated in the aggregate or on a pool-by-pool basis, ATP has proven that Rigmora committed no more than $2.425 billion.

**b. Rigmora has contributed no more than $2.3 billion.**

Ultimately, ATP need not rely on Amendment 20 to secure the relief it seeks. Rigmora claims to have contributed over $2.69 billion to date, well in excess of the $2.425 billion in undisputed commitments. But the $2.69 billion figure double counts $390 million in "deemed contributions" reallocated through Amendment 20 from Pool IV to Pool V-3 and Pool Braeburn.[299]

Double counting "deemed contributions" of Amendment 20 is inconsistent with the purpose of Amendment 20 as recounted by Rigmora. According Rigmora, the purpose of Amendment 20 was to "reallocat[e] . . . an *existing* commitment from a different pool[.]"[300] Amendment 20 was "not a new commitment."[301] Put differently, the deemed contributions were not new contributions. Moreover, counting the deemed contributions twice against Rigmora's $2.425 billion Contingent Subscription would result in Rigmora committing less than $2.425 billion to the Fund.[302] There is no evidence, either in Amendment 20 or elsewhere, that the parties intended to

[299] LPA Am. 20 ¶¶ 21(b) (stating initial deemed contributions for Pool Braeburn were $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660; *see also* Rigmora Post-Trial Answering Br. at 38 n. 277, Ex. 1 (Strebulaev) at 2.

[300] Rigmora Post-Trial Br. at 36 (emphasis added).

[301] *Id.*; *see also id.* at 6 ("Amendment 20 created two new pools . . ." and "allocated *existing assets* and liabilities to them . . . ." (emphasis added)).

[302] LPA Am. 20 ¶¶ 21(b), 22(b) (stating initial deemed contributions $203,669,000 for Pool Braeburn and $189,544,660 for Pool V-3, which is $393,213,660 in deemed contributions total).

reduce the total amounts committed to the Fund through Amendment 20. As discussed above, the commercial context indicates the contrary.

Rigmora relies on a series of ATP communications documents to support its double counting theory.[303] Each of those documents were prepared for other purposes. Two of those documents show that ATP tabulated the limited partners' total capital commitments as more than $3.2 billion.[304] These are not figures that Rigmora stands behind.

Reducing Rigmora's $2.69 billion figure to eliminate double counting, Rigmora has contributed $2.3 billion to the Fund.

**c. The Capital Calls do not exceed the difference between the Contingent Subscription and Rigmora's contributions.**

ATP has proven that Rigmora committed $2.425 billion and contributed $2.3 billion. The difference is $125 million. Given Rigmora's overall contributions, there is sufficient room to fund the Capital Calls of totaling approximately $101.7 million.

**2. Paragraph 5(a)(ii) – Funding Purposes**

ATP issued the Capital Calls for ten portfolio companies: Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, Red Queen, and Replicate of Pools V-1

[303] *See* Rigmora Post-Trial Br. at 39–40.

[304] JX-1237, PX-513, Tab "Amendment Summary," Tab "Amendment Summary," Cells G8, N10, U8, AC9, AC11 (reflecting cumulative commitments across Pools V-1, V-2, Braeburn, V-3, and IV of $3,276,929,505.56), JX-2000, Tab "Amendment Summary," Cells G8, N8, U8, AC8 (same).

and V-2, and Marengo and Ascidian of Pool V-3.[305] ATP issued these calls to provide six months of approved budget to carry forward research plans, partnership fees, and ATLS Fees.[306]

The LPA identifies partnership fees, ATLS Fees, and budgets expenses as appropriate purposes. Subsections 5(a)(ii)(A) through (C) state that "[u]nless otherwise approved by the holders of a majority of the Preferred Units in writing," the GP:

> may only call capital, as of any time, in amounts sufficient to enable the Partnership . . . to (A) pay Partnership . . . expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership . . . non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership . . . expenses and obligations incurred in the ordinary course of business, [and] (C) pay the Management Fee for the next 12-month period.[307]

Subsection 5(a)(ii)(E) authorizes the GP to call capital in amounts sufficient to "invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units."[308]

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[305] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1; *see also* JX-1622.

[306] Trial Tr. at 109:1–110:24 (Harrison); *see also* LPA Am. 13 ¶ 17(d).

[307] LPA Am. 3 ¶ 5(a)(ii)

[308] *Id.* Amendment 3 originally provided for an ATC board of directors and made certain distinctions depending on whether a project was "being run through ATC" or not. *Id.* at 1–2. Amendment 14 excised ATC, and with it the ATC board of directors, from the LPA. JX-16 at 5 (LPA Am. 14).

Rigmora concedes that the stated purpose of the Capital Calls is proper under the LPA. Aside from Replicate, Rigmora does not dispute that it approved budgets for the calls at issue or that the calls were within the approved budgets. Nor does Rigmora dispute that partnership expenses and ATLS Fees are proper purposes for capital calls or that those expenses were improperly calculated.

Rigmora instead advances three arguments to avoid its payment obligation. First, Rigmora argues that ATP cannot call capital because ATP acted in bad faith.[309] Second, Rigmora argues that the approved budgets called for tranched funding conditioned on milestones set out in investment memoranda, which served as conditions to Rigmora's funding obligations, and which the projects did not achieve.[310] Third, as to Replicate, Rigmora argues that Replicate budget was subject to contingency set out in Amendment 22 that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty, which has not yet occurred.[311]

**a. Bad Faith**

Rigmora argues that ATP cannot call capital because it acted in bad faith when making the Capital Calls. The LPA permits the General Partner to call capital only for a purpose enumerated in Paragraph 5(a)(ii).[312] The Cayman Islands' Exempted Limited Partnership ("ELP") Act, as adopted by the LPA, requires the General

[309] Rigmora Post-Trial Br. at 44–47.

[310] *Id.* at 40–43.

[311] *Id.* at 43–44; LPA Am. 22 ¶ 26.

[312] LPA Am. 3 ¶ 5(a)(ii).

Partner to exercise its power to call capital in good faith in accordance with its fiduciary duties—which Cayman courts have held requires it to act in the interests of the Fund's limited partners.[313] Rigmora argues that, as a plaintiff seeking specific performance, ATP must prove by clear and convincing evidence that it satisfied the LPA's requirements for all calls and that they are consistent with the ATP's fiduciary duties under Cayman law.[314]

It is unclear whether Rigmora is correct in interpreting Cayman law to mean that a General Partner must prove fiduciary compliance as a condition to enforcing capital calls. Typically, a party relying on the absence of a condition to avoid a contractual obligation bears the burden of proving its absence.[315] But ATP did not challenge this legal assertion. And the accuracy of Rigmora's legal position does not alter the outcome in any event, because there is no factual basis to question ATP's good faith.

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[313] *See* JX-2019, ELP Act § 19(1) ("A general partner shall act at all times in good faith and . . . in the interests of the exempted limited partnership."); JX-1 at 2 (requiring parties to carry on the limited partnership "in accordance with the provisions of the" ELP Act); *id.* ¶ 18(g)(i) (LPA governed by ELP Act); JX-2073, *Kuwait Ports Authority v Port Link GP Ltd* [2023] 1 CILR 50 at [34(iii)]; JX-2074, *Re Aquapoint LP*, CICA (Civil) Appeal No. 0014 of 2022, [2023], at [67].

[314] Rigmora Post-Trial Opening Br. at 44–47; *see also* Bloch Report ¶ 83.

[315] *See generally S'holder Representative Servs. LLC v. Shire US Hldgs. Inc.*, 2020 WL 6018738, at *17 (Del. Ch. Oct. 12, 2020), *aff'd* 267 A.3d 370 (Del. 2021) (TABLE); *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *48–50 (Del. Ch. Nov. 30, 2020), *aff'd,* 268 A.3d 198 (Del. 2021).

Harrison testified that the Capital Calls were for the purpose of funding six months of operations.[316] ATP considered numerous scenarios, evaluating how much capital to call in order to continue funding operations.[317] Harrison ultimately based the size of the Capital Calls on the portfolio companies' research plans and the partnership's expenses.[318] He excluded his own Management Fee from the Capital Calls, so none of the money would be directed to him.[319] Harrison then realized that ATP overcalled capital for Replicate based on the approved budget and corrected that Capital Call on June 1.[320] Harrison's testimony was highly credible.

To argue bad faith, Rigmora states that ATP's "correspondence demonstrates that the capital calls were made at least in part to 'put pressure on' the [Limited Partners]."[321] Rigmora bases this assertion on a May 14, 2025 email among ATP's outside attorneys.[322] The email states: "The point of making the calls is to put pressure on [Rigmora], so let's put the pressure on [Rigmora]."[323] On its face, this statement is not alarming. Contractual rights can be a source of pressure. That does not mean exercising them is an act of bad faith. Moreover, a single line in a single email among outside counsel does not undermine the extensive evidence

[316] Trial Tr. at 110:12–16 (Harrison).

[317] *Id.* at 152:7–153:14 (Harrison).

[318] *Id.* at 110:17–24 (Harrison).

[319] *Id.* at 111:4–10 (Harrison).

[320] *Id.* at 109:24–110:5 (Harrison).

[321] *Id.* at 45.

[322] Dkt. 269 at 45 (citing JX-2155 at 2).

[323] JX-2155 at 2.

demonstrating Harrison's sincere concerns about the financial health of the portfolio companies.

Rigmora's grab-bag of other arguments similarly fail. Rigmora argues that ATP delayed capital calls to maximize its litigation position.[324] But the evidence does not point to that conclusion. ATP recognized the portfolio companies' urgent need for funding and knew that Rigmora would immediately file suit in the Cayman Islands as soon as ATP issued capital calls.[325] Rigmora describes the calls as improper because ATP did not intend to distribute all the capital called to portfolio companies as required under the LPA.[326] But ATP withheld some capital to ensure that the funds would not be subject to attachment by creditors leaving the companies without funding to pay severance to employees.[327] Rigmora emphasized in briefing how the anticipated amount of capital calls evolved leading up to this lawsuit.[328] But the evidence reflects that ATP ran scenarios and considered calling capital sufficient to fund ongoing work at the portfolio companies for periods of weeks, three months, six months, and the end of calendar year 2025-2026.[329] None of this supports a finding that ATP acted in bad faith.

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[324] Rigmora Post-Trial Opening Br. at 45.

[325] *See* JX-2138 at 1–2.

[326] Rigmora Post-Trial Opening Br. at 45; LPA Am. 3 ¶ 5(a)(ii)(E).

[327] Yanchik Dep. Tr. 218:23–219:22.

[328] Dkt. 269 at 45-47.

[329] Trial Tr. at 152:5–19 (Harrison).

**b. Milestones**

Rigmora argues that the milestones set out in investment memoranda served as conditions to Rigmora's obligations to fund capital calls. No evidence supports this assertion.

As discussed above,[330] no evidence suggests that anyone intended the performance milestones identified in the investment memoranda to serve as conditions to Rigmora's obligation to fund budgets that it approved. Harrison and Rybolovlev never discussed nor negotiated the milestones.[331] Rigmora lacked the substantive expertise to set or track performance milestones.[332] Only two of the approved budgets contained any express milestones, and they were based on corporate strategy metrics.[333] The fact that certain of the Rigmora-approved budgets contained express milestones suggests that the parties did not intend to condition the other budgets on milestones contained in the investment memoranda. And although the Series A agreements of five companies (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) originally contained milestone conditions, those conditions applied to the Fund's obligation to fund the companies, not the limited partners' obligation meet capital calls.[334]

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[330] *See supra* § I.B.

[331] *Id*. at 33:11–14 (Harrison).

[332] Bogdanov Dep. Tr. at 31:2–9, 45:23–46:10, 46:11–15; Blöchlinger Dep. Tr. at 37:17–25; Yakovlev Dep. Tr. at 30:23–25.

[333] *Id*. at 33:23–34:5 (Harrison); JX-1192 at 2.

[334] *See* JX-2201; Trial Tr. at 140:5–10 (Harrison); *see, e.g.*, JX-1329 at 64, 167, 441, 586.

Moreover, treating milestones in dated investment memoranda as a fixed condition to future funding misaligns the budgeting process with the commercial realities of biotech investing.[335] "[M]any very successful therapeutics have missed development milestones."[336] Apparent "misses" were often successful pivots that increased value. Deep Apple pivoted to obesity and secured a partnership worth up to $812 million with Novo Nordisk.[337] Apertor's pivot led to a "breakthrough publication" demonstrating "incredible" platform value, ultimately leading to delivering clinical candidates.[338] Information regarding portfolio companies' pivots were regularly reported to Rigmora in quarterly reports provided by ATP.[339]

Milestones were informative on many levels to Fund management. But Rigmora did not staff anyone with a scientific background. Rigmora went nearly thirteen years without requesting information about milestones.[340] Its interest in milestones surfaced as a defense strategy in this action, and an unsuccessful one. Rigmora cannot rely on the absence of milestone achievements to avoid its funding commitments.

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[335] Trial Tr. at 105:3–11 (Harrison); *see* JX-1583 ("Robbins Rebuttal") ¶ 26.

[336] Trial Tr. at 189:11–18 (Robbins).

[337] Robbins Rebuttal ¶ 27.

[338] Trial Tr. at 253:13–254:3 (Liras).

[339] *Id.* at 255:13–256:21, 257:2–259:1, 262:8–264:9 (Liras); *see, e.g.*, JX-0560.

[340] Trial Tr. at 332:1–333:2 (Bogdanov).

**c. Replicate**

Replicate is different. The Replicate budget was approved on February 12, 2025.[341] Replicate was one of the five companies addressed in Amendment 22. It is thus subject to the contingency set out in Amendment 22 stating that the LPs realize at least $300 million from a sale or financing of their interest in the Braeburn royalty.[342] Neither event has occurred. So Rigmora need not meet the call.

ATP advances a factual response to this outcome, but it is somewhat convoluted. According to ATP, when the parties executed Amendment 22 in December 2024, they expected the then-current, unfunded budget amounts for each of the five projects listed in the new Paragraph 26—including Replicate—to last for a matter of weeks. In the case of Replicate, the parties anticipated that the budget would run out in February 2025. Paragraph 26 of Amendment 22 thus called for the discussion of a new budget sufficient to enable Replicate to operate for a period twelve months after that.[343] ATP portrays the financing condition as inconsistent with the dire circumstances under which the parties executed Amendment 22.[344]

But the language of Amendment 22 is plain. It conditions Royalty Financing on budget approval, providing that "[i]f any approval of a new budget is given by the Subject limited Partner, *such approval shall be contingent upon* at least $300 million being realized (including through deemed distributions) by the Subject Limited

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[341] JX-1192.

[342] LPA Am. 22 ¶ 26.

[343] *Id.*

[344] ATP Post-Trial Reply Br. at 27–28; *see also* ATP Post-Trial Opening Br. at 29–31

Partner on a sale or financing of its interest in ATP LLC."[345] At the time, Rigmora indicated that it would not be difficult to obtain the Royalty Financing, and ATP expected that Rigmora would "do and perform, or cause to be done and performed, all such further acts and things . . . to carry out the intent and accomplish the purposes of this Amendment . . . ," including securing Royalty Financing.[346] Whether Rigmora honored this commitment is not before the court. But there is not Royalty Financing, so the Replicate budget is not approved, and ATP may not enforce Capital Calls for Replicate.

### 3. Specific Performance

A grant of specific performance "is a specialized form of mandatory injunction that requires a party to fulfill its contractual obligations."[347] Specific performance is appropriate when (1) a valid contract exists, (2) the plaintiff is ready, willing, and able to perform, (3) money damages are inadequate, and (4) the balance of equities tips in the plaintiff's favor.[348] To obtain specific performance, a plaintiff must prove these conditions by clear and convincing evidence.[349]

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[345] LPA Am. 22 ¶ 26 (emphasis added).

[346] LPA Am. 22 ¶ Miscellaneous.

[347] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023); *see also supra* n.260 (explaining why this decision applies Delaware law on the request for specific performance).

[348] *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1158 (Del. 2010); *AbbVie Endocrine Inc. v. Takeda Pharm. Co. Ltd.*, 2021 WL 4059793, at *6 n.97 (Del. Ch. Sept. 7, 2021) ("It is elementary that the remedy of specific performance is designed to take care of situations where the assessment of money damages is impracticable[.]").

[349] *West*, 342 A.3d at 321.

As discussed above, ATP has proven by clear and convincing evidence that Rigmora must meet Capital Calls within approved portfolio company budgets and the Contingent Subscription with the exception of Replicate.[350] Rigmora must also fund calls issued for Fund expenses falling within those parameters.[351] Excluding Replicate, Rigmora's portion of those calls is $96,960,925.88. ATP also stands ready, willing, and able to perform.

Money damages are inadequate. The LPA sets out deadlines for meeting Capital Calls.[352] And timing matters. As discussed above, the negative impacts of a funding default for early-stage life sciences companies can be fatal.[353] The companies' research could ramp up again upon receipt of funding.[354] But they cannot stay in a holding pattern indefinitely.[355]

Further, a contractual provision stipulating the parties' preference of specific performance favors granting specific performance.[356] It is even more so when the agreement is between "sophisticated entities that bargained at arm's length."[357] In the LPA, sophisticated parties stipulated that damages for funding defaults "cannot

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[350] *See* JX-1 ¶ 5(a)(i).

[351] *See id*.

[352] LPA ¶ 5(a)(iii).

[353] Rao Report ¶ 67.

[354] *Id.* at 163:17–165:4 (Yanchik); *see also id.* at 114:2–12 (Harrison).

[355] *Id*. at 165:5–9, 166:6–167:2 (Yanchik).

[356] *See L-5 Healthcare P'rs, LLC v. Alphatec Hldgs., Inc.*, 2024 WL 3888696, at *7 (Del. Ch. Aug. 21, 2024).

[357] *See id*. (quoting *In re Cellular Tel. P'ship Litig.*, 2021 WL 4438046, at *72 (Del. Ch. Sept. 28, 2021)).

be estimated with reasonable accuracy."[358] This language supports a finding that damages would be inadequate.

Rigmora argues that ATP cannot seek specific performance of the capital calls for Ascidian, Aethon, Evercrisp, or Fund expenses because ATP has already used other Fund proceeds intended for other purposes to invest in the companies.[359] But rediverting funds to those companies was necessary to mitigate harm against them. The fact that ATP did so does not eliminate Rigmora's funding obligations.

On balance, the equities favor ATP. Rigmora has the funds available to meet the Capital Calls.[360] Moreover, the portfolio companies are developing treatments for serious medical conditions, including childhood blindness, various cancers, obesity, and neurodegenerative diseases. The public interest strongly favors preserving potentially life-saving research programs.[361]

For these reasons, ATP is entitled to specific performance of the Capital Calls excluding Replicate, or $96,960,925.88.

### B. Budget Approvals

ATP claims that Rigmora breached its implied duties of good faith, honesty, and rationality when reviewing and denying the budgets circulated on December 24

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[358] JX-0001 at 25 (LPA ¶ 5(c)).

[359] Rigmora Post-Trial Br. at 47 (citing JX-2130 ¶¶ 17, 25 (listing payments for Ascidian, Aethon, Replicate, Evercrisp, and Fund expenses); PTO ¶ 64).

[360] Trial Tr. at 473:1–6 (Yakovlev).

[361] *Cf. Morabito v. Harris*, 2002 WL 550117, at *2 (Del. Ch. Mar. 26, 2002); *Bernard Pers. Consultants, Inc. v. Mazarella*, 1990 WL 124969, at *3 (Del. Ch. Aug. 28, 1990).

and for Marengo.[362] ATP does not root its claim in fiduciary obligations, nor could it. Section 19(2) of the ELP Act eliminated any fiduciary obligations, so Rigmora does not owe fiduciary obligations to the Fund.[363]

Rather, ATP's claim is based in contract law. Under English and Cayman common law, which govern this analysis,[364] a court may imply contract terms in one of two scenarios: when "the term must be necessary either to spell out what is so obvious that it goes without saying [the obviousness test] or to give business efficacy to the contract [the business-efficacy test]."[365]

ATP seeks to imply a specific set of obligations—to act honestly, rationally, and in good faith.[366] These implied duties, referred to as "*Braganza* duties" after the

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[362] ATP's claim first identified budgets for Marengo, Ascidian, and Aulos but it has since shifted to the budgets for Marengo, Aulos, Replicate, and Nine Square. *Compare* Compl. ¶ 179, *with* ATP Post-Trial Opening Br. at 66, 73.

[363] ELP Act § 19(2).

[364] LPA ¶ 18(g)(1) (stating that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands, and Cayman law governs ATP's claim of breach"); PTO ¶ 25. Cayman courts view English cases as persuasive authority when Cayman law does not provide direct guidance. Phillips Report ¶¶ 19–20. Because no Cayman court has decided this issue, this opinion relies upon English authority when available.

[365] *USDAW v. Tesco Stores*, [2024] UKSC 28 at [102], available in the record as JX-2116; *see also Marks & Spencer v. BNP Paribas*, [2015] UKSC 72 at [20], available in the record as JX-2042; *Primeo Fund (In Official Liquidation) v. Bank of Bermuda (Cayman) Ltd.*, [2017] CILR 334 at [211], available in the record as JX-2056; *Cayman Shores v. Registrar of Lands*, [2021] (2) CILR 1 at [65]–[66], available in the record as JX-2120; Bloch Report ¶ 29.

[366] Phillips Report ¶ 75.

eponymous case, apply in certain circumstances when a party exercises a unilaterally conferred discretionary power under a contract.[367]

*Braganza* involved an employment contract between BP Shipping Ltd. and an employee who died mysteriously on one of its ships.[368] If the employee died by suicide, then BP Shipping had the discretion under the employment contract to deny his widow a contractual death benefit.[369] The company denied the widow the death benefit, and the widow sued for breach of an implied contractual term. The Supreme Court of the United Kingdom held that a party exercising a discretionary control of another's rights has an obligation to act "rationally (as well as in good faith) and consistently with its contractual purpose"[370] when a conflict of interest arises due to that control.[371] The court emphasized that the "conflict is heightened where there is a significant imbalance of power between the contracting parties."[372] To prevent abuse of discretion, the court will ensure the power is exercised in good faith and not arbitrarily, capriciously, or perversely.[373]

According to ATP, a court should imply *Braganza* duties when three factors are present: (1) the existence of a discretionary power granted to one party; (2) that

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[367] *Braganza v. BP Shipping Ltd.*, [2015] UKSC 17, at Headnote, [18]–[19], available in the record as JX-2102.

[368] *Id.*

[369] *Id.* at Headnote, [10]–[11].

[370] *Id.* at Headnote, [30].

[371] *Id.* at Headnote, [18].

[372] *Id.*

[373] *Id.* at Headnote, [30]–[31].

power's potential to harm the other party's interests; and (3) a conflict of interest where the decision-maker could exercise the power to benefit themselves at the other party's expense.[374] It is unclear whether English or Cayman courts apply the three-factor *Braganza* test for which ATP advocates. The case law supplied by the parties does not frame *Braganza* in this manner, nor does either side's expert in Cayman law. And the parties do not join issue on the precise requirements for implying contractual terms generally or *Braganza* duties specifically.[375]

It is clear, however, that contractual context matters in the analysis of whether to imply contractual terms.[376] In an effort to shortcut the analysis, Rigmora argues that a court can never imply *Braganza* duties in this specific context—on a limited partner of a Cayman exempted limited partnership.[377]

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[374] *Id.* at [18], [30].

[375] *See generally* ATP Post-trial Opening Br. at 66-76, Rigmora Post-Trial Br. at 48–60.

[376] *Braganza*, [2015] UKSC 17, at Headnote [31] ("But whatever term may be implied will depend on the terms and the context of the particular contract involved.").

[377] Rigmora Post-Trial Br. at 50–51 (citing *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061). *Torchlight* is remarkable in a few ways. Justice Robin McMillan issued the decision *after* the parties settled the case. JX-2061.0002. He noted that "the Court was invited . . . to withdraw the Petition" in light of the settlement but had "independent discretion to decide whether to deliver its Judgment or not." *Id.* The Justice determined to deliver his Judgment in part because he believed that the two directors of the General Partner were improperly maligned by the allegations, which "the public is entitled to know." *Id.* He viewed issuing his determination a matter of "human rights as much as . . . as matter of commercial law." *Id.* He then issued a 366 page decision.

Rigmora's primary authority does not support a categorical exclusion. Rigmora relies primarily on *Torchlight Fund LP*, where a limited partner of a Cayman exempted limited partnership alleged the general partner owed *Braganza* duties when exercising a discretionary right to send a default notice to the limited partner without first consulting the limited partner.[378] In a brief discussion toward the end of a lengthy analysis, the Cayman court declined to impose *Braganza* duties.[379] The court first noted the relevance of Section 25(1) of the ELP Act, which limits court interference with remedies under partnership agreements.[380] Next, referencing Section 25(1), the court reasoned that:

> It is the view of this Court that those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be. Not only are they bound in this case by the LPA but that LPA itself is further grounded in this instance by an express statutory provision [i.e., Section 25(1) of the ELP Act]. Therefore, taking into account the terms and context of this particular contract, the Court rules that the standard of review adopted in the judicial review of administration action [i.e., the implied duty] *does not apply nor does it have any relevance*.[381]

Rigmora interprets this passage to mean that a court can never imply a contractual duty of good faith under Cayman law where an express statutory

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[378] *In re Torchlight Fund LP*, FSD 103 of 2015 (RMJ), 25 September 2018, at [1189]–[1190], available in the record as JX-2061.

[379] *Id.* at [1180], [1182].

[380] *Id.* at [1188].

[381] *Id.* at [1189] (emphasis added).

provision already governs.[382] And that is a fair interpretation of *Torchlight*. But, unlike *Torchlight*, no express provision of the ELP Act governs here. Section 19(2) of the ELP Act eliminates general fiduciary obligations generally.[383] It does not eliminate implied contractual obligations. And the parties cite no statutory provision that governs a limited partner's discretion in approving budgets. *Torchlight*, thus, does not categorically prohibit this court from implying contractual duties of good faith into the LPA.

*Torchlight*, however, supports Rigmora's position in a more limited way. Fairly read, *Torchlight* stands for the proposition that a court will be reticent to imply *Braganza* duties in the ELP context because the power disparities that motivated *Braganza*—the power's potential to harm the other party's interest—are less present. *Braganza* involved a discretionary right wielded by a large multi-national corporation against its late employee's widow.[384] Other cases implying *Braganza* duties involve discretionary rights wielded by an insurance corporation against an insured.[385] The power disparities between the parties existed both at the time of contracting and at the time the counterparty exercised its discretionary right.[386]

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[382] Rigmora Post-Trial Br. at 51.

[383] ELP Act § 19(2).

[384] *Braganza*, [2015] UKSC 17 at [1189].

[385] *Equitas Ins. Ltd v Municipal Mut. Ins. Ltd* [2019] EWCA Civ [114]–[118], available in the record as JX-2047 (implying a term between insurers).

[386] *Braganza* does not provide clarity on the timing of when a court should assess these factors, and the parties did not specifically address this issue. Generally, "[t]he test for the implication of a *Braganza* duty is one of necessity[.]" *Horlick v Cavaco*, [2022] EWHC 2935 (KB) at [175] (citing *Equitas Ins. Ltd v. Municipal Mut. Ins. Ltd*,

The ELP context is different. As the *Torchlight* court observed: "those who enter into and participate in complex and sophisticated commercial arrangements must be taken to be fully aware of what they are doing and what the potential consequences may be."[387] And that is factually true here—both Rigmora and ATP are highly sophisticated, and the LPA was heavily negotiated. Moreover, the parties cite to no case in which applicable authorities have implied *Braganza* duties in the ELP context. And if a court is unwilling to impose implied contractual obligations on a general partner as in *Torchlight*, then it will be an exceptional case that the court imposes implied obligations on a limited partner.

This case is not the exception. Of the three *Braganza* factors identified by ATP, only two of the three are met. The LPA grants Rigmora the discretion to approve budgets. But the presence of other factors suggests that one cannot imply *Brananza* duties due to the existence of a discretionary right alone. And Rigmora's ability to reject budgets can impede ATP's right to call capital and operate the Fund. But it would be weird to describe the parties as conflicted concerning whether to call capital. It is true that Rigmora's liquidity issues changed its investment strategy. And a need for liquidity can provide a source of conflict in certain circumstances. But at the end

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[2019] EWCA Civ 718 at [150]–[151]). The tests for necessity are the business efficacy and obviousness tests. To satisfy those tests, a court will imply a term "in the way that the parties must have intended or reasonably expected it to work." *Equitas Ins. Ltd*, [2019] EWCA at [151]. This suggests that the court analyzes the *Braganza* factors ex ante. *See also* Bloch Report ¶ 24 (citing *Arnold*, [2015] UKSC at [19]) (explaining a court should interpret a contract "as at the date that the contract was made"). But, again, it is unclear. In this analysis, it does not matter.

[387] *Id.*

of the day, Rigmora owns over 98% of the Fund. Rigmora is thus highly interested in the success of its portfolio companies. And Rybolovlev's family-pharma goal, and desire to replicate his success at Uralkali, meant that he would ultimately consolidate funds behind only some of the portfolio companies and successful therapies. Rigmora's liquidity needs might have hastened that process. This, however, does not seem to be the type of conflict motivating *Braganza* duties.

Because the circumstances do not warrant implying *Braganza* duties, the analysis could end here. But, again, the parties did not neatly join issue on the relevant legal framework, and ATP analyzes the business efficacy and obviousness tests as well the *Braganza* factors. For completeness, so too does this decision.

In *USDAW v. Tesco Stores*, Lord Leggatt expounded on the business-efficacy and obviousness tests.[388] The business-efficacy test involves two steps. The court must first identify the relevant contractual purpose.[389] The court must then ask "whether the implication of a term is necessary to give effect to that purpose and prevent it from being defeated."[390] The implied term cannot conflict with existing provisions, and it must be "strictly necessary."[391]

Under the obviousness test, a court only implies a term if it is "so obvious it goes without saying."[392] The court must assess what reasonable people in the

[388] [2024] UKSC 28 at [106].

[389] *Id.*

[390] *Id.*

[391] *Id.*

[392] *Id.* at [102].

positions of the parties at the time would have agreed.[393] Actual intent does not matter.[394] Regarding detailed commercial contracts, "[a] term should not be implied . . . merely because it appears fair or merely because the court considers the parties would have agreed it if it had been suggested to them . . . [it] is a stringent test."[395]

Neither test is satisfied. Starting with the first step of the business-efficacy test, the LPA's purpose is facilitating investment in "in pharmaceutical medical device and other medically-related companies and business projects."[396] ATP seeks to imply a "good faith, honestly, and rationally" modifier to Rigmora's discretion to approve budgets.[397] Inserting that term, however, is not strictly necessary for effectuating the LPA's purpose because ATP and Rigmora share economic incentives to approve budgets. They relied on the existing provision for years, approving budgets without issue, and the Fund operated without incident. No implication is needed.

The obviousness test also fails. At the time of contracting, Rigmora contributed nearly all the Fund's capital. It thus makes sense that Rigmora secured the absolute discretion to reject budgets and negotiated for the ability to preserve its capital by blocking budgets. It is not so obvious or goes without saying that a reasonable

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[393] *Yoo Design Services v Iliv Realty Pte*, [2021] EWCA Civ 560 at [51], available in the record as JX-2113.

[394] *Id.*

[395] *Id.*

[396] LPA Am. 1 ¶ 1(c).

[397] ATP Post-trial Opening Br. at 66.

potential limited partner would have agreed to constrain its discretion to approve budgets.

Ultimately, none of the relevant tests support implying a good faith term. Because Rigmora had no implied duty to breach, ATP's claim fails.

### C. Declaratory Relief

ATP also seeks two forms of declaratory relief: a declaration that ATP's filing of this action does not violate the Exculpation Provision and is consistent with the Discretionary-Action Provision of the LPA, and a declaration that parties have not amended the Global Default Provision.[398]

Declaratory relief "is appropriate only if there is an actual controversy between the parties."[399] The Delaware Supreme Court has articulated four prerequisites for to an "actual controversy":

> (1) It must be a controversy involving the rights or other legal relations of the party seeking declaratory relief; (2) it must be a controversy in which the claim of right or other legal interest is asserted against one who has an interest in contesting the claim; (3) the controversy must be between parties whose interests are real and adverse; (4) the issue involved in the controversy must be ripe for judicial determination.[400]

On the fourth factor specified by the high court, "[a] ripeness determination requires a commonsense assessment of whether the interests of the party seeking immediate

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[398] PTO ¶ 74(f); Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[399] *Dana Corp. v. LTV Corp.*, 668 A.2d 752, 755 (Del. Ch. 1995).

[400] *XL Specialty Ins. Co. v. WMI Liquid. Tr.*, 93 A.3d 1208, 1217 (Del. 2014) (quoting *Stroud v. Milliken Enters., Inc.*, 552 A.2d 476, 479–80 (Del. 1989)).

relief outweigh the concerns of the court in postponing review until the question arises in some more concrete and final form."[401] A dispute is ripe if "litigation sooner or later appears to be unavoidable" and "the material facts are static."[402] Ultimately, Delaware's approach to declaratory relief and ripeness leaves the determination to the discretion of the court.[403] "The [c]ourt may . . . properly decline to entertain a declaratory judgment claim where another remedy is available and would be more 'effective or efficient.'"[404]

**1. The Exculpation And Discretionary-Action Provisions**

ATP seeks a declaratory judgment that ATP's filing of this action was in good faith, falls within the Exculpation Provision, and was authorized under the

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[401] *XL Specialty*, 93 A.3d at 1217 (citation modified); *see also Nask4Innovation Sp. Z.o.o. v. Sellers*, 2022 WL 4127621, at *4 (Del. Ch. Sept. 12, 2022) ("In determining whether a dispute is ripe, the Court must take a practical view of all relevant facts and make a common-sense determination of whether adjudicating a dispute at present is a prudent use of judicial resources.").

[402] *XL Specialty*, 93 A.3d at 1217 (quoting *Julian v. Julian*, 2009 WL 29371212, at *3 (Del. Ch. Sept. 9, 2009)) (citation modified).

[403] *See Stroud v. Milliken Enters., Inc.*, 552 A.2d at 480 ("The reasons for not rendering a hypothetical opinion must be weighed against the benefits to be derived from the rendering of a declaratory judgment. This weighing process requires "the exercise of judicial discretion[.]"); *Horizon Pers. Commc'ns, Inc. v. Sprint Corp.*, 2006 WL 2337592, at *17 (Del. Ch. Aug. 4, 2006) ("The ripeness of a dispute is a matter entrusted to the discretion of the trial court." (quoting *UbiquiTel Inc. v. Sprint Corp.*, 2006 WL 44424, at *2 (Del. Ch. Jan. 4, 2006))) (citation modified).

[404] *Walton v. Walton*, 2025 WL 2555839, at *8 (Del. Ch. Sept. 2, 2025) (quoting *Reylek v. Albence*, 2023 WL 4633411, at *6 (Del. Super. July 19, 2023)); *see also Markusic v. Blum*, 2021 WL 2456637, at *4–5 (Del. Ch. June 16, 2021), *aff'd*, 284 A.3d 1017 (Del. 2022) (declining to issue declaratory judgment where concurrent litigation in another court would sufficiently address the controversy); *Burris v. Cross*, 583 A.2d 1364, 1370–76 (Del. Super. Ct. 1990) (same).

Discretionary-Action Provision.[405] ATP seeks this declaration in part because Rigmora argues in the Cayman Litigation that ATP filed this action in breach of its fiduciary duties.

Rigmora argues that ATP's claim under the Exculpatory Provision is unusual. Exculpatory provisions shield a covered person from liability for covered claims. And there is no ripe claim here, because Rigmora does not argue in this dispute that ATP breached its fiduciary duties.[406]

Rigmora has the better of the argument here; ATP's request for declaratory judgment is not suitable for resolution in this forum. Delaware law governs a gross negligence standard in the Exculpation Provision; but otherwise, Cayman law governs both the Exculpatory Provision and the Discretionary-Action Provision. Further, the underlying dispute around whether ATP's filing of this action constitutes

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[405] Compl. ¶ 196; PTO ¶ 74(f); LPA ¶ 2(g) ("To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability . . . provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence as determined under the laws of the State of Delaware without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an intentional and material breach of this Agreement on the part of the General Partner[.]"; LPA ¶ 18(g)(iv) ("In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion . . . . To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law.").

[406] Rigmora Post-Trial Br. at 61–62.

a breach of its fiduciary duties is central to Rigmora's Winding Up Petition in the Cayman Litigation.[407] As a commonsense matter, this court has little reason to resolve the issue, which was not a core dispute in this litigation.[408] The factual findings in this decision speak for themselves. And Cayman court is well positioned to assess their implications under Cayman law. Commonsense dictates reserving judgment on both of ATP's requests for declaratory relief concerning the Exculpatory and Discretionary-Action Provisions.

**2. Global Default Provisions**

ATP seeks a declaratory judgment concerning the Global Default Provision, although the nature of the ATP's requested declaration has evolved over the course of this litigation.

In its Complaint, ATP requested a declaration that Rigmora is "in breach of its funding and budget approval obligations sufficient to qualify as a Defaulting Partner."[409] ATP requested similar relief in the Pre-Trial Order.[410] The Writ Injunction, however, prohibits ATP from "taking any steps against [Rigmora] to enforce any purported default provisions" related to the May 30 and June 1 capital calls.[411] At trial, therefore, ATP withdrew any request contrary to the Writ

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[407] JX-1417 ¶ 26; ATP Post-Trial Reply Br. at 44.

[408] *See id.*

[409] *Markusic*, 2021 WL 2456637, at *5.

[410] PTO ¶ 74(a)(iv) (requesting a declaration that Rigmora "breached [its] obligations under the LPA to fund and approve budgets sufficient to qualify as a Defaulting Partner").

[411] JX-1434 ¶ 1. *Compare* Compl. ¶ 183–92, *with* PTO ¶ 74(a)(iv).

Injunction.[412] In post-trial briefing, ATP seeks a far more limited declaration, asking for "an order declaring that the Global Default provision[,]" Paragraph 5(c) of the LPA, "governs defaults" and "ha[s] not been altered or amended."[413]

As currently framed, ATP's request is so narrow as to be undisputed, as Rigmora does not deny that the Global Default Provisions have never been amended.[414] Because there is not dispute between the parties on this point, there is no actual controversy. ATP's request for declaratory relief is not ripe. For that reason, it is dismissed.

**D. Attorney's Fees**

ATP requested attorney's fees under the "loser pays" principles of Cayman Island laws and the Common Law in the Complaint and in the Pre-Trial Order.[415] The Pre-Trial Order referred the court to ATP's pre-trial brief for a discussion of disputed issues, but ATP's pre-trial brief did not address the issue.[416] Rigmora addressed this issue directly in pre-trial briefing, arguing that the American rule under Delaware law governs the issue of attorney's fees.[417] ATP's post-trial opening brief made no mention of attorneys' fees. ATP did not address this issue until its post-trial reply brief and then did so in a cursory fashion.

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[412] ATP Pre-Trial Br. at 56 n.22.

[413] ATP Post-Trial Opening Br. at 82; Dkt. 266, [Proposed] Order and Final Judgment ¶¶ 2(b), 2(d).

[414] *See* Rigmora Post-Trial Br. at 60.

[415] PTO ¶ 74(g).

[416] *See generally* ATP Post-Trial Opening Br.

[417] Rigmora Post-Trial Br. at 62.

Whether a party has waived an argument by failing to raise it in briefing is a procedural matter, so Delaware law governs whether ATP's request for attorneys' fees has been waived.[418] "It is settled Delaware law that a party waives an argument by not including it in its brief."[419] "[A]n issue not raised in post-trial briefing has been waived, even if it was properly raised pre-trial."[420]

ATP's failure to meaningfully brief the issue of its entitlement to fees under Cayman law until its post-trial reply brief constituted waiver. Thus, to the extent that Cayman law supports awarding ATP its attorney's fees and expenses, which this decision does not address, the claim is denied.

## III. CONCLUSION

Excluding the Capital Call for Replicate, Rigmora is ordered to specifically perform its obligation to fund the Capital Calls. ATP is not entitled to specific performance relating to the budgeting approvals. ATP's request for a declaratory judgment concerning the Exculpatory Provision or the Discretionary-Action Provision are held in abeyance. ATP's request for a declaratory judgment concerning the Global

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[418] *See Wheeler v. Wheeler*, 636 A.2d 888, 891 (Del. 1993); *Americas Mining Corp. v. Theriault*, 51 A.3d 1213, 1264 (Del. 2012) (Berger, J., concurring) (unanimously holding that "the motion for reargument is procedurally barred under Delaware law, because the issue raised on reargument was not fully and fairly presented in the Defendants' opening briefs"); *Chaplake Hldgs., LTD. v. Chrysler Corp.*, 766 A.2d 1, 6 (Del. 2001).

[419] *Emerald P'rs v. Berlin*, 2003 WL 21003437, at *43 (Del. Ch. Apr. 28, 2003), *aff'd*, 840 A.2d 641 (Del. 2003).

[420] *Oxbow Carbon & Mins. Hldgs., Inc. v. Crestview-Oxbow Acq., LLC*, 202 A.3d 482, 502 n.77 (Del. 2019); *see also In re IBP, Inc. S'holders Litig.*, 789 A.2d 14, 62 (Del. Ch. 2001).

Default Provision is dismissed. ATP is noted entitled to its attorney's fees under the Cayman law's loser-pays rule. The parties are ordered to submit a form of order or competing forms of order implementing this decision within three business days.

**EXHIBIT F**

AMENDMENT NO. 3

AMENDMENT NO. 3 (this "Amendment"), dated September 1, 2014, to the First Amended and Restated Limited Partnership Agreement (the "Agreement") of Apple Tree Partners IV, L.P. (the "Partnership"). Capitalized terms used without definition herein shall have the respective meanings specified therefor in the Agreement.

For good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. Each reference in the Agreement to a "Subsidiary" of an entity shall be interpreted to mean and include each enterprise, a majority of whose voting securities, are owned directly or indirectly by such entity.

2. Paragraph 2(n) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(n) ATC Board. The board of directors of ATC (the "Board") shall consist of five individuals, three of whom shall be appointed by the holders of a majority of the Preferred Units and two of whom shall be appointed by the General Partner; provided, however, that if the General Partner has been removed as general partner of the Partnership pursuant to Paragraph 4(a), the Board shall consist solely of three individuals appointed by the holders of a majority of the Preferred Units. Subject to the terms of this Agreement, the Board shall have the sole and exclusive authority, by majority vote of its members (including all members appointed by the holders of a majority of the Preferred Units), to approve investments by ATC in Projects (as defined below), together with a budget for each Project (which may be for more than a single year and may include milestone-based payments), which Projects and budgets have been proposed by ATC's management. A description of the budgeting process to be undertaken by the Board is attached hereto as Schedule C. Without the approval of at least 80% of its members (including all members appointed by the holders of a majority of the Preferred Units), the Board shall not cause ATC to: (i) declare dividends or other distributions (except in accordance with a budget approved by the Board or as described below); (ii) effect any liquidation, dissolution or winding up of ATC; (iii) effect any consolidation or merger of ATC into or with any other entity or entities, or any sale or other disposition of a substantial portion of the assets of ATC; (iv) issue securities of ATC (other than to the Partnership or an Intermediary); (v) borrow or issue guarantees; or (vi) approve the transfer of any securities of ATC. The Board shall cause ATC to enter into an agreement with the General Partner for the day-to-day operations of ATC to be managed by the General Partner or its designee in a form approved in writing by the holders of a majority of the Preferred Units (the "Operating Agreement"); provided that no compensation shall be paid by ATC to the General Partner or its designee, the Management Company, Dr. Harrison or their respective affiliates pursuant thereto. Notwithstanding the foregoing, the General Partner shall cause ATC to distribute promptly to the Partnership any amounts received by ATC from its Subsidiaries which remain after ATC has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects pursuant to a budget approved by the Board). To the maximum extent practicable, ATC

shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of ATC income or distributions (including distributions received by ATC from its Subsidiaries. The holders of a majority of the Preferred Units may, at their sole option at any time or times, require the General Partner to constitute boards of directors for any or all of the Subsidiaries of ATC, substantially on the same basis, and with the same authority, as the Board. In the absence of such a board being established for any Subsidiary of ATC, such Subsidiary shall not take any action prohibited by clauses (i) through (vi) above (as if such clause referred to such Subsidiary rather than ATC), except with the prior written consent of the holders of a majority of the Preferred Units or in accordance with a budget approved by the Board. As used in this Agreement, the term "Projects" means investments in pharmaceutical, medical device and other medically-related companies, projects and related activities that are made directly by the Partnership or indirectly by it through Intermediaries, as well as through ATC."

3. Paragraph 5(a)(ii) of the Agreement is hereby amended and restated in its entirety to read as follows:

"Unless otherwise approved by the holders of a majority of the Preferred Units in writing, the General Partner may only call capital, as of any time, in amounts sufficient to enable the Partnership, ATC and the Intermediaries (including, without limitation, Subsidiaries and Operating Companies), as applicable, to (A) pay Partnership, ATC and Intermediary expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership, ATC and Intermediary non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership, ATC and Intermediary expenses and obligations incurred in the ordinary course of business, (C) pay the Management Fee for the next 12-month period, (D) invest in Projects approved by the Board in accordance with a Board-approved budget, in the case of Projects being run through ATC, (E) invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units, in the case of Projects not being run through ATC, (F) pay other Partnership, ATC and Intermediary operating expenses that are covered by a budget proposed by the General Partner and approved by the holders of a majority of the Preferred Units in writing in accordance with Schedule C-1, and (G) have a reserve not exceeding $15 million at any one time for investing in the Late-Stage Investment Pool (as defined in Paragraph 8(c)). Notwithstanding the foregoing, unless otherwise approved by the holders of a majority of the Preferred Units in writing or the Board, (i) capital calls in respect of all indemnification obligations pursuant to Paragraph 15 shall not exceed in the aggregate the greater of (Y) 20% of the Partnership's contributed capital or (Z) $50 million, and (ii) in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities."

4. Paragraph 8(c) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(c) Timing of Other Distributions. The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership, Intermediary and ATC expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units. The Partnership may, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, distribute to the Partners at any time additional amounts in cash or in kind. To the maximum extent practicable, each Intermediary, ATC and each Subsidiary shall fund its operations (including investments in Projects) from capital contributions coming directly or indirectly from the Partnership, rather than through the recycling of their own income or distributions (including distributions received from entities in which they have an ownership interest). Without limitation on the foregoing, the General Partner shall cause each Subsidiary of ATC to distribute promptly to ATC any amounts which remain after such Subsidiary has made or established appropriate reserves for paying its expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets). Notwithstanding the foregoing provisions of this Paragraph 8(c), the General Partner may designate up to $50 million in the aggregate of capital contributions made by the Partners to the Partnership for investment by the Partnership in minority positions in late-stage privately held companies, initial public offerings and publicly held companies, which investments the General Partner anticipates will be liquidated within 24-months of the respective dates on which they are made (the "Late-Stage Investment Pool"). The General Partner hereby designates the $25,229,439 previously invested by the Partnership in Aurinia, Zafgen, Dermira, Cerecor, ProQR and Tokai as part of the Late-Stage Investment Pool, leaving a remaining balance of $24,770,561 for future designation. The General Partner may cause the Partnership to continue to reinvest the proceeds realized by the Partnership from Late-Stage Investment Pool liquidations in other Late-Stage Investment Pool investments, provided that any net profits realized by the Partnership on an aggregate basis from Late-Stage Investment Pool liquidations may not be reinvested. Any Late-Stage Investment Pool investments may be made by the Partnership directly or indirectly. In addition to and notwithstanding the foregoing, at the discretion of the General Partner and with the prior written consent of the holders of a majority of the Preferred Units, the General Partner may cause the Partnership, any Intermediary, ATC or any Subsidiary to reinvest its income or any distributions or other proceeds received by it, rather than causing such amounts to be distributed to the Partners or any higher tier entity.

In all other respects, the Agreement shall continue in full force and effect and shall be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Name: Seth L. Harrison
Title: Director

7070/11922-015 current/44910393v3

LIMITED PARTNERS

Executed as a deed by:

Fizbon International Limited

By: _____

Title: Director

In the presence of:

_____

Witness

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____

Title: DIRECTOR

In the presence of:

_____

Witness Andrey Miller

Executed as a deed by:

By: _____

Seth L. Harrison

In the presence of:

_____

Maja Nowak

7070/11922-015 current/44910393v3

**EXHIBIT G**

**ATP LIFE SCIENCE VENTURES, L.P. - AMENDMENT NO. 20**

AMENDMENT NO. 20 (this "Amendment"), dated June 21, 2021, to the First Amended and Restated Limited Partnership Agreement, as amended from time to time (the "Agreement"), of ATP Life Science Ventures, L.P. (the "Partnership"). Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

Whereas, the parties hereto desire to amend the Agreement as set forth herein.

Now, therefore, for good and valuable consideration, including but not limited to the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby agree that the Agreement is hereby amended (on behalf of all Partners) pursuant to Paragraph 17 thereof as follows:

1. **Additional Paragraph 21.** A new Paragraph 21 is hereby added to the Agreement to read in its entirety as follows:

"21. Braeburn Inc.

(a) Pool Braeburn. A sixth Pool is hereby added to the Partnership, entitled "Pool Braeburn". Pool Braeburn shall consist of the assets, liabilities, income, gains, losses and expenses associated with the Partnership's investment in Braeburn Inc. and its successors (collectively, "Braeburn"), including without limitation any successors arising pursuant to or in connection with a bankruptcy or reorganization in bankruptcy of Braeburn. Such assets and expenses shall include without limitation (i) all securities of Braeburn owned by the Partnership on the date of Amendment No. 20 to the Agreement ("Amendment 20"), including all equity and debt securities, which securities owned by the Partnership on such date are referred to as the "Existing BB Securities", (ii) all right, title and interest of the Partnership pursuant to a memorandum of understanding with Braeburn dated February 22, 2021, as amended, regarding royalty payments in exchange for commercialization capital (the "MOU"), (iii) the $10,000,000 deposit made by the Partnership to Braeburn pursuant to Section 3 of the MOU (the "Deposit"); (iv) any

Joint Exhibit
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C.A. No. 2025-0607-KS-JM

additional capital contributions made by the Subject Limited Partner to the Partnership after the date of Amendment 20 in respect of Pool Braeburn, including $189,900,000 in unfunded previously approved budgets; (iv) any additional securities of Braeburn acquired by the Partnership after the date of Amendment 20 ("Additional BB Securities"), and (v) certain expenses as set forth in Paragraph 20(e). All additional Partnership investments in assets of Braeburn shall be held in Pool Braeburn. No investments in non-Braeburn assets shall be made by the Partnership in Pool Braeburn. Except as otherwise expressly provided in the Agreement, the intent of the Partners is that the assets, liabilities, income, gains, losses and expenses associated with Pool Braeburn shall affect only Pool Braeburn and the Limited Partners participating therein, and not the Partnership generally, the other Pools or the Limited Partners participating in such other Pools. Accordingly, except as otherwise expressly provided in the Agreement or required by the ELP Law, separate and distinct records shall be maintained for Pool Braeburn, and capital contributions, distributions, income, gains, losses and expenses in respect of Pool Braeburn shall be accounted for separately.

(b) Capital Contributions. All capital invested in the Partnership in respect of Pool Braeburn or attributable to expenses or liabilities of Pool Braeburn (or liabilities or expenses otherwise apportioned to Pool Braeburn pursuant to Paragraph 20(e)) shall be called from and contributed by the Subject Limited Partner exclusively and shall be treated as contributed to Pool Braeburn. No other Partner shall be required to contribute capital to or in respect of Pool Braeburn. In addition, (i) the Subject Limited Partner shall be deemed to have made a capital contribution to the Partnership solely in respect of Pool Braeburn equal to the value of the Partnership's investment in Braeburn (including the Existing BB Securities, the Deposit and the MOU) as of the date of Amendment 20 (the "Existing Value"), which Existing Value is agreed by both the General Partner and the Subject Limited Partner to be $203,669,000, based on an independent third-party valuation, (ii) ATP IV shall be deemed to have transferred the Existing BB Securities, the Deposit and the MOU to Pool Braeburn on the date of Amendment 20 at a price equal to the Existing Value, and (iv) on the date of

Amendment 20, an amount equal to the Existing Value shall be deemed to have been distributed by the Partnership in respect of ATP IV to the Subject Limited Partner, Dr. Harrison and Les Pommes in respect of their Preferred Units, and on a pro rata basis thereto, as a return of capital and, accordingly, no funds will actually be transferred.

(c) Profits and Losses. The profits and losses of Pool Braeburn shall be calculated on a separate basis and shall be allocated exclusively to the Limited Partners participating in Pool Braeburn. For U.S. federal income tax purposes, all expenses attributable to Pool Braeburn shall be allocated solely to the Subject Limited Partner, with a priority allocation of subsequent net income or gains, if any, to the Subject Limited Partner in a corresponding amount.

(d) Distributions. Distributions in respect of Pool Braeburn, other than Tax Distributions, shall be made as follows: (A) first, to the Subject Limited Partner until it has received aggregate distributions pursuant to this clause (A) equal to its aggregate capital contributions (including its deemed capital contribution of $203,669,000) to Pool Braeburn; and (B) thereafter, 92.5% to the Subject Limited Partner, 4.5% to Dr. Harrison, and 3.0% to Ms. Batarina. Notwithstanding the foregoing, the Pool Committee shall, subject to receipt of prior written notice from the Subject Limited Partner at any time, cause the Partnership to distribute all of the net assets of Pool Braeburn in accordance with clause (B) of the preceding sentence, subject to compliance with the General Partner's duties under the ELP Law, all applicable securities laws and internal policies of Braeburn. The vesting schedules for Dr. Harrison's and Ms. Batarina's carried interests in Pool Braeburn shall be the same as they were in ATP IV.

(e) Management. So long as ATP III GP, Ltd. continues as the General Partner, the management of Pool Braeburn, including without limitation any investment decisions, capital calls and approval requests with respect to Pool Braeburn, shall be delegated by the General Partner to, and shall be the sole responsibility of, the Pool Committee, subject to any consent or other approval rights of the holders of the Preferred Units, as provided for in this Agreement."

2. **Additional Paragraph 22.** A new Paragraph 22 is hereby added to the Agreement to read in its entirety as follows:

"22. Pool ATP V-3.

(a) ATP V-3. A seventh Pool is hereby added to the Partnership, entitled "ATP V-3". ATP V-3 shall consist of the assets, liabilities, income, gains, losses and expenses associated with the Partnership's investments in Ascidian Therapeutics, Inc. ("Ascidian"), Gala Therapeutics, Inc. ("Gala"), Galary, Inc. ("Galary"), Galvanize Therapeutics, Inc. ("Galvanize"), Galaxy Medical, Inc. ("Galaxy"), Intergalactic Therapeutics, Inc. ("Intergalactic"), Marengo Therapeutics, Inc. ("Marengo") and their respective successors (collectively, the "ATP V-3 Companies"). Such assets and expenses shall include without limitation (i) all securities of the ATP V-3 Companies owned by the Partnership on the date of Amendment 20, including all equity and debt securities, which securities owned by the Partnership on such date are referred to as the "Existing ATP V-3 Securities", (ii) any additional capital contributions made by the Limited Partners to the Partnership after the date of Amendment 20 in respect of ATP V-3, including amounts payable by the Limited Partners to the Partnership to enable it to make follow-on investments in the ATP V-3 Companies, which follow-on investments were previously approved by the Subject Limited Partner (the "Prior Budgeted ATP V-3 Follow-on Investments); (iii) any additional securities of the ATP V-3 Companies acquired by the Partnership after the date of Amendment 20, other than the Prior Budgeted ATP V-3 Follow-on Investments ("Additional ATP V-3 Securities"), and (iv) certain expenses as set forth in Paragraph 20(e). All additional Partnership investments in assets of the ATP V-3 Companies shall be held in ATP V-3. No investments in non-ATP V-3 Companies shall be made by the Partnership in ATP V-3. Except as otherwise expressly provided in the Agreement, the intent of the Partners is that the assets, liabilities, income, gains, losses and expenses associated with ATP V-3 shall affect only ATP V-3 and the Limited Partners participating therein, and not the Partnership generally, the other Pools or the Limited Partners participating in such other Pools. Accordingly, except as otherwise expressly provided in the Agreement or required by the ELP

Law, separate and distinct records shall be maintained for ATP V-3, and capital contributions, distributions, income, gains, losses and expenses in respect of ATP V-3 shall be accounted for separately.

(b) Capital Commitments and Contributions. ATP V-3 shall have capital commitments of $500,000,000, including without limitation (i) the $189,500,000 of capital deemed to have been contributed as provided below, (ii) the $70,853,399 of capital comprising the Prior Budgeted ATP V-3 Follow-on Investments, and (iii) approximately $235,000,000 in investments anticipated to be made in new Portfolio Companies. All capital invested in the Partnership in respect of ATP V-3 or attributable to expenses or liabilities of ATP V-3 (or liabilities or expenses otherwise apportioned to ATP V-3 pursuant to Paragraph 20(e)) shall be called from and contributed by the Subject Limited Partner, Dr. Harrison and Les Pommes exclusively and shall be treated as contributed to ATP V-3. From and after the date of Amendment 20, the Ezbon, Blue Horizon, Dr. Harrison and Les Pommes shall contribute 50.7974%, 48.8054%, 0.1869% and 0.2103%, respectively, of such capital. No other Partner shall be required to contribute capital to or in respect of ATP V-3. In addition, (i) the Subject Limited Partner, Dr. Harrison and Les Pommes shall be deemed to have made capital contributions to the Partnership solely in respect of ATP V-3 equal in the aggregate to the value of the Partnership's investment in the ATP V-3 Companies (including the Existing ATP V-3 Securities) as of the date of Amendment 20 (the "Existing ATP V-3 Value"), which Existing ATP V-3 Value is agreed by the General Partner, the Subject Limited Partner, Dr. Harrison and Les Pommes to be $189,544,660, and such capital contributions shall be deemed to have been made by Ezbon, Blue Horizon, Dr. Harrison and Les Pommes in the respective amounts of $97,101,127.51, $89,392,036.25, $1,436,768.54 and $1,615,727.70, immediately prior to the date of Amendment 20, (ii) ATP IV shall be deemed to have transferred the Existing ATP V-3 Securities to ATP V-3 on the date of Amendment 20 at a price equal to the Existing ATP V-3 Value, and (iv) on the date of Amendment 20, an amount equal to the Existing ATP V-3 Value shall be deemed to have been distributed by the Partnership in respect of ATP IV to the Subject Limited Partner, Dr. Harrison and Les Pommes in respect of their Preferred Units, and on a pro rata basis

thereto, as a return of capital and, accordingly, no funds will actually be transferred.

(c) Profits and Losses. The profits and losses of ATP V-3 shall also be calculated on a separate basis and shall be allocated exclusively to the Limited Partners participating in ATP V-3. For U.S. federal income tax purposes, all expenses attributable to ATP V-3 shall be allocated solely to the Subject Limited Partner, Dr. Harrison and Les Pommes on a pro rata basis to their respective aggregate capital contributions to ATP V-3, with a priority allocation of subsequent net income or gains, if any, to them in a corresponding amount and on such pro rata basis.

(d) Distributions. Distributions in respect of ATP V-3, other than Tax Distributions, shall be made as follows: (i) first, to the Subject Limited Partner, Dr. Harrison and Les Pommes, pro rata to their respective unreturned capital contributions, until they have received aggregate distributions pursuant to this clause (i) equal to their aggregate capital contributions (including deemed capital contributions) to ATP V-3; and (ii) thereafter, (A) 44.5945% to Ezbon, (B) 40.8446% to Blue Horizon, and (C) 5.3757% to Dr. Harrison, 5.8391% to Les Pommes, 2.0561% to Ms. Batarina, 0.5000% to Paul Eisenberg and 0.7900% to Jonathan Waldstreicher. Notwithstanding the foregoing, the General Partner shall, subject to receipt of prior written notice from the Subject Limited Partner at any time, cause the Partnership to distribute all of the Freely Marketable securities of an ATP V-3 Portfolio Company in accordance with clause (ii) of the preceding sentence, subject to compliance with the General Partner's duties under the ELP Law, all applicable securities laws and internal policies of such Portfolio Company. The vesting schedules for Dr. Harrison's, Les Pommes's, Ms. Batarina's, Dr. Eisenberg's and Dr. Waldstreicher's carried interests in ATP V-3 shall be the same as they were in ATP IV.

(e) Management. So long as ATP III GP, Ltd. continues as the General Partner, the management of ATP V-3, including without limitation any investment decisions, capital calls and approval requests with respect to ATP V-3, shall be the sole responsibility of the General Partner, subject to

any consent or other approval rights of the Subject Limited Partner, as provided for in this Agreement.

(f) Right to Purchase. Dr. Harrison and/or Les Pommes shall have the right to purchase such portion of the Subject Limited Partner's capital interest in ATP V-3 as will be sufficient to give them an aggregate capital interest in ATP V-3 (including their capital interests in ATP V-3 owned prior to such purchase) of up to 2.5%, on the same terms and conditions as their right to purchase up to 2.5% of the Subject Limited Partner's capital interests in ATP V-1 and ATP V-2. In the event of such a purchase, the subsequent capital contribution obligations of the Subject Limited Partner, Dr. Harrison and Les Pommes in respect of ATP V-3 shall be appropriately adjusted."

3. **Additional Paragraph 23.** A new Paragraph 23 is hereby added to the Agreement to read in its entirety as follows:

"23. Stoke and Akero Distributions. As promptly as practicable following the date of Amendment 20, including compliance with all applicable securities laws and all internal policies of Stoke Therapeutics, Inc. ("Stoke") and Akero Therapeutics, Inc. ("Akero"), all of ATP IV's 17,161,713 shares of common stock of Stoke (the "Stoke Shares") and 5,830,203 shares of common stock of Akero (the "Akero Shares") shall be distributed to the Limited Partners in accordance with the following:

a) All of the Stoke Shares and Akero Shares shall be distributed by the Partnership on behalf of ATP IV in "carry mode", i.e., in accordance with the provisions of Paragraph 8(d)(ii) of the Agreement, as adjusted in accordance with this Paragraph 23.

b) Distributions of Stoke Shares and Akero Shares to Dr. Harrison, Les Pommes and Ms. Batarina in respect of their carried interest shall not be reduced to take account of prior tax distributions to them. Subsequent carried interest distributions to such Limited Partners in respect of ATP IV shall, however, take account of their prior tax distributions.

c) Distributions of Stoke Shares and Akero Shares to all other carried interest Limited Partners in ATP IV shall be reduced to take account of prior tax distributions to them, as provided for in the Agreement. Such reductions shall inure to the benefit of the Subject Limited Partner, Dr. Harrison and Les Pommes on a pro rata basis in respect of their Preferred Units, as provided for in the Agreement. Such reductions shall be made from the Stoke and Akero distributions on a pro rata basis in accordance with the respective values of such distributions.

d) For all purposes of the Agreement, each Stoke Share and Akero Share shall be deemed to have been distributed to the Limited Partners at the closing price thereof on The Nasdaq Global Select Market on the distribution date.

e) With the exception of the Stoke Shares and Akero Shares distributed to the Subject Limited Partner, Dr. Harrison and Les Pommes to make up for prior tax distributions, the distributions of the Stoke Shares and Akero Shares shall not be deemed to be a return of the preference amounts on the Preferred Units.

f) The General Partner shall have the discretion to specify which lots of stock are used for distributions to designated Limited Partners."

4. **Additional Paragraph 24.** A new Paragraph 24 is hereby added to the Agreement to read in its entirety as follows:

"24. Pool ATP IV. Following the transfers pursuant to Paragraphs 21 and 22 and the distributions pursuant to Paragraph 23, the only assets remaining in ATP IV in respect of prior investments by the Partnership will consist of contingency payments (escrows, milestone payments and the like, which are hereafter referred to collectively as "Contingency Payments") receivable as to the sales or mergers of Corvidia Therapeutics, Inc., Syntimmune, Inc., Tendyne Holdings, Inc. and Tusker Medical, Inc. ATP IV shall not make any new investments. ATP IV shall have unfunded capital commitments of $20,000,000 to pay its continuing expenses, which shall be contributed in accordance with the terms of the Agreement by the following Limited Partners: Ezbon – 50.7974%, Blue Horizon – 48.8054%, Dr. Harrison – 0.1869% and Les Pommes – 0.2103%."

5. **Term of Partnership and Pools**. Subject to Paragraph 10(b) or operation of law, (i) the term of ATP V-1, ATP V-2, ATP V-3, Pool Braeburn, Holding Pool 1 and Holding Pool 2 shall end on February 6, 2029 (the "Initial Term"); provided, however, that the Initial Term of each of those Pools may be extended by the General Partner for up to two one-year periods, (ii) the term of ATP IV shall end on the date the last Contingency Payment has been received or the right to receive any remaining Contingency Payment has been extinguished, and (iii) the term of the Partnership shall end when the term of the last Pool has expired. Notwithstanding the foregoing, the term of Holding Pool 1 and/or Holding Pool 2 may be shortened or further extended, in each case with the consent of the General Partner and the Subject Limited Partner."

6. **Expenses and Liabilities; ATLS Fee**. Paragraph 20(e) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(e) Expenses and Liabilities; ATLS Fee.

(i) Expenses and Liabilities. Any fees and expenses directly attributable to a particular Pool shall be apportioned to such Pool. Any fees and expenses that are attributable to more than one Pool shall be apportioned among the applicable Pools in accordance with their respective overhead allocation percentages, which shall initially be as follows: ATP IV – 2.5%, ATP V-1 – 15.0%, ATP V-2 – 45.0%, ATP V- 3 – 30.0% and Pool Braeburn – 7.5%. By way of example only, (A) all of the Partnership's legal expenses attributable to new investments in ATP V-2, shall be borne solely by ATP V-2 and (B) the Management Fee and the ATLS Fee shall initially be allocated among ATP IV, ATP V-1, ATP V-2, ATP V-3 and Pool Braeburn in accordance with their respective overhead allocation percentages. From time to time, as they deem necessary, the Subject Limited Partner and the General Partner shall in good faith appropriately adjust the overhead allocation percentages for the Pools (including the Holding Pools) to reflect changes in the Partnership's circumstances.

(ii) ATLS Fee. The General Partner shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the "ATLS Fee").

Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year, and the Subject Limited Partner shall, within ten (10) business days of the budget being provided by the General Partner, either approve the budget or inform the General Partner that the Subject Limited Partner declines to provide such approval along with the reasons therefor. If the Subject Limited Partner fails to so respond within such ten (10) business day period, the budget shall be deemed to have been approved. If the Subject Limited Partner so informs the General Partner that it declines to approve the proposed budget, the Subject Limited Partner and the General Partner shall discuss in good faith any objections presented by the Subject Limited Partner to the initial proposed budget, and thereafter the General Partner shall have an opportunity to prepare a revised budget, which shall again be submitted for approval as set forth above. If a budget is not approved for a calendar year, then the approved budget for such year shall be deemed to be the most recently approved budget for a prior calendar year; provided, however, that if there were extraordinary, non-recurring expenses in such prior year's fee, such extraordinary, non-recurring expenses shall be excluded from the succeeding year's fee, and if there are extraordinary, non-recurring expenses anticipated in the succeeding year's fee, then the Subject Limited Partner and the General Partner shall mutually agree in good faith as to whether and to what extent such extraordinary, non-recurring expenses will be included in the succeeding year's fee. The ATLS Fee for 2021 shall be $17,812,087. The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee."

7. **Distribution Override**. The distribution override provisions of Paragraph 20(h) are hereby deemed revised as to Dr. Harrison, Les Pommes and Ms.

Batarina to the extent necessary so that they apply to them as to ATP V-1, ATP V-2 and ATP V-3, rather than solely as to ATP V-1 and ATP V-2. For the avoidance of doubt, the distribution override provisions of Paragraph 20(h) remain unchanged as to all other carried interest Limited Partners. The distribution override provisions of Paragraph 20(h) shall not apply to distributions of Freely Marketable securities that are directed to be made by the Subject Limited Partner.

8. **Holding Pools**. Paragraph 20(b) of the Agreement is hereby amended and restated in its entirety to read as follows:

"(b) Holding Pools. Core Holdings Pool 1 and Core Holdings Pool 2 are hereby redesignated "Holding Pool 1" and "Holding Pool 2", respectively. The Subject Limited Partner and Dr. Harrison may, upon mutual agreement, elect to distribute all of a Portfolio Company's securities in ATP V-1 that are Freely Marketable (as defined below) in accordance with sub-paragraph 20(g)(ii)(B) and all of a Portfolio Company's securities in ATP V-3 that are Freely Marketable in accordance with sub-paragraph 22(d)(ii). The Subject Limited Partner and the Pool Committee may, upon mutual agreement, elect to distribute all of a Portfolio Company's securities in ATP V-2 that are Freely Marketable in accordance with sub-paragraph 20(g)(ii)(D). The portion of such securities to be distributed to the Subject Limited Partner shall be distributed to Holding Pool 1, in the case of ATP V-1 or ATP V-3 securities, and Holding Pool 2, in the case of ATP V-2 securities, and, in each case, outright to the other Limited Partners entitled to participate in such distribution (i.e., certain Limited Partners other than the Subject Limited Partner). "Freely Marketable" means any securities that satisfy the following conditions: (i) such securities can be immediately sold by the Partnership to the general public without the necessity of any federal, state or local government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act or Section 13 or 16 of the Securities Exchange Act of 1934, as amended), (ii) such securities are either listed on a national securities exchange or carried on a national securities or NASDAQ and market quotations are readily available for such securities, and (iii) any "underwriter's lock-up" with respect to such securities has expired."

9. **Additional Paragraph 25.** A new Paragraph 25 is hereby added to the Agreement to read in its entirety as follows:

TO

"25. Non-binding Distributions Guidelines. The General Partner and the Pool Committee, as applicable, anticipate that for each new publicly-traded company held in the Partnership after the date of Amendment 20, 50% of the holdings will be distributed by 18 months afer the initial public offering and the remaining 50% will be distributed by 42 months after the initial public offering, in each case subject to compliance with all applicable securities laws and internal policies of the applicable company."

10. **Certain Mandatory Distributions**. Notwithstanding anything to the contrary set forth in this Agreement, the General Partner shall, subject to receipt of prior written notice from the Subject Limited Partner at any time, cause the Partnership to distribute all of the Freely Marketable securities of an ATP V-1 Portfolio Company in accordance with clause (B) of Paragraph 20(g)(ii), subject to compliance with the General Partner's duties under the ELP Law, all applicable securities laws and internal policies of such Portfolio Company. Notwithstanding anything to the contrary set forth in this Agreement, the Pool Committee shall, subject to receipt of prior written notice from the Subject Limited Partner at any time, cause the Partnership to distribute all of the Freely Marketable securities of an ATP V-2 Portfolio Company in accordance with clause (D) of Paragraph 20(g)(ii), subject to compliance with the General Partner's duties under the ELP Law, all applicable securities laws and internal policies of such Portfolio Company.

11. **Subsequent Adjustments.** Notwithstanding anything to the contrary set forth in this Amendment, the distribution percentages set forth above shall be appropriately adjusted by the General Partner in good faith to take account of any carried interest divestments, Default Charges, non-pro rata capital contributions or the like occurring after the date of this Amendment.

12. **Shifting of Investments from One Pool to Another Pool**. For the avoidance of doubt, the parties acknowledge that certain budgets for additional investments were previously approved as to Portfolio Companies whose securities are now being moved from one Pool to another Pool and that such prior approved budgets continue to apply as to the Pool to which such securities are now being moved, e.g. Pool Braeburn and ATP V-3.

13. **Schedules**. The Schedules supporting certain of the calculations contained in this Amendment and set forth in Annex A hereto are hereby incorporated by reference into this Amendment as if set forth herein at length. The parties acknowledge that certain of such Schedules or portions thereof are pro forma only, based on certain assumptions which may or may not occur.

14. **Miscellaneous**. The headings in this Amendment are for convenience of reference only and shall not limit or otherwise affect the meaning of provisions contained herein. This Amendment shall be governed in accordance with the laws of the Cayman Islands without regard to conflicts of laws principles. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

15. **Effectiveness**. In all other respects, the Agreement shall continue in full force and effect and be unaffected by this Amendment.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as a deed on the day and year first above written.

GENERAL PARTNER:

Executed as a deed by:

ATP III GP, Ltd.

By: _____
Seth L. Harrison, Director

In the presence of:

_____
Witness

Margaret M. Bigelow
Name of Witness (please print)

LIMITED PARTNERS:

Executed as a deed by:

Ezbon International Limited

By: _____

Title: Director on behalf of M.C.R.S. Limited

In the presence of:

_____

Witness

Maria Ch. Giannakou

Name of Witness (please print)

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____

Title: Director on behalf of M.C.R.S. Limited

In the presence of:

_____

Witness

Violetta Lamari

Name of Witness (please print)

Executed as a deed by:

_____

Seth L. Harrison

In the presence of:

LIMITED PARTNERS:

Executed as a deed by:

Ezbon International Limited

By: _____
Title: _____

In the presence of:

_____
Witness

_____

Name of Witness (please print)

Executed as a deed by:

Blue Horizon Enterprise Ltd.

By: _____
Title: _____

In the presence of:

_____
Witness

_____
Name of Witness (please print)

Executed as a deed by:

_____
Seth L. Harrison

In the presence of:

Witness

Margaret M. Bigelow
Name of Witness (please print)

Executed as a deed by:

LES POMMES LLC

By: _____
Seth L. Harrison, Manager

In the presence of:

Witness

Margaret M. Bigelow
Name of Witness (please print)

Executed as a deed by:

Anna Batarina

In the presence of:

Witness

Margaret M. Bigelow
Name of Witness (please print)

**EXHIBIT H**

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

| | | |
|---|---|---|
| ATP III GP, LTD., in its capacity as General Partner of ATP Life Science Ventures, L.P., | ) | |
| Plaintiff, | ) | |
| v. | ) | C.A. No. 2025-0607-KSJM |
| RIGMORA BIOTECH INVESTOR ONE LP and RIGMORA BIOTECH INVESTOR TWO LP, | ) | **REDACTED PUBLIC VERSION EFILED: November 5, 2025** |
| Defendants. | ) | |

**PLAINTIFF ATP III GP, LTD.'S POST-TRIAL BRIEF**

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Dated: October 28, 2025

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## PRELIMINARY STATEMENT

The evidence adduced at trial paints a clear picture. ATP and Rigmora entered into a heavily-negotiated limited partnership agreement in 2012 and amended that agreement twenty-two times. In 2020 and 2021, seeing a surge in early-stage biotech investment spurred by the global response to the Covid-19 epidemic, Rigmora increased its capital commitments to the Fund by about $1.4 billion and approved budgets for Series A funding of nine new biotech startups and follow-on funding for several existing portfolio companies. Dmitry Rybolovlev personally approved each of these investments.

That surge was ephemeral. The biotech markets retrenched in 2022 and have yet to fully recover. Simultaneously, the Rybolovlev family trust was being managed inefficiently, cash was short, and the trust often sold low-risk assets to fund its high-risk biotech investments. Then a financial advisor, Yuri Bogdanov described the problem in a detailed memorandum and concluded that the only way for the trust to regain financial footing was to "drastically" reduce its commitments to ATP. When circumstances saw him elevated to CEO status in 2024, Bogdanov resolved to cease new commitments to the portfolio and take steps to avoid its existing commitments to its riskiest preclinical assets. Rigmora used a combination of coercion and deception to achieve these goals without incurring the consequences of a contractual default. Ultimately, however, Rigmora breached both its obligation

to contribute capital in response to ATP's fully-authorized May 30 and June 1 capital calls and its obligation to consider in good faith new budgets for portfolio companies whose existing funding had been fully expended. But a limited partner does not gain license to walk away from a partnership agreement simply because its investment preferences have changed or markets have dropped.

In its defense, Rigmora offers distorted readings of the LPA that disregard the facts as they were available to the parties at the time of execution and as the parties reasonably should have understood them—supplanting Cayman law's objective standard of contract interpretation with a subjective, post hoc reading. Rigmora claims that it has not increased its commitments since it executed Amendment 17 to the LPA in 2020 (stopping at $2.5 billion), and that Amendment 20 merely reorganizes pre-existing commitments. This view is both counterfactual and contrary to the plain text of Amendment 20. The pool structure, the pools' accounting, and the parties' communications at the time of the negotiation and drafting of Amendment 20 all work to confirm that Rigmora was committing new money. This is further evidenced by Rigmora's failure to dispute capital call documents that tallied updated commitment amounts in the wake of Amendment 20. Additionally, contrary to Rigmora's argument, no amendment to the Subscription Agreements was required; indeed, the Subscription Agreements themselves expressly contemplate additional commitments via amendment to the LPA.

The evidence shows that Rigmora's commitments exceed [redacted]; its contributions total approximately $2.3 billion; and, it has not exhausted its commitments. Hence, contributions of capital in response to ATP capital calls against approved budgets are not "voluntary." Rigmora may not impose extracontractual conditions on its contribution of capital, and none of the reasons in Rigmora's May 15 Email justify its refusal to contribute capital.

The evidence shows that Rigmora has manufactured reasons to delay new budget approvals. In the months following the execution of Amendment 22, Rigmora hid behind the pretext of "due diligence" to avoid new budget approvals. In reality, it is clear that no one at Rigmora was even equipped to properly engage in Rigmora's new diligence process, and there is no evidence that any degree of disclosure by ATP would have satisfied Rigmora's demands.

At trial, ATP's Dr. Harrison testified that Bogdanov's May 15 Email stripped away any remaining hope that Dr. Harrison had for legitimate engagement and cooperation. Bogdanov's declaration that Rigmora would not even discuss new budgets for the clinical-stage companies until ATP agreed to liquidate or wind down the seven preclinical companies was the equivalent of extortion. This ultimatum revealed that Rigmora was intent on denying new budgets for illegitimate reasons (*i.e.*, to evade existing funding obligations), never mind ATP's months of work to satisfy Rigmora's information demands.

By May 15, 2025, there was no doubt that Rigmora had been abusing the budget approval process and that its actions violated the contractual duties of good faith, honesty, and rationality that, under Cayman law, impliedly constrain its discretion. Its rejection of all further funding obligations to the preclinical companies and refusal to approve budgets for Aulos, Ascidian, Marengo, and Nine Square constituted breaches of both express and implied duties under the LPA. Faced with near-term "cash-out" dates for all of these companies, ATP was left no choice but to exercise its express authority as GP to protect Fund value. It issued capital calls necessary for continued operations, and then it filed litigation to enforce the Fund's rights. Faced with Rigmora's breaches and the imminent collapse of portfolio companies, ATP not only had the right but the obligation to seek judicial intervention. Rigmora materially breached the LPA when it failed to meet those calls for approved budgets.

Moreover, Rigmora's attack on ATP's standing contravenes the LPA, which expressly authorizes the General Partner to bring actions to enforce the Fund's rights. Protecting the Fund from destruction by a rogue limited partner falls squarely within ATP's authority and fiduciary duties.

The Court should order specific performance to prevent the destruction of the Fund's portfolio companies and the loss of potentially life-saving therapies.

Rigmora remains bound by the agreements it signed, and this Court should hold Rigmora to them.

## BACKGROUND

### I. Apple Tree Partners Is Established to Promote Scientific Advancement and Generate Long-Term Profit

In 2010, Dr. Seth Harrison, who trained as a surgeon before embarking on a 35-year career as a venture capitalist in the biotechnology field, met Dr. Dmitry Rybolovlev, a Russian-born Cypriot national.[1] They formed Apple Tree Partners IV, L.P., which was later renamed to ATP Life Science Ventures, L.P., a Cayman Islands exempted limited partnership (the "Fund" or "Partnership").[2] The Fund's purpose is investing in and developing biotechnology.[3] On November 1, 2012, the parties entered into the First Amended and Restated Limited Partnership Agreement (the "LPA"), which governs the Fund's operations.[4] The LPA establishes the Fund's core mission: "to invest … in pharmaceutical, medical device and other medically related companies and business projects."[5]

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[1] Tr. (Harrison) 7:22-–9:20; Tr. (Rybolovlev) 349:20–350:23.

[2] PTO ¶ 23.

[3] *Id*.; Tr. (Harrison) 9:24–10:10; Tr. (Rybolovlev) 349:20–351:9; JX-0001 at 3; JX-1574 ¶ 15.

[4] JX-0001; *see also* PTO ¶¶ 24–25.

[5] JX-0002 at 1 (LPA Am. 1 ¶ 1(c)).

ATP III GP, Ltd. ("ATP") serves as the General Partner of the Fund, and Harrison is the manager of ATP.[6] The largest limited partners are Defendants Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP, both ultimately owned by Rybolovlev's family trust.[7] The Rigmora entities are successors-in-interest to the original Limited Partners Blue Horizon Enterprise Ltd. and Ezbon International Ltd. (together with both Rigmora entities, "Rigmora").[8]

Prior to Rigmora's breaches at-issue here, the Fund's total value was approximately $6.48 billion.[9] The Fund has distributed approximately $2.4 billion to Rigmora since inception.[10] These substantial returns reflect the significant value created by Harrison's management and demonstrate effectiveness in identifying and nurturing promising biopharmaceutical companies.

## II. Rigmora Commits More than [redacted] to the Fund

Over the course of the Fund, Rigmora has agreed to capital commitments totaling [redacted]. These commitments arose through a lengthy negotiation history, beginning with an initial commitment of $1.425 billion alongside the November 2012 LPA and followed by additional commitment amounts carefully

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6 PTO ¶¶ 13, 15.

7 PTO ¶¶ 17–20; *see also* Tr. (Bogdanov) 270:12–271:3, 271:13–15.

8 PTO ¶ 18; *see also* Tr. (Harrison) 11:4–7, 25:10–17.

9 JX-1293 at 24.

10 PTO ¶ 46.

negotiated in connection with amendments to the LPA. These commitments were not aggregated for the use of all portfolio companies but were instead expressly allocated to specific pools, including as most relevant here, Pools ATP V-1, V-2, and V-3. Rigmora agreed that funds were not to be shared across pools.

### A. Rigmora's Initial $1.425 Billion Commitment Establishes The Fund (2012)

On November 1, 2012, Rigmora made its initial capital commitment of $1.425 billion, pursuant to Subscription Agreements ("SAs") signed by Blue Horizon for [redacted] and Ezbon for [redacted].[11] The capital contributions set forth in the SAs were specifically made "[s]ubject to the terms and conditions set forth in … the Partnership Agreement," as well as the respective SA.[12] Rigmora also agreed to "make such other capital contributions and payments to the Partnership as provided for in the Partnership Agreement, in the manner and at the times provided in the Partnership Agreement," and to become "bound by the terms of the Partnership Agreement."[13]

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[11] JX-0212 at 19–22 (Blue Horizon SA signature pages); JX-213 at 19–22 (Ezbon SA signature pages); Tr. (Harrison) 25:18–22.

[12] JX-0212 at 3 (Blue Horizon SA ¶ 1); JX-0212 at 3 (Ezbon SA ¶ 1).

[13] JX-0212 at 3 (Blue Horizon SA ¶ 1); JX-0212 at 3 (Ezbon SA ¶ 1).

### B. Amendment 13 Creates Investment Pools With Separate Accounting And Commitments (2019)

LPA Amendment 13, dated February 4, 2019, introduced a "pool" structure through which commitments, assets, and contributions would be allocated and tracked across distinct, separate "pools."[14] The aim of the pool concept was to segregate money so that profits on new investments would not leak to former Fund employees.[15] Pools also allowed the parties to increase capital commitments without having to establish new entities, thus avoiding potential know-your-customer ("KYC") roadblocks relating to Rybolovlev.[16]

The initial pool structure established through Amendment 13 involved just two pools: Pool A, which held the existing economics, and Pool B, which held the Fund's new projects.[17] Rigmora was exclusively responsible for funding all capital called in respect to Pool B.[18] Amendment 13 specified that expenses would be allocated exclusively by pool insofar as they were "directly attributable" to a

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[14] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[15] Tr. (Harrison) 27:11–28:9; Finkelman Dep. 38:7–41:18.

[16] Tr. (Harrison) 27:11–28:9.

[17] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[18] JX-0015 at 1 (LPA Am. 13 ¶ 17(b)).

particular pool, while expenses that were attributable to both pools were apportioned between them based on the relative cost basis of the remaining assets in each pool.[19]

Amendment 13 identified the Management Fee and the Apple Tree Life Sciences, Inc. ("ATLS")[20] Fee as two examples of expenses that were attributable to both pools.[21]

To facilitate the distinct treatment of the pools, Amendment 13 provided that "separate and distinct records shall be maintained for each Pool, and capital contributions … shall also be accounted for separately on a Pool-by-Pool basis."[22] The parties maintained this emphasis on segregating the treatment of pools, including a version of this "Pool-by-Pool" language in each amendment that modified the pool structure.

### C. In Amendment 17 Rigmora Commits Additional $1 Billion (2020)

Amendment 17, dated September 9, 2020, committed Rigmora to fund an additional $1 billion to be allocated between Pool B and a new Pool C.[23]

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[19] *Id.* at 2 (LPA Am. 13 ¶ 17(d)).

[20] JX-0009 at 3 (LPA Am. 7, Schedule A ¶ 3).

[21] JX-0015 at 2 (LPA Am. 13 ¶ 17(d)). ATLS is a wholly-owned subsidiary of the Partnership designed to cover Partnership operational expenses like facility costs, leases, rents, and employee costs. JX-0009 at 3 (LPA Am. 7, Schedule A ¶ 3); Tr. (Harrison) 17:17–18:4. The ATLS Fee and the Management Fee were allocated between the pools according to fixed percentages. JX-0222 at 9–10 (LPA Am. 20 ¶ 6).

[22] JX-0015 at 1 (LPA Am. 13 ¶ 17(a)).

[23] Tr. (Harrison) 29:1-19; JX-0089 at 1 (LPA Am. 17).

Thereafter, Pool A would consist of Rigmora's original $1.425 billion capital commitment and all economics of the Fund not expressly allocated to Pools B or C, while Pools B and C would split Rigmora's new $1 billion commitment.[24] Amendment 17 further specified that Pool B would contain Chinook Therapeutics U.S., Inc.; Nine Square Therapeutics Corporation; and Initial Therapeutics, Inc., along with a proportionate share of the Management Fee and ATLS Fee.[25] Pool C would contain Kynos Therapeutics Ltd and any new projects after the execution of Amendment 17, along with a proportionate share of the ATLS Fees.[26] Each of these pools would be funded "exclusively" by Rigmora, and "[a]ll capital invested in the Pool C Projects … [would] be treated as contributed to Pool C."[27] Following execution of Amendment 17, the parties executed amended subscription agreements pursuant to which Blue Horizon and Ezbon committed to contributing [redacted] and [redacted], respectively, to Pools B and C.[28]

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[24] JX-0089 at 1–2 (LPA Am. 17 ¶ 4 (new Paragraph 20(a))).

[25] *Id*.

[26] *Id.*

[27] *Id.* at 2 (LPA Am. 17 ¶ 4 (new Paragraph 20(b))).

[28] Tr. (Harrison) 41:11–42:14; JX-0099; JX-0101.

Shortly thereafter, in Amendment 19, dated November 27, 2020, the parties renamed Pools A, B, and C, as Pool ATP IV, Pool ATP V-1, and Pool ATP V-2, respectively.[29]

### D. In Amendment 20 Rigmora Commits An Additional $310 Million (2021)

The following year, the parties executed Amendment 20, providing for an additional significant increase in the capital commitments from Rigmora and Harrison.[30]

To set the amendment's financial terms, the parties exchanged an outline confirming their understanding of the commitments that generally would remain or materialize in each pool. In a May 2021 email, Harrison sent a draft outline to Rigmora's then-CEO and CIO Anna Kolonchina. Kolonchina returned a revised draft to Harrison on May 26, 2021, noting that, with the business terms ready, it "make[s] sense to start drafting a long form" amendment.[31]

The outline included a section titled "Remaining Unfunded Capital Commitments," which estimated that each pool would have roughly the following unfunded commitments following execution of Amendment 20: (1) [redacted] for

[29] JX-0132 at 1 (LPA Am. 19 ¶ 1); Tr. (Harrison) 28:22–24.

[30] Tr. (Harrison) 42:15–44:6; JX-1061 at 3.

[31] JX-0195 at 1.

ATP IV; (2) [redacted] for ATP V-1; (3) [redacted] for ATP V-2; (4) [redacted] for a new pool ATP V-3; and (5) [redacted] for a new Pool Braeburn.[32] At the time, there was approximately [redacted] in remaining capital commitments for Pool IV that the parties had agreed to sunset, and Pools V-3 and Pool Braeburn were to be created with independent commitments under Amendment 20.[33] Consistent with this plan, the parties executed Amendment 20 on June 21, 2021, memorializing their agreement to modify the investment in Pool IV to reduce the remaining commitment to expenses related to that pool and to new pools Pool ATP V-3 and Pool Braeburn, with additional new money commitments.

Amendment 20 had several features which, taken together, unambiguously documented the parties' agreement to increase the overall commitments to the Fund.

***First***, Amendment 20 established Pool Braeburn to hold the assets and commitments to a single portfolio company, Braeburn. For Pool Braeburn, Rigmora principally committed [redacted] in previously budgeted and approved but not yet funded amounts.[34]

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[32] JX-0195 at 4–5.

[33] JX-220 at 28 (showing $1.35 billion contributed prior to Amendment 20); JX-1061 (LPA Am. 20 ¶¶1–2 (new Paragraphs 21–22))

[34] JX-1061 at 3–5 (LPA Am. 20 ¶ 1 (new Paragraph 21)); Tr. (Harrison) 44:14–46:3; Engels Dep. 92:30–95:3.

***Second***, Amendment 20 established Pool V-3 to hold the assets and commitments for certain existing portfolio companies being operated under new management that the parties believed warranted additional commitments: Ascidian Therapeutics, Inc. ("Ascidian"), Gala Therapeutics Inc. ("Gala"), Galary, Inc. ("Galary"), Galvanize Therapeutics ("Galvanize"), Galaxy Medical, Inc. ("Galaxy"), Intergalactic Therapeutics, Inc. ("Intergalactic"), and Marengo Therapeutics, Inc. ("Marengo"), and their successors.[35] The total new commitment into Pool V-3 memorialized in Amendment 20 consisted of approximately $310.5 million. That $310.5 million in unfunded commitments derived from the parties' agreement to have a total commitment of [redacted] to Pool V-3, reduced by the existing investments into the companies compromising Pool V-3 as of the date of execution of Amendment 20, [redacted].[36] The remaining commitment would consist of [redacted] in previously approved, unfunded budgets for the Pool V-3 companies and approximately [redacted] in additional commitments to those companies.[37] As to Pool V-3, the parties agreed that "Ezbon, Blue Horizon,

[35] JX-1061 at 6–9 (LPA Am. 20 ¶ 2 (new Paragraph 22)).

[36] *Id.*

[37] Tr. (Harrison) 46:5–47:9.

Harrison, and Les Pommes shall contribute [redacted], respectively," to any unfunded remaining budgets.[38]

***Finally***, for Pool IV, the parties agreed to reduce the remaining unfunded commitments from the initial $1.5 billion to approximately [redacted] to be used to cover expenses, including litigation expenses related to the cost of a then-ongoing portfolio company exit.[39] The actual cost of expenses related to that litigation, and what was ultimately paid into Pool IV after Amendment 20, totaled [redacted].[40]

Immediately following Amendment 20, ATP began calling committed capital from Rigmora and Harrison. On June 24, 2021, ATP transmitted a capital call to Rigmora for approximately [redacted], consisting of [redacted] for Pool Braeburn, [redacted] for Pool V-2, and [redacted] in expenses charged to the pools, all split among Rigmora and Harrison in line with their commitment obligations to the pools.[41]

This call included an exhibit tracker of the outstanding capital commitments before and after: a practice that ATP included in each capital call following Amendment 20 through present day. These exhibits included the amount of funds

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[38] JX-1061 at 6–9 (LPA Am. 20 ¶ 2 (new Paragraph 22)).

[39] JX-1061 at 10 (LPA Am. 20 ¶ 4 (new Paragraph 24)).

[40] Engels Dep. 321:20–322:22.

[41] Tr. (Harrison) 47:10-48:3; JX-0230 at 1–2.

being called from each party on a pool-by-pool basis (including the breakdown of ATLS fees proportionately for each pool), and the amount of unfunded committed capital that would remain following the capital call.[42]

Exhibit A to the June 2021 capital call evidenced a total remaining commitment of [redacted], a sizable increase from the approximately $1 billion in outstanding commitments across the initial $2.5 billion committed to the initial fund and Pools V-1 and V-2, commensurate with the parties' agreement in Amendment 20 to increase the overall commitments to the fund.

ATP provided this record to Rigmora with "every single capital call," and no one at Rigmora (including then-CEO Kolonchina, who received these calls), ever objected to the accounting.[43] Rigmora's CFO Alexey Yakovlev testified to being responsible for processing capital calls, and he admitted to "not [being] aware" of anyone at Rigmora challenging these records.[44]

## III. The LPA Defines the Rights, Duties, and Procedures for Capital Calls, Budget Approvals, and Defaults

### A. Call, Budget, and Contribution Framework

Paragraph 5(a)(ii), as amended, authorizes the GP to call capital under seven circumstances, including funding partnership expenses, management fees, reserves,

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[42] JX-0230 at 4; Tr. (Harrison) 48:19–50:18.

[43] Tr. (Harrison) 48:19–51:1.

[44] Tr. (Yakovlev) 474:22–476:10.

and investments in "Projects."[45] As relevant here, subsections 5(a)(ii)(A) through (C) provide, "Unless otherwise approved by the holders of a majority of the Preferred Units in writing," the GP:

> may only call capital, as of any time, in amounts sufficient to enable the Partnership … to (A) pay Partnership … expenses then existing or reasonably anticipated to be incurred within the next six-month period, (B) pay other Partnership … non-discretionary items (such as taxes and tax distributions) and satisfy other Partnership … expenses and obligations incurred in the ordinary course of business, [and] (C) pay the Management Fee for the next 12-month period.[46]

Subsection 5(a)(ii)(E) authorizes the GP to call capital in amounts sufficient to "invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units."[47] Rigmora (which holds the majority of Preferred Units) thus has the right to approve budgets for Projects before capital can be called.

The ATLS Fee is also subject to a budget approval process. Rigmora must either approve the ATLS budget proposed annually by the GP or provide reasons for

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[45] *See* JX-4 at 2 (LPA Am. 3). "Projects" are defined as "investments in pharmaceutical, medical device and other medically-related companies, projects and related activities that are made directly by the Partnership or indirectly by it through Intermediaries."

[46] *Id.*

[47] *Id.* Amendment 3 originally provided for an ATC board of directors and made certain distinctions depending on whether a project was "being run through ATC" or not. *Id.* at 1–2. Amendment 14 excised ATC, and with it the ATC board of directors, from the LPA. JX-16 at 5 (LPA Am. 14).

not approving it within ten days.[48] If Rigmora does neither, the ATLS budget is deemed approved in an amount equal to the previous year's ATLS budget minus any extraordinary, non-recurring expenses that may have been included therein.[49] The amount of the separate Management Fee was set at [redacted] by Amendment 14.[50] Rigmora agreed to contribute capital to pay the ATLS Fee semi-annually in advance and the Management Fee annually in advance.[51]

Rigmora is obligated to contribute capital duly called. Paragraph 5(a)(i) requires LPs to contribute capital when requested by the GP in accordance with the LPA.[52] Capital is due when set by the call, with "not less than ten business days' prior written notice." LPA ¶ 5(a)(iii).[53]

### B. The Global Default Protects The Fund's Integrity

Because, by design, Rigmora is the chief funding source for the Fund, and the Fund is, in turn, often the only source of funding for its portfolio companies, the consequences to those companies of Rigmora breaching its obligations to contribute

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48 JX-22 at 9–10 (LPA Am. 20 ¶ 6).

49 *Id.*

50 JX-0016 at 1 (LPA Am. 14 ¶ 1).

51 JX-0222 at 9–10 (LPA Am. 20 ¶ 6).

52 JX-1 at 18 (LPA ¶ 5(a)(i)).

53 *Id.* at 19–20.

capital are existential.[54] A funding default could trigger talent loss, delayed or abandoned R&D, difficulties restarting halted or delayed trials, difficulty attracting future investments or partners, and negative perception of the company and the Fund.[55] To ensure funding, the LPA provides for a range of potential consequences if an LP fails to meet a capital call, including imposing a Default Charge of up to 50% of the LP's interest for each default.[56] Such remedies are typical in almost all venture capital fund agreements, but, as Harrison testified, they are especially important for this venture, given that it relies on essentially single-source funding.[57] Harrison discussed the import of such a provision with Rybolovlev when establishing the Fund, noting that "[i]t would be highly unlikely that [they] would be able to even start business unless [they] had such a remedy" in the LPA.[58]

Specifically, five days after a missed capital call, the GP may issue a Default Notice (as defined in the LPA) informing the LP of its failure to pay and notifying it that it will be considered a "Defaulting Partner" if payment is not received within

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[54] *E.g.*, Tr. (Harrison) 20:8–21:1, 60:19–61:10.

[55] JX-1572 (Rao Opening) ¶ 67.

[56] JX-0001 at 23–27; *see also* Tr. (Harrison) 19:6–14, 21:2–6, 22:5–18.

[57] Tr. (Harrison) 20:8–21:1; *see also* Finkelman Dep. 61:13–64:17 (global default mechanism is typical, and Harrison had insisted upon it when parties first executed LPA).

[58] Tr. (Harrison) 20:8–21:1; *see also* Finkelman Dep. 61:13–64:17 ("The concept of a default charge was the single most contentious point in the negotiation …of the [LPA]. … [I]t looked at times as if … the parties were going to go their separate ways without reaching an agreement because of their disagreement on that.").

thirty days.[59] Once an LP becomes a Defaulting Partner, the GP may pursue one of multiple remedies in its sole discretion, including a Default Charge in an amount up to "50% of such Defaulting Partner's corresponding number of Units … immediately prior to becoming a Defaulting Partner."[60]

Further, "[i]n connection with the application of the Default Charge, the General Partner may make such adjustments to the manner in which Capital Accounts are determined and distributions are made … as the General Partner reasonably determines are necessary or appropriate in order to reflect the application and the intention of the Default Charge."[61]

In addition to imposing a Default Charge, the GP may pursue the Fund's other rights and remedies against the Defaulting Partner under the LPA, the SAs, and governing law, including bringing a lawsuit to collect the unpaid capital contribution, together with interest, costs, and damages.[62]

The Defaulting Partner also remains obligated to pay both the unpaid capital call that led to the Default Charge and subsequent capital calls when due.[63]

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[59] JX-0001 at 23–27 (LPA ¶ 5(c)).

[60] *Id.* at 25.

[61] JX-0001 at 25 (LPA) ¶ 5(c).

[62] *Id.* at 24, ¶ 5(c)(iv); *see also* Finkelman Dep. 68:11–71:10 (testifying that Cayman law does not recognize the concept of a "series" partnership).

[63] *Id*. at 25.

Finally, the LPA provides that a Defaulting Partner loses "voting, consent, approval … and other such rights."[64]

The parties' various amendments to the LPA did not alter these default provisions.[65] Likewise, when ATP and Rigmora contemplated executing a Second Amended and Restated LPA to streamline the incorporation of amendments up through that point, Rigmora's attempt to weaken the default provision was a primary reason a second restated LPA was never executed.[66]

## IV. For Years, the Partners Cooperated on Budget Approvals

Until late 2024, the process by which Rigmora exercised its budget approval rights typically began with informal discussions among Rigmora's chief investment officer (which role has been transferred over time), Harrison, and Rybolovlev.[67] For each new Series A investment, Harrison and Rybolovlev met—often in person—to discuss the opportunity, its prospects for commercial and scientific success, and

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[64] *Id*. at 74, ¶ 18(f).

[65] Tr. (Harrison) 57:8–10; Blöchlinger Dep 109:16–120:14 (Rigmora's GC acknowledging that none of the LPA amendments apply to default provisions); Finkelman Dep. 65:24–66:13 ("none of the amendments touched paragraph 5-C of the [LPA]").

[66] Finkelman Dep. 61:13–64:17 (Rigmora and ATP "disagreed substantively" on modification of global default provision); Blöchlinger Dep. 126:3–7, 129:18–130:8 (Rigmora's GC acknowledges that draft of Second Amended and Restated LPA did not include a pool-by-pool default mechanism); JX-0325 at 18 (Rigmora attempts to remove global default charge from draft amended LPA).

[67] Tr. (Harrison) 14:14–21.

funding needs.[68] Once Rybolovlev informally approved the investment, ATP would prepare an investment memorandum, CFIUS memorandum,[69] and a request for formal budget approval.[70]

After formal budget approval, the Fund would enter into Series A stock purchase agreements ("SPAs") with the relevant portfolio companies.[71] In many cases, the deployment of capital to the portfolio companies was tied to milestone-based tranches, but the Fund retained discretion to disburse capital regardless of milestone progress, as is typical for SPAs in the venture industry.[72] Indeed, the Fund retained the right to invest the entirety of the Series A capital commitment at any time, in whole or in part.[73]

Most of the Fund's portfolio companies exclusively rely on funding from the Fund to meet their operating needs, and thus the Series A commitments were key to recruiting top scientists and staff.[74] This arrangement stemmed from Rybolovlev's

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[68] Tr. (Harrison) 31:15–32:4, 33:5–10; Tr. (Rybolovlev) 355:4–12.

[69] Each budget request was accompanied by an analysis of the need for a CFIUS review; counsel typically concluded that because these were greenfield businesses they were outside the purview of CFIUS. *See* JX-310 at 6–7.

[70] Tr. (Harrison) at 31:15–33:4; Tr. (Rybolovlev) 355:9–18.

[71] Tr. (Harrison) at 34:19–35:2

[72] *See, e.g.*, JX-248 at 11–13, § 1.2(a)–(i); *see also* Tr. (Harrison) at 35:3–36:8.

[73] JX-123 at 6, § 1.2(f).

[74] JX-1174 at 2.

insistence on the Fund's ownership and control, but, eventually, the Fund was unable to syndicate its deals owing to KYC issues arising from post-Ukraine perceptions of Russian nationals.[75]

## V. Bogdanov Champions Strategic Shift From Biotech Ventures

In fall of 2022, Bogdanov, who was then an analyst working on financial risk management, observed that Rigmora lacked cash-generating assets and had little cash on the balance sheet.[76] Though not in charge, Bogdanov formulated his vision for Rigmora in a series of internal memoranda characterizing Rigmora's finances as a "situation of a liquidity crisis" with a "lack of cash flow stability" that could only be remedied with a change in investment strategy.[77] In his memoranda, Bogdanov observed that "two or three years earlier" a crisis with similar characteristics had been "resolved by liquidating the private equity portfolio."[78] He warned that Rigmora's structure, with "predominance of venture projects (biotech [and] gaming) carries same risks that had led to the current crisis: poorly predictable [] money inflows (divestments) [and] massive outflows (capital calls), which will grow exponentially if the divestments are delayed."[79]

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[75] Tr. (Harrison) 12:17–13:8;105:17–107:18.

[76] JX-440 at 2.

[77] *Id.*; *see* Tr. (Bogdanov) 318:2–321:23.

[78] JX-446 at 1.

[79] *Id.*; Tr. (Bogdanov) 320:11–18.

Bogdanov's solution was singular: "The current cash gap can be closed by drastic reduction in venture investment (and particularly biotech) and divestiture."[80] Otherwise, Rigmora would remain trapped in "the same logic of shifting money from less risk (Private Equity Funds, real estate, boat) to more risky assets with 'fire extinguishing' from time to time" to resolve periodic emergency cash shortages.[81] Bogdanov confirmed at trial, as other notes in the memoranda corroborate, that "biotech ventures" referred to the Fund.[82]

According to Bogdanov, Rigmora would "most importantly," re-encounter emergency cash shortages due to "***guaranteed obligations*** on … biotech venture projects."[83] Although the Fund could be "a source of capital gains," it could not "serve as a reliable source of cash for funding [Rigmora's] regular needs."[84] But if Rigmora were to exit its biotech investments, it would gain a "buffer" of $300–400 million—enough to mitigate the current liquidity crisis and achieve a "stable

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[80] JX-463 at 2; Tr. (Bogdanov) 320:3–7.

[81] JX-463 at 2; Tr. (Bogdanov) 320:19–24.

[82] Tr. (Bogdanov) 320:8–10.

[83] JX-440 at 2 (emphasis added). This email was sent by Bogdanov's associate, but Bogdanov testified that he is "the author." Bogdanov Dep. 162:5–10.

[84] JX-440 at 2.

position" longer-term.[85] Thus, the way "to start moving towards the cash buffer" was ***"to drastically reduce ATP payments."***[86]

Bogdanov believed that Rigmora could achieve "drastic" payment reductions through "tight controls," including "clear rules for review and approval of new projects."[87] His prescription was stark and his goal unambiguous: "[N]o funding sources – no new projects."[88] The "priority" was to "put a 'plug' on expenses" rather than find new investors.[89]

In December 2024, when Kolonchina made the "unexpected decision" to depart Rigmora, Bogdanov became CIO and co-CEO.[90] Bogdanov had no prior involvement in the Fund's company budgets, nor any meaningful recent exposure to biotech.[91] Indeed, Rybolovlev observed that Bogdanov had "certain occupational deformities" because his "background is auditing and his perspective hasn't changed," making him "very, very, conservative."[92] Nonetheless, though Rybolovlev admitted that he does not "know any auditor who would be successful

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[85] JX-446 at 1.

[86] JX 462 at 2 (emphasis added); Bogdanov Dep. 174:14–21.

[87] JX-462 at 2; Bogdanov Dep. 173:16–22.

[88] JX-462 at 2.

[89] Tr. (Bogdanov) 321:14–18.

[90] Rybolovlev Dep. 51:19–52:8; Tr. (Bogdanov) 271:24–272:7.

[91] Tr. (Bogdanov) 272:8–24; 317:11–13.

[92] Rybolovlev Dep. 50:17–51:3.

in running a business," Bogdanov was elevated because he had "a general understanding of what's going on."[93] But, as Bogdanov told the Court, he received no "specific instructions" from anyone at Rigmora, including Kolonchina, concerning how to proceed as Rigmora's top executive.[94] Bogdanov quickly began to implement a shift towards his planned thesis of reducing long-term investments and building a cash buffer.

Bogdanov's planned shift was not communicated directly to Harrison or ATP. However, starting in late September 2022, Rigmora (through Rybolovlev and Kolonchina) did plead for an "austerity budget" for the Fund, on the basis of liquidity concerns following Russia's invasion of Ukraine.[95] As Harrison documented in a memorandum to Kolonchina, Rybolovlev expressed to Harrison that he was regretting current commitments and concerned about cashflow.[96] In response, ATP worked to accommodate Rigmora's professed liquidity concerns by "calling capital at a lower rate" and asking the portfolio companies to "make do with less," "slow the companies down or drop some programs."[97]

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[93] *Id.* at 51:5–52:4.

[94] Tr. (Bogdanov) 342:20–343:3.

[95] JX-473 at 2. Tr. (Harrison) 52:1–12; 54:20–55:1; *see* Tr. (Bogdanov) 318:2–6 (acknowledging liquidity crisis in 2022).

[96] JX-473 at 2; Tr. (Harrison) 52:1–19.

[97] Tr. (Harrison) 57:19–58:9.

ATP did not, however, simply forgive Rigmora's "guaranteed obligations."

## VI. Amendment 22 Requires Rigmora to Consider New Budgets Following Braeburn Settlement

### A. Braeburn Dispute and Resolution

In 2023, the FDA approved Braeburn's drug Brixadi, transforming Braeburn into a commercial-stage company with multi-billion dollar potential.[98] Rigmora demanded immediate distribution of Braeburn's shares.[99] ATP refused the demand on fiduciary and other grounds, citing concerns about the Fund's solvency and Rigmora's potential default on commitments to fund Pool V-1 and V-2.[100]

By late 2023, Rigmora conditioned its agreement to meet key funding obligations on ATP's agreement to cap the Fund's capital calls and shift approved budgeted amounts away from preclinical startups in Pools ATP V-1 and V-2 in favor of older, clinical-stage companies.[101]

In July 2024, Rigmora renewed its demand for immediate distribution of the assets in Pool Braeburn (then independently valued at up to [redacted]).[102] When ATP requested time to consider the implications of such a distribution on the Fund,

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98 PTO ¶ 49.

99 PTO ¶ 51.

100 PTO ¶ 52.

101 *See* JX-698 at 4–5.

102 Tr. (Harrison) 67:9–68:14; JX PTO ¶ 53.

Rigmora immediately commenced legal proceedings in the Cayman Islands to compel the distribution.[103]

In this 2024 Cayman lawsuit (the "Cayman Action"), Rigmora debuted its prime defense here: exhaustion of capital commitments. On October 10, 2024, Kolonchina filed an affidavit in the Cayman court stating, for the first time, that Rigmora's "combined Contingent Subscriptions are [redacted]," and because Rigmora had already funded $2.6 billion to date, "it is therefore impossible" that Rigmora had outstanding contingent subscriptions.[104] Kolonchina further attested that there was no "global default mechanism" in the LPA.[105] That same day, Kolonchina stated in an email to ATP that Rigmora would pay a pending capital call despite that it was "not obligated to do so."[106] By October 2024, Rigmora was explicitly disclaiming any obligation to respond to capital calls for budgets already expressly approved in writing, insisting any payments would be made only "on a voluntary basis."[107]

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103 PTO ¶ 54; Ans. ¶ 98, 100.

104 JX-1002 ¶¶ 23–26.

105 JX-1002 ¶ 27–29.

106 JX-998 at 1.

107 *Id*.

Rather than assert counterclaims or run to Delaware court, Harrison flew to Monaco and suggested to Rybolovlev that they settle, leading to a "couple of days of meetings" where they "agreed to the basic outline of a settlement in order to continue to work together."[108]

ATP and Rigmora settled the Cayman Action on December 20, 2024, agreeing to Amendment 22 and an amended agreement regarding Pool Braeburn.[109] Rigmora obtained distribution of the Braeburn royalty, valued on date of distribution at [redacted]. The transaction transferred the Braeburn royalty from Pool Braeburn to a special-purpose entity known as ATC LLP, and thus the royalty was no longer subject to the Global Default Charge.

During the Cayman Action, certain portfolio companies were nearing the end of their Series A commitments and initial budgets, making new budgets a critical part of settlement discussions.[110] Ascidian, in particular, would reach the middle of its Stargardt disease trial and run out of funding to conclude it properly with a pediatric cohort.[111]

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[108] Tr. (Harrison) 68:24–69:4.

[109] *See* JX-1068 at 4 (LPA Am. 22 ¶ 26); Tr. (Bogdanov) 275:6-21.

[110] Tr. (Harrison) 72:6–19.

[111] *Id.* 72:20–73:10.

### B. Amendment 22

Amendment 22 to the LPA was executed concurrently with the settlement.[112] Bogdanov, who took over Kolonchina's position as Co-CEO in October 2024, was a primary negotiator for Amendment 22.[113]

A key concern in settlement was continued funding for specific companies. In return for the transfer of the Braeburn royalty, Rigmora agreed in Amendment 22:

> From and after the date of [Amendment 22], the General Partner and [Rigmora] shall discuss new budgets for the Partnership in accordance with the process set forth in this Agreement to allow it to invest in Ascidian Therapeutics, Inc., Aulos Bioscience, Inc., Nereid Bioscience, Incorporated, Nine Square Therapeutics Corporation and Replicate Bioscience, Inc. sufficient amounts to enable each of them to operate for a period of twelve months after the remaining unfunded amounts, if any, under their respective existing approved budgets are expected to have been fully utilized …[114]

Paragraph 26 lists projected cash-out dates for each company: [redacted] When asked if it was "clear to the Family Office and Dr. Rybolovlev that these companies were running out of cash in the near term" Harrison testified that "it wasn't news" to Rigmora.[115] Moving

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112 JX-1068 (LPA Am 22); Tr. (Harrison) 79:10–12.

113 Tr. (Bogdanov) 271:24–272:7; *id.* 275:2–5.

114 JX-1068 at 4 (LPA Am. 22 ¶ 26).

115 Tr. (Harrison) 75:1–8.

forward, as Rybolovlev knew, Harrison planned to consider reorganizing the companies; in the meantime, Amendment 22 would allow "holding budgets" so the companies could continue operating for a 12-month period.[116]

Paragraph 26 also created a contingency, applicable once Rigmora approves a budget. "If any approval of a new budget is given by" Rigmora, "such approval shall be contingent upon at least $300 million being realized (including through deemed distributions) by [Rigmora] on a sale or financing of its interest in ATP LLC," referred to as a "Royalty Financing."[117] The Royalty Financing term was not at odds with the expectation that the companies needed new budgets relatively soon; Harrison expected the partners would "collaborate" on pursuing the Royalty Financing, which Rigmora indicated would not be difficult to obtain.[118]

These expectations were consistent with the terms of Amendment 22, which mandates that in pursuing the financing, as well as approving budget proposals, each party would "do and perform, or cause to be done and performed, all such further acts and things … as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment and the consummation

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[116] Tr. (Harrison) 76:3–11.

[117] JX-1068 at 3 (LPA Am. 22 ¶ 21(f)); *id.* at 4 (LPA Am. 22 ¶ 26).

[118] Tr. (Harrison) 77:24–78:3.

of the transactions contemplated hereby."[119] Despite this obligation and the initial anticipation that Royalty Financing would be promptly achieved, Rigmora has not closed a financing agreement ten months later.[120]

## VII. Bogdanov Ascends to Power and a Pattern of Obstruction Persists

ATP, unaware of Rigmora's goal of "no funding … no new projects" and concerned about funding for companies running out of cash, wasted little time after executing Amendment 22 before sending Rigmora proposed budgets.[121] On December 24, 2024, Harrison sent an email containing budget requests for[122]:

- **Auolos**, [redacted]";
- **Replicate**, for "$11M"; and
- **Nine Square**, "[redacted]."

Harrison also explained that he was attaching materials concerning budgets for:

- **Nereid**, [redacted]
- **Ascidian**, [redacted]

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119 JX-1068 at 5 (LPA Am. 22 ¶ Miscellaneous).

120 *See* PTO ¶ 38.

121 *See* JX-463 at 2; JX-1079 at 1; Tr. (Harrison) 79:10–80:5.

122 JX-1079.

Harrison provided a spreadsheet showing "[redacted]," plus access to data rooms with "supporting materials for the new budgets."[123] These measures went above and beyond past expectations; Harrison testified that he "doubted very highly whether [Rigmora] would review" the data, but "[w]e did it to make sure [Rigmora] understood that after the settlement agreement we were being radically transparent."[124]

Bogdanov forwarded Harrison's email to Rigmora's analyst, Zufar Iskhakov, exclaiming "Let's start. Merry Christmas!"[125] Bogdanov admitted in deposition that he did not mean "let's start approving budgets."[126] Now Rigmora's CIO and Co-CEO,[127] he was ready to execute his vision for Rigmora's balance sheet; he meant "let's start" imposing "tight controls."

### A. Obstructionist Diligence Begins Immediately

Tight controls were first applied to Replicate. Bogdanov testified that upon receiving Harrison's December 24 email warning that Replicate would "run out of cash by the third week of January," Rigmora "set Replicate budget as our priority

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123 JX-1079 at 1.

124 Tr. (Harrison) 128:6–9.

125 JX-1079 at 1.

126 Bogdanov Dep. 228:13–15.

127 *Id.* 27:4–5.

and worked for the holidays."[128] But this "work" consisted of generating what Bogdanov described as "the list of the full-out diligence questions."[129]

On January 5, 2025, Bogdanov sent Harrison a list of 19 diligence questions for Replicate.[130] The list was "bizarre," in Harrison's words, since "this is a company that we founded I think in 2021 and on which we'd reported extensively, were the sole owner, and we had many, many, many conversations about with Dmitry."[131] Harrison noted that "typically when you know a deal and you're just funding specific programs that you know and you understand the technology and you understand management and everything, providing an additional relatively small amount of capital shouldn't require much diligence at all."[132]

Thus, Rigmora's 19 diligence requests disregarded known, long-discussed background concerning Replicate's pivot "from oncology to a rabies vaccine over the course of the fund's investment."[133] The requests were also open-ended, seeking, for example, narratives explaining whether Replicate had "lost its differentiation,"

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128 Tr. (Bogdanov) 291:11–16.

129 *Id.* 291:17–20.

130 JX-1107 at 3–6.

131 Tr. (Harrison) 82:22–83:3.

132 Tr. (Harrison) 83:4–9.

133 *Id.* 128:12–18; JX-1107. Bogdanov asked: "After four years, could you please outline the main reasons for shifting RBI-4000 and RBI-5000 from oncology to infectious disease indications?" Tr. (Harrison) 128:19–129:24.

and how its "technology evolved over the past four years compared to its main peers."[134] The requests were patently difficult to fulfill. When confronted on cross-examination about whether he even knew if his diligence questions could "be answered in a reasonable amount of time," Bogdanov admitted: "I didn't know."[135]

The pattern of interrogation was, as Harrison testified, "bizarre if the investor already knew about it and approved the budget that enabled it."[136]

Momentum only picked up with a series of meetings in Monaco in January among Rybolovlev, Bogdanov, Harrison, and Batarina, during which Bogdanov continued to issue requests for extensive, irrelevant information.[137] Although Rigmora eventually approved budgets for Replicate[138]—unlike the other companies listed in Harrison's December 24th communication—the diligence process for Replicate marked a departure from the historically collaborative approach over the Partnership's twelve-year history. Bogdanov introduced barriers where none had existed before.

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134 Tr. (Harrison) 130:4–16.

135 Tr. (Bogdanov) 328:17–329:1.

136 Tr. (Harrison) 129:3-5.

137 Tr. (Bogdanov) 293:3–11.

138 Rigmora initially approved Replicate budgets conditioned on, in addition to the Royalty Financing, a pharmaceutical deal with a third-party. *See* Tr. (Harrison) 87:4–17. It later contributed funds notwithstanding those conditions—part of the pick-and-choose, on-and-off approach to funding. *See* Tr. (Bogdanov) 295:13–18.

### B. Other Budget Delays Persist Through March

That newfound friction was intentional—an end in itself. Bogdanov specifically instructed Iskhakov (who had no science training) to generate diligence requests that would be onerous and time-consuming to fulfill.[139] Additional meetings occurred in March 2025 in Monaco to discuss the budget approval requests for Aulos, Ascidian, and Marengo.[140] As part of these meetings, ATP provided Bogdanov and Rybolovlev extensive presentation materials and data rooms.[141] The senior management teams for those companies flew overseas, as did consultant Bill Grossman, whom ATP engaged for Bogdanov's and Rybolovlev's benefit.[142] Grossman assessed courses of action for Aulos, but, eventually, at a subsequent meeting, Rybolovlev deferred to Harrison's expertise before agreeing, in Harrison's words, "we should do Aulos."[143]

In the end, however, the Monaco meetings only gave the illusion of progress toward funding. They did not result in approved budgets for Aulos, Ascidian, or Marengo.[144]

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[139] *See* JX-1287 at 1 (instruction to revise questions to be "open-ended"); *see also, e.g.*, JX-1107 at 1; JX-1112 at 1.

[140] Tr. (Harrison) 92:15–18.

[141] *Id*. 94:5–24; JX-1222 at 1.

[142] Tr. (Harrison) 95:1–18.

[143] *Id*. at 95:24–97:15.

[144] Tr. (Harrison) 97:16–18.

Rigmora's "diligence" requests gave Rigmora time to delay approving new budgets.[145] Rigmora concedes it lacked expertise to have evaluated the responses in any meaningful way, without subject matter experts on staff or retained consultants to assist.[146] The Bogdanov-led process was not only a departure from the Fund's prior budget practices, but also far outside the norm for follow-on investments by an investor with intimate knowledge of the companies. Harrison reflected at trial that "the totality of these diligence questions" was obstructionist.[147]

## VIII. Rigmora Weaponizes the GP's Good-Faith Efforts to Accommodate Rigmora's Purported Concerns

The stalling both on budgets and a Royalty Financing deal prompted Harrison to realize, in April 2025, that Rigmora was unwilling to approve any additional budget requests.[148] In light of this, with the understanding that the only capital the Partnership would receive from Rigmora would be capital called within approved budgets, Harrison tried to propose a way to "work within" Rigmora's imposed constraints to "figure out how to move some of the clinical projects along."[149] The

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[145] [redacted]. JX-1119 at 4; Bogdanov Dep. 213:16–220:25.

[146] *See, e.g.*, Bogdanov Dep. 31:2–9; 45:23–46:10; 46:11–15; Blöchlinger Dep. 37:17–25; Yakovlev Dep. 30:23–25.

[147] Tr. (Harrison) 131:1–10.

[148] *Id*. 97:19–98:20.

[149] *Id*.

reallocation proposal consisted of moving some of the approved budget amounts from the preclinical companies to clinical companies.[150]

Ultimately, the parties did not agree on the reallocation proposal.[151] Harrison testified that on or around May 9, he had a Zoom call with Bogdanov, Rybolovlev, and Batarina.[152] At this meeting Harrison provided a brief introduction and then offered a more formal presentation.[153] In response, Bogdanov and Rybolovlev said that such a presentation would be unnecessary as "[t]his is moving in the right direction" and the next step would be to meet with lawyers.[154]

The "lawyer call" followed on May 12, 2025, and Harrison characterized it as an "ambush."[155] Rigmora's attorneys distorted the purpose and meaning behind the reallocation proposal, saying to Harrison "it's obvious that you think the preclinical companies are worthless, otherwise why would you have proposed this reallocation."[156] On the contrary, as Harrison later clarified on May 19, 2025: "[redacted]

[redacted]

150 *Id*. 98:21–99:2.

151 *Id*. 99:3–6.

152 *Id*. 99:7–15.

153 *Id*.

154 *Id*.

155 *Id*. 100:18–21.

156 *Id*. 101:2–12.

[redacted]," and the reallocation proposal was only "[redacted]."[157]

In any event, Harrison withdrew the proposal on the May 12 call.[158] Nevertheless, on May 15, Rigmora again exploited Harrison's good-faith compromise by using it to justify imposing new, severe conditions on any further funding.

## IX. Rigmora's May 15 Email Makes Its Exit Scheme Explicit

Facing urgent budget requests, Bogdanov responded to ATP in a May 15, 2025 email that contained numerous concerning components (the "May 15 Email").[159]

***First***, Bogdanov declared that the Fund should cease further funding of seven preclinical companies, which he referred to as the "Early-Stage Companies," and which all had approved yet unspent budgets.[160] He claimed those companies had "no way for a path to commercial success," had "failed to meet the milestones set out in

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157 JX-1336 at 1.

158 *See* Tr. (Bogdanov) 305:18–20.

159 JX-1319 at 1.

160 *Id*.

the investment memoranda on which [Rigmora's] initial funding was premised," and there was "no third party interest."[161] In casting the companies as dead-ends, the May 15 Email continued to make use of Harrison's reallocation proposal, misstating that Harrison "hold[s] a similar view" that "further funding of those Early-Stage Companies will waste the ATP Fund's assets."[162]

***Second***, though Rigmora had already approved those budgets, Bogdanov flipped the burden on ATP. He invited a "detailed explanation" of why, despite the companies' supposed unworthiness, Rigmora should "contribute further capital" to the preclinical companies.[163] Bogdanov stated Rigmora's intent to "comply" with the LPA but conditioned its cooperation on whether ATP could "demonstrate that the LPA allows" ATP to call further capital.[164]

***Third***, Bogdanov expressly conditioned any further funding of the four *clinical stage companies* on ATP's agreement to "wind down or liquidate the Early-Stage Companies."[165] After months of work to justify budget requests for the clinical companies whose requests ATP issued on December 24, 2024, Rigmora confirmed

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161 *Id*.

162 JX-1336 at 1–2.

163 JX-1319.

164 *Id.*

165 Bogdanov did not address the two preclinical companies Nereid and Nine Square that had already expended their initial Series A funding. *See id.*

that it would not even "consider" those budgets until ATP agreed to release Rigmora from its obligations to meet capital calls for already-approved budgets and abandon existing investments through liquidation or wind down.

***Fourth***, the May 15 Email demanded "objective information" to "facilitate the discussion" of any "new budgets"—suggesting that Bogdanov had not digested the past five months' data.[166]

***Finally***, the May 15 Email buried its lede. In the penultimate sentence, Bogdanov stated that, as a threshold matter, Rigmora rejected any further funding obligations because it does "not presently have any outstanding capital commitments to ATP Fund and therefore has full discretion whether to agree to fund any new investment proposals."[167]

After five months of performative diligence requests and delay tactics that created *the appearance* of legitimate inquiry and the *illusion* of progress, the May 15 Email finally revealed what Bogdanov's "tight controls" were intended to achieve: an exit from biotech venture investing. The ultimatum—liquidate the preclinical companies *with already approved budgets* or receive no funding for companies *in the midst of clinical trials*—was not a negotiation but the execution of the strategy

166 *Id.*

167 *Id*.

Bogdanov had mapped out in 2022, when he declared that Rigmora needed to "drastically reduce ATP payments" and put a "plug on expenses."[168]

## X. ATP Calls Six Months Of Capital; Rigmora Fails to Fund

On May 30, the GP called [redacted] in capital for the preclinical companies as well as Replicate, Marengo, and Ascidian and [redacted] in ATLS Fees and partnership expenses.[169] ATP determined to call the capital necessary to fund the ATLS Fee, certain existing Fund expenses, and capital needed to maintain research activity at each of the below preclinical companies with remaining approved (but unfunded) budgets:

| Company | Pool | Capital Called | Unfunded Approved Budget[170] |
|---|---|---|---|
| Aethon | ATP V-2 | [redacted] | [redacted] |
| Apertor | ATP V-2 | [redacted] | [redacted] |
| Ascidian | ATP V-3 | [redacted] | [redacted] |
| Deep Apple | ATP V-2 | [redacted] | [redacted] |
| Evercrisp | ATP V-2 | [redacted] | [redacted] |
| Initial | ATP V-1 | [redacted] | [redacted] |
| Marengo | ATP V-3 | [redacted] | [redacted] |
| Marlinspike | ATP V-2 | [redacted] | [redacted] |
| Red Queen | ATP V-2 | [redacted] | [redacted] |
| Replicate | ATP V-2 | [redacted] | [redacted] |
| **TOTAL**: | | [redacted] | [redacted] |

[168] JX-463 at 2–3.

[169] *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

[170] JX-1622.

ATP worked to calculate the amounts in the foregoing May 30 capital calls, plus a call for [redacted] in ATLS Fees and already-incurred partnership expenses (together with a revised June 1 capital call for Replicate, the "May 30 Calls"). As Harrison testified, the figures were keyed to estimates for six months of budgets, with the goal of permitting company survival and "following forward on … research plans."[171] At trial, Rybolovlev corroborated this view that six-months' worth of money permits a company's "normal functioning."[172]

With the exception of Replicate, for which the GP issued a revised capital call on June 1, 2025, the May 30 Calls were due on June 13, under paragraph 5(a) of the LPA.[173] The revised Replicate capital call was due June 16, 2025.[174] Rigmora has never contributed capital in response to any of the May 30 Calls.[175]

ATP issued Default Notices on June 17, 2025,[176] but an *ex parte* order in the later-filed Cayman Islands litigation enjoins the GP from "taking any [further] steps to designate, deem or treat the Plaintiffs as a 'Defaulting Partner' … or enforce any

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171 Tr. (Harrison) 110:8–21.

172 Tr. (Rybolovlev) 392:8–11.

173 *See* JX-1387 at 1; JX-1388 at 1; JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1396 at 1; JX-1397 at 1; JX-1398 at 1; JX-1415 at 1.

174 JX-1415 at 1.

175 PTO ¶ 78.

176 *See, e.g.*, JX-1620.

purported 'Default Notice' or 'Default Charge' against the Plaintiffs; … arising out of or in relation to the Plaintiffs' non-payment of the capital calls issued by the Defendant on 30 May 2025 and 1 June 2025 respectively" (the "Cayman Order").

## XI. The Fund's Investments Achieve Significant Scientific Progress

The Fund currently has fifteen portfolio companies. Each company is co-founded or co-led by at least one ATP Venture Partner, who help with growth and development to realize each company's unique value proposition and investment thesis.[177] The Venture Partners help the portfolio companies with all aspects of growth and development, both scientific and non-scientific.

Expert analysis from Mark Robbins, Ph.D, J.D., validates the scientific merit undergirding each portfolio company and the portfolio at-large. Robbins' analysis relied on, *inter alia*, the composition of each company's management team, development progress that has been made and is expected to be made, the presence of IP protections, the ability of a company's therapeutic to meet an unmet need, and third-party interest in the companies.[178]

[177] *See, e.g.,* Tr. (Liras) 242:11–243:3; 160:11-18.

[178] Tr. (Robbins) 180:3–16; JX-1573 (Robbins Opening) ¶ 34.

### A. Seven Preclinical Companies Show Promise

The seven preclinical companies[179]—Aethon, Apertor, Deep Apple, Evercrisp, Initial, Marlinspike, and Red Queen—each have shown technical merit in addressing a major unmet therapeutic need. In some instances, initial research and data provided pivot points for the preclinical companies to refocus their efforts on unexpected, more fruitful avenues. ATP personnel, including Harrison and Venture Partner Spiros Liras, PhD, testified at length to these facts, which were further expounded upon by Robbins,[180] whose analysis of the preclinical companies, individually and in aggregate, indicated "significant scientific and clinical potential."[181]

Robbins sets out a laundry list of scientific luminaries and experienced biotech executives involved in each preclinical company's founding.[182] All seven companies have made noteworthy development progress,[183] and each has significant development progress on the horizon.[184] All have generated third-party interest,

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[179] PTO ¶ 41. In Defendants' correspondence to ATP dated May 15, 2025, and from time to time thereafter, these companies have also been referred to as "Early Stage Companies." *Id.*

[180] *See, e.g.,* Tr. (Harrison) 74:13–20; Tr. (Liras) 246:23–247:16.

[181] JX-1573 (Robbins Opening)¶¶ 23(iv), 38; Tr. (Robbins) 183:13–23.

[182] JX-1573 (Robbins Opening) ¶¶ 70, 49, 80, 89, 97; Tr. (Robbins) 187:19–188:11.

[183] JX-1573 (Robbins Opening) ¶¶ 55, 74, 76(ii), 84, 91, 102, 110, 117; Tr. (Robbins) 186:9–17 ("All the preclinical companies had made significant development progress.").

[184] *Id.* ¶¶ 53, 74, 76(ii), 84, 94, 102, 110, 119.

including from pharma giants like Eli Lilly, Novartis, Novo Nordisk, Pfizer, Merck, and AstraZeneca.[185]

For example, Aethon is an immuno-oncology company with a focus on developing synthetic antibodies that target cancer cells.[186] Its founders include fellows in prominent scientific organizations and past biotech founders.[187] Aethon has entered into a multi-year collaboration agreement with Revolution Medicines, under which Aethon is entitled to approximately [redacted] in research funding from Revolution and option-based future payments that could potentially total up to $940 million, plus royalties.[188] As of February 2025, Aethon was on track to announce development candidates in late 2025 or early 2026.[189]

Deep Apple, on the other hand, illustrates the value derived from a company shifting its therapeutic focus when enabled by data. Deep Apple's technology allows for the relatively rapid technology-assisted review of how billions of different

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[185] *Id.* ¶¶ 56 (Evercrisp discussions with Lilly and Novartis), 75 (Aethon collaboration with Revolution Medicines), 94 (Initial discussions with Merck, J&J, and Ono), 104 (interest in Red Queen from "several investors" and grant from U.S. federal government), 111 (Marlinspike discussions with AstraZeneca, Roche/Genentech, Lilly), 121 (Deep Apple discussions with 30 potential investor partners and 15 pharma partners).

[186] *Id.* ¶¶ 69, 71.

[187] *Id.* ¶ 70.

[188] *Id.* ¶ 75; Tr. (Robbins) 186:21–187:1.

[189] JX-1573 (Robbins Opening) ¶ 74; JX-1210 at 3.

chemical compounds may attach to certain proteins within the body.[190] Deep Apple's research could apply across a wide range of therapeutic needs, making the potential for commercialization profound.[191]

As Liras testified at trial, following initial research and discussion with scientific project leads, Deep Apple narrowed its focus "to move in, all-in, in obesity" in light of increased commercial activity and demand in this space.[192] Deep Apple " is now yielding several clinical candidates."[193] One such clinical candidate was the basis for Deep Apple's partnership with Novo Nordisk, for which Deep Apple received an upfront payment of approximately [redacted], with the potential to earn up to $812 million in total.[194]

Value propositions for the remaining preclinical portfolio companies include[195]:

- **Apertor**, focused on developing molecules that disrupt disease-causing protein interactions[196];

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190 *See* Tr. (Liras) 260:20–261:2; JX- 0289 at 1–2; JX-1573 (Robbins Opening) ¶ 115.

191 Tr. (Liras) 260:20–261:2; JX- 0289 at 1–2.

192 Tr. (Liras) 261:3–21.

193 *Id.*

194 Tr. (Liras) 261:3–21; JX-1427; JX-1428.

195 In addition, ATP has two other preclinical companies in its portfolio, Nereid and Nine Square.

196 JX-1573 (Robbins Opening) ¶ 79.

- **Evercrisp**, a genetic medicine delivery platform founded by Nobel Laureate Dr. Jennifer Doudna[197];

- **Initial**, developing molecules that can disrupt the creation of disease-causing proteins at the cellular level[198];

- **Marlinspike**, fighting cancers by regulating how cells process genetic mutations that can cause cancer[199]; and

- **Red Queen**, developing rapid response antiviral medicines to protect against rapidly-evolving influenzas, coronaviruses, and other pathogens.[200]

### B. Clinical-Stage Companies Continue to Advance

ATP has four additional companies in its portfolio that are currently at the clinical trial stage:

- **Aulos**, an immuno-oncology company developing an antibody that focuses the immune system's ability to attack cancer cells[201];

- **Ascidian**, an RNA-editing company with a focus on Stargardt disease, a major cause for macular degeneration and blindness in children[202];

- **Marengo**, an immuno-oncology company developing antibodies harnessing the immune system's ability to fight cancer[203]; and

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197 *Id.* ¶ 49.

198 *Id.* ¶ 88.

199 *Id.* ¶ 108.

200 *Id.* ¶ 96.

201 *Id.* ¶¶ 124, 126.

202 *Id.* ¶ 154.

203 *Id.* ¶ 147.

- **Replicate**, developing self-replicating RNA medicines to create protein factories inside the body that become the source of therapeutics.[204]

Robbins's analytical framework applies equally to the Fund's clinical-stage companies.[205] Each of the four clinical-stage companies has a "who's-who" lineup of founders and leaders, including past biotech CEOs who have sold their companies to pharma giants like Bristol Myers Squibb and Amgen for billions of dollars,[206] inventors on dozens of patents,[207] and seasoned pharma executives and scientific leaders.[208] The clinical stage companies are all currently engaged in active clinical trials[209] and have generated interest from potential third-party collaborators.[210]

Replicate is another testament to the value of shifting research focus. Replicate's RNA technology was originally focused mostly on creating cancer vaccines; this focus was pronounced Replicate's original investment memorandum.[211] As Harrison testified, however, the company realized the

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[204] *Id.* ¶¶ 133, 136.

[205] *Id.* ¶¶ 33–34.

[206] *Id.* ¶ 125.

[207] *Id.* ¶ 133–134.

[208] *Id.* ¶ 155.

[209] *Id.* ¶¶ 126–128; 137–142; 149–150; 157.

[210] *Id.* ¶¶ 131 (Aulos' developing partnerships with Pfizer, Regeneron); 143 (Replicate's partnership with leading Brazilian pharma company, and negotiations with Novo Nordisk); 152 (Marengo in partnerships with Ipsen and Gilead); 158 (Ascidian partnership with Roche, and discussions with Lilly, Regeneron, and Bayer).

[211] JX-0150 at 9.

applicability of this technology to the delivery of a rabies vaccine.[212] In light of this, Replicate is in late partnership discussions with Brazilian pharma giant Instituto Butantan, which will enable Replicate to push its rabies vaccine toward commercialization globally.[213]

## XII. The Portfolio Companies Face Immediate Harm, Threatening Years Of Scientific Progress And Life-Saving Therapies

Rigmora's actions have put the companies at risk of significant, imminent harm. The negative impacts of a funding default for early-stage life sciences companies are numerous, including, but not limited to, loss of talented personnel, delayed or abandoned R&D, difficulties restarting halted or delayed trials, difficulty attracting future investments or partners, and negative market perception in general.[214] Further, abruptly discontinuing or withholding funding for preclinical companies can trigger bankruptcy proceedings, leading to distressed sales of the key assets for "a fraction of their actual value."[215]

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[212] Tr. (Harrison) 85:20–86:18.

[213] *Id.*; JX-1573 (Robbins Opening) ¶ 143.

[214] JX-1572 (Rao Opening) ¶ 67; *see also* Tr. (Harrison) 60:19–10; Tr. (Yanchik) 165:5–21; JX-1174 at 2 (without "financing rounds to achieve value-creating milestones plus margins of at least six months … biotech investors do not invest, and typically top founders and high-quality managers will not participate.").

[215] JX-1573 (Robbins Opening) ¶ 162.

Already, the preclinical companies are in "desperate condition" due to Rigmora's refusal to meet its funding obligations.[216] ATP has kept them alive during this litigation by paring back operations with the goal of preserving "critical projects" and "key employees [who] retained the knowledge."[217] This has required ATP to move certain companies out of their facilities, sell capital equipment, reduce research programs, and terminate approximately 70% of employees portfolio-wide.[218] Even with such protective measures, one company has already been forced to cede valuable technology back to the source institution.[219]

The companies are currently in a form of "stasis" such that their research could ramp up again upon receipt of funding.[220] However, as Yanchik testified, "that opportunity will exist" only for "a finite period of time."[221] That is because, in Yanchik's words, "whenever you stop a research organization, it starts to deteriorate."[222] The companies face an imminent risk of losing key employees and

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[216] Tr. (Harrison) 113:14–16; *see also* Tr. (Liras) 265:18–22 (recent lack of funding is "devastating").

[217] Tr. (Harrison) 114:2–12; Tr. (Yanchik) 163:17-164:10.

[218] Tr. (Harrison) 113:14–114:1; Tr. (Yanchik) 162:23–163:6; *see also* Tr. (Liras) 266:1–7 ("[T]he companies at this point in time are … operating with skeletal crew").

[219] Tr. (Harrison) 113:14–114:1.

[220] Tr. (Yanchik) 163:17–165:4; *see also* Tr. (Harrison) 114:2–12.

[221] Tr. (Yanchik) 164:18–165:4; *see also* Tr. (Harrison) 114:2–12.

[222] Tr. (Yanchik) 165:5–9; *see also id.* 166:6–167:2.

competitive advantages if additional funding is not received soon, diminishing or even destroying the value of years of research.[223] Worse yet, the companies could be forced into bankruptcy by their creditors.[224] Yanchik, who has been the primary representative for the companies in communications with the creditors,[225] testified at trial that he does not "believe [the creditors] will hold off for much longer … and then [ATP is] likely to lose the assets" entirely.[226]

The current and anticipated harm as a result of the funding shortfall is precisely why the partners agreed, when they entered the LPA, that "the damages suffered by the Partnership as the result of any failure by a Limited Partner to timely make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy."[227]

## ARGUMENT

### I. Rigmora Breached the LPA

#### A. Legal Standards

The LPA states that the "terms and provisions" of the LPA "shall be construed under the laws of the Cayman Islands, and thus this Court should apply Cayman law

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223 *Id.* 165:5–16.

224 *Id.* 165:17–21.

225 *Id.* 163:3–6.

226 Tr. (Yanchik) 165:17–21.

227 JX-0001 (LPA) ¶ 5(c).

in determining breach. LPA ¶ 18(g)(1).[228] The elements to prove a breach are: (1) a valid contract, (2) a breach of that contract, and (3) damages arising from the breach.[229]

Under Cayman law, a court interprets a written contract according to "the intention of the parties by reference to 'what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the context to mean.'"[230] The aim is to ascertain the "objective meaning" of the contract based on not just the language of a particular clause but on the "contract as a whole and, depending on the nature, formality and quality of drafting of the contract, give more or less weight to elements of the wider context in reaching [a] view as to that objective meaning."[231]

Contract interpretation is a "unitary exercise involv[ing] an iterative process by which each suggested interpretation is checked against the provisions of the contract and its commercial consequences are investigated," and a close textual

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[228] PTO ¶ 25.

[229] JX-1588 (Phillips Opening) ¶ 56. The same elements apply under Delaware law, *e.g.*, *Kuroda v. SPJS Hldgs.*, 971 A.2d 872, 883 (Del. Ch. 2009), and there is therefore no conflict as to the basic elements of the claim.

[230] JX-1574 (Bloch Opening) ¶ 23(1). *See also* JX-2032 at 18, *Investors Compensation Scheme*, at 913 ("[T]he meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean.").

[231] *Id.* ¶ 23(2).

reading is balanced against "the factual background and the implications of rival constructions" to arrive at the objective meaning of the contract.[232]

Partnership agreements, like other contracts, are to be construed with "regard … to the factual matrix in which it was executed."[233] When the language of an agreement is unclear, a court applying Cayman law "may be particularly helped by considering the factual matrix and the purpose of similar provisions in contracts of the same type."[234] *However*, "[t]here is no need to find any ambiguity in the contract before the principle" of the factual matrix "can be brought into play."[235]

The scope of the factual matrix is expansive; as Lord Hoffmann stated in *Investors Compensation Scheme*, it includes anything that would have affected the way in which the language would have been understood by a reasonable man.[236] This includes not only factual matters but also, as Justice Leggatt explained in *Yam Seng*, "shared values and norms of behaviour" whether general, specific to the

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[232] *Id.* ¶ 25.

[233] JX-1588 (Phillips Opening) ¶ 58 (quoting JX-2080, *Lindley & Banks on Partnership* ("*Lindley*")).

[234] JX-1574 (Bloch Opening) ¶ 25; *accord* JX-1588 (Phillips Opening) ¶ 61.

[235] JX-1588 (Phillips Opening) ¶ 58 (quoting *Lindley*).

[236] *Invs. Comp. Scheme Ltd v. West Bromwich Bldg. Soc.* [1997] UKHL 28, 912–913 ("Subject to the requirement that it should have been reasonably available to the parties" and the exception of "declarations of subjective intent", "it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.").

industry, or, as critical here, "arising from features of the particular contractual relationship."[237] As Leggatt observes, "[m]any such norms are naturally taken for granted by the parties when making any contract without being spelt out in the document recording their agreement," necessitating a broader view of the context of contracting when interpreting the language of the contract.[238]

### B. Rigmora Has Outstanding Funding Commitments

A valid contract exists (the LPA) and Rigmora remains bound by its funding commitments. Rigmora currently has over [redacted] in outstanding funding commitments to the Fund, consisting of approximately [redacted] in unfunded, approved budgets,[239] and approximately [redacted] in committed capital toward unapproved budgets. Of those remaining commitments, approximately [redacted] of the unfunded, approved budgets were allocated to Deep Apple, Initial, Aethon, Replicate, Evercrisp, Red Queen, Apertor, and Marlinspike in Pools V-1 and V-2,[240] and approximately [redacted] of the unfunded, approved budgets were allocated to Marengo and Ascidian of Pool V-3.[241] And yet on the basis of no support other than Bogdanov's desire to focus Rigmora's investments on other "cash

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237 *Yam Seng Pte v. Int'l Trade Corp*, [2013] EWHC 11 (QB) [134].

238 *Id.*

239 *See* JX-1622 at 10, 13.

240 JX-1622 at 10.

241 JX-1622 at 13.

cow" projects and away from biotech, Rigmora takes the position that it has exceeded the capital commitments it agreed to fund, and on those grounds, it refuses to meet capital calls or to engage in good faith on reasonable budget approvals. Rigmora's position is contradicted by the overwhelming evidence reflecting not only the parties' longstanding intention regarding Rigmora's remaining capital commitments but also—consistent with Cayman law—the objectively reasonable interpretation of intent according to the facts as known to the parties at the time of execution.

Following success flowing from the parties' investments through the initial $1.5 billion in commitments to the Fund, Rigmora twice agreed, through Amendments 17 and 20, to increase its overall capital commitments to ATP through express commitments to Pools V-1, V-2, V-3, and Braeburn.

***First***, pursuant to Amendment 17, Rigmora agreed to commit $1 billion in new money to be split between the two pools that would later be renamed Pool V-1 and Pool V-2.[242] Rigmora agreed to be solely responsible for this new capital commitment. Amendment 17 unambiguously provided that Rigmora would commit to Pool V-2 "such amount … as is equal to $1 billion minus the aggregate amount

[242] *Id.* (setting forth that commitments to Pool C would consist of "such amounts of Contingent Subscriptions by the Subject Limited Partner as is equal to $1 billion minus the aggregate amount of capital contributions made from time to time by the Subject Limited Partner to Pool B").

of capital contributions made from time to time by [Rigmora] to" Pool V-1. In other words, the $1 billion commitment would be split exclusively between Pool V-1 and Pool V-2. Blue Horizon and Ezbon executed subscription agreements shortly thereafter committing to contribute [redacted] and [redacted], respectively, to Pools V-1 and V-2.[243]

***Second***, pursuant to Amendment 20, Rigmora and Harrison agreed to an overall increase in their respective commitments to the Fund. This increase flowed from a complex, carefully negotiated process that consisted of: (i) writing down the approximately [redacted] in remaining commitments to Pool IV, save for an estimated [redacted] in fees and expenses (ultimately [redacted]) associated with litigation concerning portfolio company Syntimmune; (ii) establishing a new Pool V-3, with approximately $310.5 million in commitments following execution of the amendment; (iii) establishing a new Pool Braeburn, with [redacted] in commitments following execution of the amendment; and (iv) leaving undisturbed the remaining uncalled commitments to Pools V-1 and V-2 from the $1 billion subscription agreements that accompanied Amendment 17.[244] Rigmora and Harrison agreed to Pool V-3 commitments.

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[243] Tr. (Harrison) 41:15–42:154; JX-0099; JX-0101.

[244] JX-1061 at 3–11.

Every capital call after Amendment 20 included an "Exhibit A" with a detailed chart laying out, on a pool-by-pool basis, the uncalled committed capital prior call, the amount of capital called from each applicable pool relevant to that call, and the amount of uncalled committed capital that would remain in each pool after the call, consistent with the figures set forth above. The chart was first transmitted to Rigmora three days after Amendment 20 in a June 24, 2021 capital call. That call reflected $1.462 billion in unfunded commitments prior to the call, consisting of (i) an estimated $20 million to Pool IV for fees and expenses; (ii) [redacted] to Pools V-1 and V-2; $310.5 million to Pool V-3; and [redacted] to pool Braeburn. Rigmora's CFO, Yakovlev, testified at trial that he was unaware of Rigmora ever challenging these figures. Harrison also was unaware of Rigmora ever challenging this commitment calculation prior to Kolonchina suddenly asserting in October 2024 that Rigmora was no longer obligated to meet capital calls.

Over the following four years, ATP would call capital from time to time, and Rigmora would meet those capital calls consistent with its obligation under Paragraph 5(a) of the LPA. Each time Rigmora met a capital call, it did so recognizing that Rigmora had hundreds of millions of dollars in outstanding commitments to Pools V-1 and V-2, Pool V-3, and Pool Braeburn.

***Finally***, Rigmora's internal records confirm that they also recognized over $500 million in remaining commitments. On January 20, 2025, Bogdanov discussed

with Ishakov what the financial condition of Rigmora's investments in ATP would look like if Rigmora "stop[ped] additional investments and worked with the current budgets" in ATP.[245] The analyst sent Bogdanov an internal Rigmora record indicating that Rigmora would have over [redacted] in "residual commitments" across Pools V-1, V-2, and V-3.[246] Only five days earlier, Rigmora General Counsel Patrik Blöchlinger revised this same tracker and provided comments that Ishakov implemented into the version he sent to Bogdanov.[247]

### C. Rigmora Breached Its Express Duty To Meet Capital Calls For Companies With Approved Budgets

The trial record establishes that Rigmora breached its obligation to meet capital calls for companies with approved budgets. On May 30 and June 1, 2025, ATP issued capital calls for ten portfolio companies against their existing, approved budgets: Deep Apple, Aethon, Replicate, Evercrisp, Red Queen, Apertor, Initial, and Marlinspike of Pools V-1 and V-2, and Marengo and Ascidian of Pool V-3.[248] These approved budgets were well within the remaining commitments for each pool. And yet Rigmora has refused to meet these calls. Rigmora's unjustified refusal constitutes material breach.

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245 JX-1142 at 1.

246 JX-1142 at 1.

247 JX-1635 at 1.

248 JX-1622 at 1, 13.

### 1. Rigmora Breached Paragraph 5(a) With Respect To The Pool V-1 And V-2 Preclinical Companies

Paragraph 5(a) of the LPA allows the GP to call capital in amounts equal to the LP's Contingent Subscription, ¶ 5(a)(i), in amounts sufficient to enable the Fund to invest in projects with approved budgets, ¶ 5(a)(ii)(E), and in amounts sufficient to cover Partnership expenses, ¶ 5(a)(ii)(A)–(B), and an approved ATLS Fee, ¶ 20(e). The LPA is clear that "[a] Partner may not make less than the full amount of any required capital contribution." ¶ 5(a)(i). Discretion to issue these capital calls rests with the GP.

In breach of Paragraph 5, Rigmora failed to meet eight capital calls ATP issued on May 30 and June 1, 2025 for portfolio companies in Pools V-1 and V-2 with existing, approved budgets. The facts are simple:

***The GP validly called capital.*** On May 30 and June 1, ATP called $51.8 million in capital portfolio companies in Pools V-1 and V-2.[249] These calls were well within the approximately [redacted] in budgeted, uncalled capital commitments for Pools V-1 and V-2 as of May 30.[250]

[249] *See* JX-1622 at 10.

[250] Tr. (Harrison) 90:13–21.

***The capital came due.*** With the exception of Replicate, which was due June 16 following a revised capital call on June 1, the May 30 Calls were due on June 13.[251]

***Rigmora did not pay when due.*** It is undisputed that Rigmora did not answer the May 30 Calls by June 13 or 16, and it has not since.[252]

Harrison testified at trial that ATP issued these calls to provide six months' of budget to carry forward research plans.[253] Following Rigmora's failure to meet these capital calls, ATP issued notices of default to Rigmora, notifying the Limited Partner that its failure to contribute capital violated the LPA.[254] Notwithstanding receipt of these calls and default notices, Rigmora has yet to contribute the capital.

### 2. Rigmora Breached Paragraph 5(a) With Respect To The Pool V-3 Preclinical Companies

For the same reasons that Rigmora's failure to meet calls for Pools V-1 and V-2 constituted a breach, Rigmora's failure to meet capital calls for companies in Pool V-3—Marengo and Ascidian—constitute a breach of Paragraph 5(a) of the LPA. On May 30 the GP called [redacted] in capital for portfolio companies in

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[251] *Id.*; *see also* JX-1390 at 1; JX-1391 at 1; JX-1393 at 1; JX-1394 at 1; JX-1395 at 1; JX-1397 at 1; JX-1398 at 1.

[252] PTO ¶ 78; Tr. (Harrison) 113:3–5.

[253] Tr. (Harrison) 109:1–110:24.

[254] *Id.* 113:6–13; JX-1610 at 1; JX-1611 at 1; JX-1613 at 1; JX-1614 at 1; JX-1615 at 1; JX-1617 at 1; JX-1619 at 1; JX-1620 at 1.

Pool V-2.[255] These May 30 Calls were due on June 13.[256] Harrison testified at trial that ATP issued these calls to provide six months of budget to carry forward research plans for each of these portfolio companies.[257] These calls were within the approximately [redacted] in budgeted, uncalled capital commitments for Pool V-3, and the applicable approved budgets for each of these portfolio companies, as of May 30.[258]

### 3. Rigmora Breached Paragraph 5(a) And 20(e) With Respect To The ATLS Fee And Partnership Expenses

Rigmora's failure to pay the ATLS Fee and Partnership Expenses also breached the LPA. As to the ATLS Fee, the GP called [redacted], half of the annual amount that Rigmora agreed to pay in Amendment 20 and refused thereafter to increase.[259] The LPA requires Rigmora to "make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance."[260] As to Partnership expenses, Paragraph 5(a)(ii)(A) and (B) require Rigmora to pay capital calls for existing Partnership expenses as well as those expected to be incurred over the next

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255 *See* JX-1392 at 1; JX-1396 at 1.

256 *Id.*

257 Tr. (Harrison) 109:1–110:24.

258 *Id.* 89:6–90:21; JX-1622 at 13.

259 JX-0222 at 10 (LPA Am. 20 ¶ 6).

260 *Id.*

six months.[261] Rigmora has no consent rights with respect to Partnership expenses.[262] The May 30 Call for expenses for the prior six-month period from December 2024 to May 2025 thus fell squarely within Paragraph 5(a)(ii), and Rigmora was required to meet it.

It is undisputed that Rigmora failed to answer the May 30 Calls when due, and has not done so since.[263] ATP then notified Rigmora that its failure to contribute capital consistent with its obligation to do so under the LPA violated Paragraph 5(c).[264]

#### 4. Rigmora's Milestone Defense Is Anti-Contractual And Factually Wrong

Rigmora seeks to escape its funding obligations by pointing to purported missed "milestones" set in outdated investment memoranda.[265] This defense fails as a matter of law and fact.

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[261] JX-00004 at 2 (LPA Am. 3).

[262] JX-0011 at 10 (LPA Am. 9) ("For the avoidance of doubt, the Partnership's budget delivered to the Subject Limited Partner shall be provided for informational purposes only and the Subject Limited Partner shall have no consent rights in relation to such budget.").

[263] PTO ¶ 78; Tr. (Harrison) 113:3–5.

[264] Tr. (Harrison) 113:6–13; JX-1612 at 1; JX-1616 at 1.

[265] Rigmora Br. Dkt. 203 at 42 ("Any capital calls for those companies would therefore be invalid under paragraph 5(a)(ii)(E) of the LPA, which provides that a capital call may not be made except 'in accordance with' a portfolio company budget.").

***First***, milestones are not contractually required. The LPA contains no milestone conditions either as a precondition for budget approvals, a second-look contingency before funding approved budgets, or a condition to calling capital. To the extent that the parties agreed to impose milestones—as they did with the Replicate budget approval—they did so expressly, not through some implied incorporation of investment memoranda.[266] And although five companies' (Marlinspike, Aethon, Aulos, Braeburn, and Replicate) Series A agreements originally contained milestone conditions, such conditions applied to *the Fund's* obligation to fund the companies, not the LP's obligation to review budgets in good faith or meet capital calls.[267] Only the LPA—not any company purchase agreement or memoranda—determines Rigmora's rights and obligations with respect to budgets and capital calls for the already-approved budgets. Even so, the Series A agreements provide discretion to fund the companies, notwithstanding milestones.[268]

***Second*****,** the milestones in dated investment memoranda misalign with the commercial realities of biotech investing.[269] As Robbins explained, "[m]any very

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[266] *See* Tr. (Harrison) 33:23–34:5.

[267] *See* JX-2201; Tr. (Harrison) 140:5–10; *see, e.g.*, JX-1329 at 64, 167, 441, 586.

[268] *See e.g.*, JX-1329 at 71.

[269] *See* Tr. (Harrison) 105:3–11; JX-1583 (Robbins Rebuttal) ¶ 26. For example, Liras testified that milestones "shouldn't be" static requirements "because … early research … changes quite rapidly." Tr. (Liras) 245:4–17.

successful therapeutics have missed development milestones."[270] Apparent "misses" were actually successful pivots that increased value. Deep Apple pivoted to obesity and secured a partnership worth up to $812 million with Novo Nordisk.[271] Apertor's pivot led to a "breakthrough publication" demonstrating "incredible" platform value and delivering clinical candidates.[272] Information regarding portfolio companies' pivots were regularly reported to Rigmora in quarterly reports provided by ATP.[273]

And even if, arguendo, milestones were informative, Bogdanov's team—lacking scientific expertise—could not meaningfully assess whether milestones were missed or what any miss indicated about the companies' prospects. Rigmora did not staff anyone with a scientific background like that of Dr. Rimm, for example—whose post-hoc analysis of the missed milestones bore no connection in reality to the analysis that Rigmora actually conducted.[274]

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[270] Tr. (Robbins) 189:11–18.

[271] Harrison Dep. 330:16–331:11; JX-1583 (Robbins Rebuttal) ¶ 26.

[272] Tr. (Liras) 253:13–254:3.

[273] *Id.* 255:13–256:21; *see, e.g.*, *id.* 257:2–259:1, 260:18–264:9; JX-0560 at 11; JX-0824 at 2.

[274] *See* Tr. (Rimm) 443:9–20.

***Third***, Rigmora went nearly thirteen years without requesting information about information about milestones.[275] It was only when Rigmora needed a pretext to renege on obligations and a litigation strategy to defend its conduct that Rigmora's interest in milestones suddenly piqued.

***Fourth*,** Rigmora's assertions that the preclinical companies all were missing milestones is counterfactual. Bogdanov's own analyst reported that Red Queen and Marlinspike had "actually achieved and were in line with their investment memo milestones."[276] When confronted with this evidence, Bogdanov could only characterize it as his analyst's "guess."[277] Indeed, Bogdanov admitted he "didn't know for sure" whether all companies had missed milestones and that Rigmora "missed information to assess their performance" for some companies.[278]

Rigmora cannot retroactively invalidate its obligation to fund budgets it already approved through selective milestone analysis. Tellingly, before May 2025, Rigmora never checked milestone status before funding capital calls on approved

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[275] Tr. (Bogdanov) 332:1–333:2.

[276] *See* JX-1285; Tr. (Bogdanov) 334:6–20.

[277] Tr. (Bogdanov) 334:9–10.

[278] *Id.* 333:14–18.

budgets.[279] This thirteen-year practice confirms the parties' shared understanding that investment memoranda milestones were not budget funding conditions.

### D. Rigmora Breached Its Implied Duties To Consider Budgets In Good Faith, Honestly, And Rationally

Rigmora breached implied duties in its abuse of power when reviewing and denying the December 24 and Marengo budget requests.

#### 1. Implied Duties Constrain Rigmora's Discretion to Deny Budgets

English and Cayman common law recognize that terms may be implied in a contract when "the term must be necessary either to spell out what is so obvious that it goes without saying or to give business efficacy to the contract."[280]

Following those principles, courts have recognized implied duties of good faith, rationality, and honesty.[281] In *Braganza v. BP Shipping Ltd*, the UK Supreme Court held that "where contractual terms gave one party to a contract the power to exercise a discretion or form an opinion as to relevant facts … the court would seek to ensure that the power was not abused by implying a term in appropriate cases."[282]

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[279] *Id.* 332:10–333:5.

[280] *USDAW v. Tesco Stores,* [2024] UKSC 28 at [102]; *see also Marks & Spencer v. BNP Paribas* [2015] UKSC 72 at [21]; *Primeo Fund (In Official Liquidation) v. Bank of Bermuda (Cayman) Ltd.*, [2017] (2) CILR 334 at [440]; *Cayman Shores v. Registrar of Lands*, [2021] (2) CILR 1 at [38].

[281] *See* JX-1574 (Bloch Opening) ¶¶ 49-51, 55 (collecting cases).

[282] [2015] UKSC 17, at Headnote, [18]-[19]; *see also id.* at [28]-[33] (discussing approach to implying terms).

The *Braganza* court identified key factors supporting implied constraints: (1) the existence of a discretionary power granted to one party; (2) that power's potential to adversely affect the other party's interests; and (3) a conflict of interest where the decision-maker could exercise the power to benefit themselves at the other party's expense.[283] When these factors align, courts will imply duties of good faith, honesty, and rationality to ensure the power is not exercised arbitrarily, capriciously, or perversely.[284]

Here, the LPA grants Rigmora budget approval authority—a power that directly affects the Fund's ability to function. In the circumstances of the budget approval process, the contracting parties' interests conflict.

**(a) Constraints On Discretion To Deny Budgets Are "Necessary" For Business Efficacy**

The LPA would not "work" as the parties intended without *some* fetters on Rigmora's discretionary decisions to approve or deny budgets.[285] Otherwise, Rigmora could unilaterally determine that the Fund would not invest in

[283] *Id.* at [18], [30].

[284] *Id.* at [30]–[31].

[285] JX-1574 (Bloch Opening) ¶ 40 ("whether to imply a term may depend on 'whether, without the implied term, the contract would work in the way the parties must reasonably have intended and expected it to work'") (quoting *Tesco*, at [105]).

biopharmaceutical companies; the GP could not manage the business decisions; the GP could not call capital; Rigmora could evade both contribution and default.

The structure, objects, and context of the LPA necessitate an implication of *Braganza* duties with respect to budgets. ***First***, the LPA should be understood to center on the sole purpose of the Fund: "to invest … in pharmaceutical medical device and other medically-related companies and business projects."[286] ***Second***, the LPA provides that "[t]he management, policies, and control of the affairs, and the conduct of business, of the Partnership shall be vested exclusively in the General Partner," LPA ¶ 2(b), which accords with the Cayman Exempt Limited Partnership Act ("ELPA").[287] ***Third***, through budgets, the LPA recognizes that Rigmora's capital contributions are essential to the Fund's business purpose. Budgets inform the scope of the investment Projects: the LPA establishes budgets as the gateway to initial investments and capital deployment by limiting the GP's right to call capital for Projects solely to those Projects that have approved budgets.[288] Accordingly, the LPA has long afforded Rigmora the right to approve budgets.[289] In Amendment 22, specifically, with the status of existing investments on the line, the parties agreed to

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286 JX-2 (LPA Am. 1) ¶ 1(c).

287 JX-1574 (Bloch Opening) ¶ 60.

288 JX-4 (LPA Am. 3) ¶ 5(a)(ii).

289 *Id.*; Background Part III.

"discuss" necessary funding and still follow the process set forth in Paragraph 5(a)(ii) or Schedule C.[290]

Without budget approvals, the Fund cannot maintain operations of existing portfolio companies or pursue new investment opportunities.[291] As ATP's expert Michael Bloch KC explains: "Were an unfettered right to decline to approve budgets to exist, the basic scheme of the LPA Am22 would lack coherence."[292]

The necessity for implied constraints is particularly acute given Amendment 22's "factual matrix." The parties executed Amendment 22 to settle litigation and enable continued operations. Paragraph 26 specifically requires the parties to "discuss new budgets" for named companies facing cash depletion "in accordance with the process set forth in this Agreement." This provision would be meaningless if Rigmora could refuse all budgets regardless of merit.

Further, if Rigmora could refuse to approve *any* budgets, it could circumvent its capital obligations and the default provisions to enforce those obligations, rendering the GP's management and the Fund's purpose nugatory. "Fetters" therefore must be implied.

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290 JX-1068 at 4 (LPA Am. 22).

291 *See* Plaintiff's Pre-Trial Brief at 1.

292 JX-1574 (Bloch Opening) ¶ 73.

### (b) Implied Duties Are "Obvious" From The Contract's Structure

The express text of the LPA neither specifies nor precludes constraints on discretion. Perhaps unsurprisingly, no provision in the LPA expressly authorizes Rigmora to deny a budget arbitrarily, capriciously, or for ulterior motives that defeat the contract's purpose and spirit.

Though the parties did not expressly limit Rigmora's discretion, this Court can find that "notional reasonable people in the position of the parties at the time at which they were contracting" intended constraints or would have had they specifically considered them.[293] Commercial parties understand that long-term investment relationships require reasonable constraints on discretionary powers, and no commercial party would place their entire business purpose at the mercy of dishonest, arbitrary or irrational decision-making.[294] The Fund would become what Lord Neuberger called a "commercial nonsense" in *Arnold v Britton*—a structure where one party could unilaterally prevent the contract from achieving its fundamental purpose.[295] This alternative reveals the obviousness of the implied

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[293] *Marks & Spencer v. BNP Paribas*, [2015] UKSC 72 at [21] (quoted in JX-1574 (Bloch Opening) ¶ 37).

[294] *See Cayman Shores v. Registrar of Lands,* [2021 (2) CILR 1 at 88].

[295] *Arnold v. Britton*, [2015] UKSC 36 at [115] ("[W]here an ordinary reading of the contractual words produces commercial nonsense, the court will do its utmost to find a way to substitute a more likely alternative, using whichever interpretative technique is most appropriate to the particular task.").

constraints; truly unfettered discretions in a long-term investment structure would be so commercially unreasonable that no rational party would agree to it.

### (c) Exclusion Of Fiduciary Duties Has No Effect On Contractual Duties

Rigmora's foreign law expert Mark Phillips KC incorrectly argues that the LPA does not require that Rigmora act in good faith, honestly, and rationally because Rigmora is a limited partner that owes no fiduciary duties.[296] This position misunderstands both the statute and nature of the implied obligations.

***First*,** Section 19(2) provides that limited partners owe no "fiduciary duty" to the partnership or other partners. This statutory provision addresses the special obligations of loyalty and care that arise from fiduciary relationships; it does *not* purport to eliminate ordinary contractual duties that arise from an agreement itself.

***Second***, the duty to exercise contractual discretion honestly and rationally is not a fiduciary duty but a contractual one, arising from principles of contract interpretation rather than status-based obligations. As multiple authorities confirm, these contractual duties exist independently of fiduciary obligations. A party can owe contractual duties of good faith without owing fiduciary duties. *Braganza* itself involved employment contracts where no fiduciary relationship existed, yet the court implied constraints on discretionary powers.

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[296] *See, e.g.*, JX-1588(Phillips Opening) ¶¶ 44, 72-75.

***Third***, courts interpret statutes harmoniously with common law principles unless there is clear legislative intent to override them.[297] Nothing in the ELPA suggests the Cayman legislature intended to eliminate centuries-old principles of contract interpretation.

***Finally***, the result of Rigmora's argument is absurd: limited partners in Cayman ELPs would enjoy unlimited discretion in all contractual powers, able to exercise them dishonestly, irrationally, or in bad faith without recourse.[298]

### 2. Bogdanov's May 15 Email Was The Smoking Gun That Revealed Rigmora's Pattern Of Bad Faith, Dishonesty, Irrationality

The standard for rationality derives from administrative law's *Wednesbury* principles, requiring that the decision-maker: (1) consider relevant matters and exclude irrelevant ones from consideration; and (2) reach a decision that is not so unreasonable that no reasonable person acting reasonably could have reached it.[299]

The May 15 Email and the preceding conduct meet both prongs. ***First***, Rigmora considered irrelevant factors (backward-looking milestones that were never contractual requirements) while ignoring relevant ones (the companies' scientific progress, third-party interest, and forward-looking potential). Rigmora's

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[297] *See id.* ¶ 34 (quoting *Re Padma Fund LP* [2021 (2) CILR 556])

[298] *See* Phillips Dep. 92:7 – 97:19.

[299] *Associated Provincial Picture Houses Ltd v. Wednesbury Corp.* [1948] 1 KB 223.

admitted lack of scientific expertise to evaluate the companies certainly does not counter the apparent irrationality of the decision-making process. ***Second***, the decision to declare all seven scientifically diverse companies as having "no way for a path to commercial success" was so perverse that no reasonable person could have reached it.

Rigmora's breach of the duty of rationality and good faith includes its bad-faith treatment of the December 24 budget requests. Harrison submitted budget requests on December 24, 2024, for two clinical-stage companies facing near-term cash depletion—Aulos [redacted] Replicate ($11 million)—and the preclinical company Nine Square [redacted].[300] He also initiated the process for Ascidian, which would require discussion due to contingent variables. Despite Amendment 22's explicit requirement to "discuss" new budgets for these named companies "sufficient to enable them to operate for a period of twelve months," over months Rigmora subjected these requests to the same obstructionist treatment on bald display in the May 15 Email. **Aulos**, with lead assets in Phase 2 trials and developing partnerships with Pfizer and Regeneron, was denied funding despite Rybolovlev's own expression of "readiness in further financing."[301] **Ascidian,**

[300] Tr. (Harrison) 79:19–80:5; JX-1079.

[301] Tr. (Rybolovlev) 372:13–14.

developing treatment for childhood blindness with ongoing Phase 1/2 trials and a Roche partnership, faced an arbitrary yoking to liquidation of preclinicals. **Nine Square**, though lacking any remaining budget and therefore not on the May 15 liquidation list, was among the preclinicals sweepingly condemned as having "no way for a path to commercial success," but later secured a [redacted] term sheet from a major pharmaceutical company while operating with just three scientists.[302]

Rigmora violated *Braganza* duties with respect to the budget for **Marengo**, a clinical-stage immuno-oncology company with active partnerships with Ipsen and Gilead. Marengo's CEO presented directly to Rybolovlev and Bogdanov in March 2025, and Rybolovlev responded positively to the company's progress.[303] Yet Rigmora refused to approve any budget. Instead, in the May 15 Email, Bogdanov made approval for Marengo and other clinical companies contingent on ATP's agreement to "wind down or liquidate the Early-Stage Companies." This yoking of unrelated companies was irrational: Marengo's clinical progress and commercial prospects have no logical connection to the status of preclinical companies in different therapeutic areas. The only connection is the plan to "drastically" reduce payments to the Fund.

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[302] Tr. (Liras) 266:8–14.

[303] Tr. (Rybolovlev) 372:15-16.

### 3. Bogdanov's "Occupational Deformities" Undermine Any Claim to Rational Decision-Making

That irrational process was driven by Bogdanov, whose judgment was questionable even within Rigmora. When asked at his deposition whether he trusted Bogdanov, Rybolovlev equivocated, stating "That's a very wide question."[304] When pressed about whether Bogdanov was truthful in his dealings, Rybolovlev deflected, characterizing Bogdanov as having "occupational deformities" from his auditing background and describing him as having an extremely "conservative outlook."[305] Rybolovlev acknowledged "a cosmic, astronomical difference" between an auditor's risk tolerance and an entrepreneur's.[306] When asked directly whether there should be any difference when it comes to telling the truth, Rybolovlev responded: "As he sees it. As one of my friends said: Truth has many faces."[307]

Cayman law and the evidence support the conclusions that (1) implied duties constrain the budget approval discretion, and (2) Rigmora violated its implied duties to exercise its budget approval powers honestly, rationally, and in good faith. As Lady Hale explained in *Braganza*, this standard ensures that discretionary powers

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304 Rybolovlev Dep. 50:10–12.

305 *Id.* 50:16–25.

306 *Id.* 51:12–14.

307 *Id.* 51:15–18.

are exercised "in accordance with the purpose for which they were conferred."[308] The fate of these companies reflects not only flawed logic but also the dysfunction of allowing an untrusted auditor with "occupational deformities" and no biotech expertise to dictate investment decisions worth hundreds of millions of dollars with billions in potential.

The December 24 and Marengo budget requests should be deemed approved based on Rigmora's breach of its implied duties.

## II. The Court Should Order Rigmora To Specifically Perform Its Capital Call And Approval Obligations

ATP seeks the equitable remedy of specific performance of Rigmora's obligations to fund capital calls for approved budgets and to consider the remaining December 2024 budget requests in good faith or deem them approved. This equitable relief is necessary to prevent the destruction of valuable scientific enterprises and potential life-saving therapies.

### A. Specific Performance Is The Appropriate Remedy For Capital Calls

Specific performance is appropriate when (1) a valid contract exists, (2) the plaintiff is ready, willing, and able to perform, (3) money damages are inadequate,

[308] [2015] UKSC 17 at [31].

and (4) the balance of equities tips in the plaintiff's favor.[309] Those conditions are satisfied here.

Rigmora remains bound by outstanding capital commitments, and the May 30 Calls were validly called, triggering Rigmora's duty to perform. A valid contract—and a present contractual duty—exists. ATP is ready, willing, and able to manage the Fund's deployment of the due capital and oversee the Projects.

As discussed in Background Part XII, *supra*, the Fund has been harmed because the preclinical companies' development efforts have ground to a halt. Companies that had meaningful value before May 15, 2025, have lost a material portion of that value as a result of Rigmora's breach. They continue to lose value daily in amounts that are difficult to quantify.

The parties agree that money damages are inadequate. The LPA stipulates that damages for funding defaults "cannot be estimated with reasonable accuracy."[310] This acknowledgment reflects the unique nature of early-stage biotech ventures, where funding interruptions cause cascading and unquantifiable harm: loss of key scientific personnel, abandonment of ongoing trials, deterioration of research programs, forfeiture of intellectual property, and destruction of commercial

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[309] *26 Cap. Acq. Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 464 (Del. Ch. 2023).

[310] JX-0001 at 25 (LPA ¶ 5(c)).

relationships. The portfolio companies have already suffered—terminating 70% of employees, abandoning facilities, and in one case, ceding valuable technology back to its source institution.

Moreover, the portfolio companies are developing treatments for serious medical conditions, including childhood blindness, various cancers, obesity, neurodegenerative diseases. The public interest strongly favors preserving potentially life-saving research programs.

The Court should order Rigmora to perform by funding the May 30 Calls totaling [redacted],[311] which represent six months of operating capital for companies with approved budgets plus Partnership expenses and the ATLS Fee. This relief is narrowly tailored, commercially reasonable, and necessary to prevent irreparable harm.[312]

### B. Specific Performance Is The Appropriate Remedy For the Obligation to Consider Budgets

ATP's First Cause of Action is to compel performance with Rigmora's obligation to consider new portfolio company budgets, including specific performance "compelling [Rigmora] to consider reasonable budgets in good

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311 PTO ¶ 68.

312 *See W. Willow-Bay Ct., LLC v. Robino-Bay Ct. Plaza, LLC*, 2009 WL 458779, at *5 (Del. Ch. Feb. 23, 2009) ("A party may urge performance of the contract judicially by suing for specific performance[.]").

faith."[313] This is a well-established equitable remedy—Delaware courts routinely order specific performance of obligations to negotiate or consider matters in good faith.[314] Such relief is particularly appropriate where, as here, one party has demonstrated bad faith through obstructionist tactics to avoid its obligations.[315]

ATP also has asked the Court to fashion a more flexible, tailored remedy that would deem Rigmora to have waived its right to approve budgets and permit ATP to call capital for clinical-stage portfolio companies, subject to the [redacted] contingency set forth in Amendment 22.[316]

"Equitable remedies ... are distinguished by their flexibility, their unlimited variety, their adaptability to circumstances, and the natural rules which govern their use."[317] ATP asks the Court to "employ judicial principles and tools creatively so as

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[313] Compl. ¶ 164.

[314] *See BAE Sys. Info. & Elec. Sys. Integration v. Lockheed Martin Corp.*, 2009 WL 264088, at *5, 7 (Del. Ch. Feb. 3, 2009) (declining to dismiss claims that an agreement "require[d] the parties to 'meet together as necessary to coordinate their pursuit activities'"); *Great-West Invs. L.P. v. Thomas H. Lee P'rs L.P.*, 2011 WL 284992, at *9–10 (Del. Ch. Jan. 14, 2011) (denying dismissal of a claim for specific performance of a contract requirement to negotiate in good faith).

[315] *26 Cap.*, 309 A.3d at 473 ("When determining whether to award equitable relief, the court always considers the balance of the equities. That is true for specific performance as well.").

[316] Compl. ¶¶ 163–64.

[317] *In re Oxbow Carbon LLC Unitholder Litig.*, 2018 WL 3655257, at *3 (Del. Ch. Aug. 1, 2018), *vacated on other grounds*, 202 A.3d 482 (Del. 2019).

to effect justice."[318] This Court can provide "a more certain, prompt, complete, and efficient remedy than is available at law" because only specific performance or an equitable order authorizing ATP to invest in companies with budget requests foreclosed by Rigmora can salvage the Fund and the medical promise of its portfolio companies.[319]

Rigmora failed to engage in discussions in good faith, honestly, or rationally for Aulos, Ascidian, Nine Square, and Marengo. The December 24 budgets should be deemed approved and eligible for capital calls under Paragraph 5(a)(2). The Royalty Financing, though it may preclude a call once "approval … is given," does not preclude this relief.[320]

### C. Rigmora's Defenses Fail

Rigmora cannot invoke the doctrine of unclean hands. ATP's—and the Fund's—conduct throughout has been transparent and accommodating: ATP provided extensive data rooms, arranged management presentations, proposed compromise reallocations, and attempted to work within Rigmora's stated constraints. That ATP ultimately sought judicial intervention when faced with

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318 *Id.*

319 *United BioSource LLC v. Bracket Hldg. Corp.*, 2017 WL 2256618, at *4 (Del. Ch. May 23, 2017).

320 *See* JX-1068 at 4 (LPA Am. 22 ¶ 26) (introducing contingency once "any approval of a new budget is given by" Rigmora).

Rigmora's categorical refusal to fund does not constitute inequitable conduct; it represents the proper exercise of the GP's duty to protect the Fund.

## III. The Global Default Provision Remains Intact And Applicable To Failures To Contribute Capital

Rigmora is incorrect that imposition of a Default Charge would be limited only to its interests in pools that retain Preferred Units and Investment Common Units.[321] At the time the Global Default Provision was written, all of the Fund's investments were tracked in terms of Preferred Units (reflecting capital contributed) and Investment Common Units (reflecting profit participation). There were no investments that were *not* based on the concept of units. Even Rigmora's own expert recognizes that "a subsequent change in the factual matrix which was not anticipated by the parties and was, on a true analysis, 'unthinkable' at the time they concluded their contract, can be taken into account and may justify construing that contract so as to accord with their original (assumed) intentions rather than conferring a wholly unjustified and fortuitous benefit on one of them."[322] Given that the Global Default Provision as originally written unequivocally applied to a Default relating to any investment, and there is no reason to think that the parties intended to change that

[321] *See* Blöchlinger Dep. 104:24–105:1.

[322] JX-1588 at 29 (Phillips Opening ¶ 58).

scope, the Global Default provision applies to all investments and pools, whether they involved units or not.

In compliance with the Cayman Order, with respect to the Global Default, ATP seeks only an order declaring that the Global Default provision governs defaults under the LPA.

## IV. ATP Complied With the LPA By Bringing This Action

ATP's Count V requests that the Court declare that it did not violate the LPA in bringing this action.[323] ATP has not violated the LPA in bringing this action because (i) the LPA authorizes ATP to act within its discretion when a limited partner breaches, and (ii) ATP did not violate its duty of care.

### A. ATP Is Authorized To Bring This Action

The LPA specifically requires that ATP, ***in its sole discretion***, take action in the face of a breaching limited partner.

Specifically, ATP has an obligation to obtain a "favorable result" for the Fund and other LPs when another LP breaches the LPA.[324] As discussed, Rigmora breached its obligations when it made clear it did not intend to meet its funding commitments and refused to approve new budgets.[325] ATP had an obligation to the

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[323] Dkt. 1.

[324] JX-0001 at 75 (LPA ¶ 18(g)(iv)); Tr. (Harrison) 112:2–113:2.

[325] Tr. (Harrison) 131:1–10.

Fund and other LPs to act, and the LPA gives ATP broad discretion to do so. Further, the LPA bars Rigmora from claiming that ATP violated its fiduciary duties for bringing such an action.[326]

Based on the LPA's plain language, ATP was within its rights as the GP to file this action in an attempt to obtain a favorable result for the Fund in response to Rigmora's breach, and it is Rigmora that breached its obligations by filing the Winding Up Petition. ATP requests a declaration that under Cayman law it complied with the LPA, including Paragraph 18(g)(iv), by bringing this action.

### B. ATP Did Not Violate Its Fiduciary Duties in Bringing this Action

Even if the Court does not find that Rigmora breached the LPA, ATP still did not violate the LPA in bringing this action. Paragraph 2(g) of the LPA provides the standard of care for the general partner:

> To the fullest extent permitted by law, neither the General Partner nor any of its affiliates shall incur liability to the Partnership or any other Partner for any loss suffered by the Partnership or any other Partner which arises out of any … action or inaction on the part of the General Partner or any of its affiliates, provided that in any such case (i) the General Partner's or such affiliate's course of conduct was in good faith and (ii) such course of conduct did not constitute willful fraud, willful misconduct, gross negligence ***as determined under the laws of the State of Delaware*** without regard to otherwise governing principles of conflicts of law ("Gross Negligence") or an

[326] *Id.*

> intentional and material breach of this Agreement on the part of the General Partner or such affiliate.[327]

Under Delaware law, a determination of whether the general partner is acting in good faith is based on whether the general partner reasonably believed that their actions were in the best interest of the partnership.[328] "The general partner of a limited partnership owes fiduciary duties that run to the limited partnership for the benefit of the partners as a whole," so, generally, it need not believe that its actions serve the best interests of a specific limited partner—only the partnership.[329] Here, ATP "believe[d] that [it] had the right under the LPA to bring a lawsuit against an LP who had breached the LPA," and that there was "no possibility of a r[ap]pro[]ch[e]ment" or "of any kind of agreement" by the Rigmora LPs to live up to their capital commitments.[330] Accordingly, ATP filed this action in the face of significant loss for the Fund.[331] ATP is seeking to enforce the Fund's contractual rights and Rigmora's obligations to provide funding and approve budgets.

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[327] JX-0001 at 7 (LPA ¶ 2(g)) (emphasis added).

[328] *Brinkerhoff v. Enbridge Energy Co., Inc.*, 159 A.3d 242, 253-54 (Del. 2017); *see Allen v. El Paso Pipeline GP Co., LLC*, 113 A.3d 167, 178 (Del. Ch. 2014), *aff'd*, 2015 WL 803053 (Del. Feb. 26, 2015) (TABLE).

[329] *Leo Invs. Hong Kong Ltd. v. Tomales Bay Cap. Andurill III, L.P.*, 342 A.3d 1166, 1194–95 (Del. Ch. 2025).

[330] Tr. (Harrison) 112:2–5, 111:11–112:1.

[331] *Id.* 113:14–114:12.

In protecting the Fund's portfolio companies, ATP has not violated the standard of care through willful fraud, misconduct or gross negligence; Rigmora makes no allegations otherwise.[332] Rigmora asserts only that ATP had unclean hands because ATP refused "to provide information on the portfolio companies."[333] This is untrue, and even if it were true does not amount to willful misconduct or gross negligence.[334] Moreover, ATP routinely informed Rigmora of the portfolio companies' performance.[335]

Measured by standards of Delaware law, ATP is not in breach of its fiduciary obligations, nor has ATP violated the LPA in bringing this Action.

### C. The Matter Is Ripe For Declaratory Judgment

Where a "dispute is live … not hypothetical; and no additional facts will develop to advance the dispute for better presentation to the Court," it "is ripe for judicial determination."[336] Here, the parties dispute whether ATP was authorized to bring this specific case, and no additional facts are needed to make that determination. Rigmora's posited authority is inapposite. *Schick Inc. v.*

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[332] Dkt. 57 at 96–99.

[333] *Id.* at 97.

[334] *See Metro Storage Int'l LLC v. Harron*, 275 A.3d 810, 844 (Del. Ch. 2022) ("gross negligence has its own special meaning that is akin to recklessness").

[335] *See, e.g.,* JX-1293 at 22, JX-1214 at 3, JX-1212 at 21.

[336] *Murfey v. WHC Ventures, LLC*, 2022 WL 214741, at *1 (Del. Ch. Jan. 25, 2022).

*Amalgamated Clothing & Textile Workers Union* involved declaratory judgment claims premised on "a premature ruling on … a derivative action that has not yet been filed."[337] Not so here. As Rigmora itself admits, ATP seeks a declaratory judgment that "the LPA's Exculpation Clause [a]pplies to the GP's [f]iling of *This Action*."[338]

## CONCLUSION

ATP respectfully requests that the Court grant the relief requested in Plaintiff's Proposed Final Judgment.

[337] 533 A.2d 1235, 1237 (Del. Ch. 1987).

[338] Rigmora Pre-Trial Br. (Dkt. 203) at 55 (emphasis added).

*/s/ Michael A. Barlow*

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17,886 / 18,000 WORDS

**EXHIBIT I**

**ND COURT OF THE CAYMAN ISLANDS**

**FINANCIAL SERVICES DIVISION**

**CAUSE NO: FSD 151 OF 2025 (JAJ)**

**IN THE MATTER OF THE EXEMPTED LIMITED PARTNERSHIP ACT (2025 REVISION), THE COMPANIES ACT (2025 REVISION) AND THE PARTNERSHIP ACT (2025 REVISION)**

**AND IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**

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**AMENDED WINDING UP PETITION**

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**To the Grand Court**

The humble petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of Rigmora Biotech Investor One LP ("**RBI One**")) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of Rigmora Biotech Investor Two LP ("**RBI Two**")) shows that:

## A. Introduction

1. This is the amended petition of Unicorn Biotech Ventures One Ltd (in its capacity as general partner of RBI One) and Unicorn Biotech Ventures Two Ltd (in its capacity as general partner of RBI Two) (together, the "**Petitioners**"), each with its registered office at 3076 Sir Francis Drake's Highway, PO Box 3463, Road Town, Tortola, British Virgin Islands.

2. The Petitioners present this Petition against (i) ATP Life Science Ventures, L.P. (formerly named Apple Tree Partners IV, L.P.) (the "**Partnership**") and (ii) ATP III GP, Ltd. (the "**GP**") in its capacity as the general partner of the Partnership, for the winding up of the Partnership pursuant to Section 36(3) of the Exempted Limited Partnership Act (2025 Revision) (the "**ELP Act**") and Section 92(e) of the Companies Act (2025 Revision) (the "**Companies Act**"), and/or in the alternative pursuant to section 35 of the Partnership Act (2025 Revision).

This **WINDING UP PETITION** was presented by Campbells LLP, Attorneys for the Petitioners, whose address for service is that of its Attorneys at Floor 4, Willow House, Cricket Square, George Town, Cayman Islands, KY1-9010 (ref: PDK/JFI/19135-44991).

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#3377166v2

3. The Petition is presented because, as described in detail below, there has been continued serious mismanagement and a lack of probity in the conduct of the affairs of the Partnership by the GP. The GP is a Cayman Islands exempted company with registration number 252582 and its registered office at Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1-1104, Cayman Islands.

4. As a result of the GP's mismanagement and lack of probity, there is a justifiable loss of trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole. In particular:

   a. The GP has issued capital call notices on 30 May 2025 and 1 June 2025 (the "**Disputed Capital Calls**") in violation of the LPA seeking to compel the contribution of over USD 100 million in additional capital in excess of maximum subscription commitments ~~and~~ in breach of the terms of the LPA, and in breach of its fiduciary duties to act in the interests of the Partnership as a whole.

   b. The GP ~~has~~ launched proceedings in Delaware (the "**Delaware Proceedings**") seeking to compel the Petitioners to provide vast sums of further funding to the Partnership, in breach of the express provisions of the LPA (defined in paragraph 16 below) whilst simultaneously seeking to apply a penal default charge in order to confiscate 50% of the Petitioners' interest in the Partnership, in order to take control of the Partnership and billions of dollars of the Petitioners' assets.

   b1. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

   b2. The GP has misappropriated and dissipated Partnership assets.

   b3. The GP has made improper denials regarding the breakdown in the relationship between it and the Petitioners.

   b.4 The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list

of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

c. The GP has also improperly charged its expenses to the portfolio companies and failed to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

d. The GP also has a conflict of interest and/or has been acting in breach of its fiduciary duties to act in the best interests of the limited partners as a whole, as it has been acting in the interests of the portfolio companies and / or in its own interests and / or for the improper purpose of placing pressure on the Petitioners ~~by exposing the Partnership to open-ended, binding commitments thereto and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA.

5. In all the circumstances, the substratum of the Partnership has also been lost, and there is a need for independent investigation into the Partnership's affairs.

## B. The Partnership

6. The Partnership is a Cayman Islands exempted limited partnership established pursuant to the ELP Act and registered on 29 October 2012. The registered office of the Partnership is at Maples Corporate Services Limited, P.O. Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.

7. The Partnership was formed following discussions between Dr Seth Harrison ("**Dr Harrison**") and Dr Dmitry Rybolovlev ("**Dr Rybolovlev**") concerning the formation of a vehicle to make investments in the life science industry using capital provided from entities owned by the Rybolovlev family trust (the "**Trust**"). Dr Rybolovlev is a highly successful businessman of Cypriot nationality and settlor of the Trust.

8. Upon the Partnership's formation, its limited partners were Blue Horizon Enterprise Ltd ("**Blue Horizon"**) Ezbon International Ltd ("**Ezbon**") and Dr Harrison. Blue Horizon and Ezbon are special purpose vehicles ultimately owned and controlled by the Trust.

9. The GP is part of a life sciences venture capital firm called Apple Tree Partners ("**ATP**"), which operates out of the United States. Dr Harrison is the founder and managing director of ATP. ATP has no meaningful business interests or capital under management other than that belonging to the Partnership. Apple Tree Life Sciences, Inc. ("**ATLS**") serves as a management company for the Partnership and an annual fee is paid to it in connection with certain Partnership expenses. ATLS is a wholly-owned subsidiary of the Partnership.

10. The Petitioners are limited partners of the Partnership. Unicorn Biotech Ventures One Limited and Unicorn Biotech Ventures Two Limited are the sole general partners of RBI One and RBI Two, respectively. The sole limited partner of both RBI One and RBI Two is Rigmora Holdings Ltd ("**Rigmora Holdings**"). Rigmora Holdings is a holding company for the Trust and also acts as an advisor to the trustees of the Trust.

11. As of June 2025, the contingent subscriptions of the Petitioners total US$2.425 billion (US$1,188,250,000.00 for RBI One and US$1,236,750,000.00 for RBI Two), and the total capital contributions of the Petitioners are in excess of US$2.6 billion, which represents c. 9~~8~~% of all capital contributions made to the Partnership.

12. The Petitioners became limited partners of the Partnership as of 30 June 2024 by respectively taking over the limited partner positions of the two former limited partners, Blue Horizon and Ezbon.

13. ~~The Petitioners are the only limited partners of the Partnership not affiliated with the GP.~~ The other limited partners are Dr Harrison and Les Pommes LLC ("**Les Pommes**") and 12 former or present employees of ATLS. Les Pommes is a discretionary family trust for Dr Harrison's daughters. ~~Ms Anna Batarina (an employee of ATP) is a carry holder and ultimately has an economic interest in the Partnership. The GP has claimed that various other employees of ATP are also limited partners of the Partnership. However, none of those persons are parties to the LPA (as defined below) and none of those individuals have ever contributed any capital to the Partnership. The Petitioners do not accept that they are in fact legitimate limited partners.~~

14. The Partnership has been built almost exclusively using capital belonging to the Petitioners. As of June 2025, c. 9~~8~~% of the US$2.7 billion invested into the Partnership was capital contributed by the Petitioners. The remaining US$53.8m of capital has been contributed by Dr Harrison and Les Pommes, funded substantially by way of a loan from Ezbon.[1] No other limited partner has contributed any capital to the Partnership.

15. The principal purpose of the Partnership is to achieve returns on its capital by investing in pharmaceutical, life science, medical device and other medically-related companies and business projects.

*Structure of the Partnership*

16. The limited partners of the Partnership, and the GP are parties to a limited partnership agreement ("**LPA**"), the initial version of which was dated 29 October 2012. The LPA was restated on 1 November 2012 and has been amended a further 22 times since then: on 1 January 2014, 15 August 2014, 1 September 2014, 1 April 2015, 11 May 2015, 31 December 2015, 31 May 2017, 9 August 2017, 22 December 2017, 1 July 2018, 26 October 2018, 1 December 2018, 4 February 2019, 17 April 2019, 10 July 2019, 1 February 2020, 9 September 2020, 5 November 2020, 27 November 2020, 21 June 2021, 5 December 2022 and 20 December 2024. Each of the amendments has been undertaken by way of a separate amendment agreement (each referred to herein as "Amendment X" where X represents the number of the amendment following the execution of the 1 November 2012 restated LPA).

17. Upon incorporation, the Partnership had a conventional fund structure consisting of a single set of assets and liabilities participated in by all limited partners. However, by way of subsequent amendments starting with Amendment 13 (executed on 4 February 2019) the structure of the Partnership was changed to consist of separate investment "pools" each of which "*to the maximum extent possible*" consisted of its own set of assets and liabilities.

18. Prior to the transfer of the limited partner interests in June 2024, Blue Horizon and Ezbon together were the "Subject Limited Partner" under the LPA and the holder of the majority of

[1] The capital contributed to the Partnership by Dr Harrison was mostly made up of US$52.6m in capital that he had borrowed from Ezbon of which US$24.8 was repaid in cash (out of capital distributed by the Partnership to the GP), and the remaining US$27.8m was repaid by transferring part of his limited partner interests in the Partnership to Ezbon (as recorded in Paragraph 6(c) of Amendment No. 14 of the LPA).

"Preferred Units" in the Partnership. Following the transfer of the limited partner interests, the Petitioners became the "Subject Limited Partner" and the holder of the majority of "Preferred Units" in the Partnership for the purposes of the LPA.

19. The LPA (as amended) provides, materially:

    a. Paragraph 5(a)(i) provides that each limited partner shall contribute to the Partnership an amount equal to but not in excess of the total amount of its "Contingent Subscription" specified in the "List of Partners". The amount of each limited partner's Contingent Subscription is in turn determined by the individual subscription agreement entered into between that limited partner and the Partnership (the "**Subscription Agreements**") (Clause 1(e)).

    b. Paragraph 5(a)(ii) provides that the GP may only call capital for the purposes specified therein unless otherwise approved by holders of a majority of the Preferred Units in writing. In particular, Paragraph 5(a)(ii)(E) provides that the GP may only "*invest in Projects approved by the holders of a majority of the Preferred Units in writing in accordance with a budget therefor approved by such holders of Preferred Units*".

    c. Paragraph 5(a)(ii) also provides, materially: *"… in the case of a capital call pursuant to clause (D) or (E) of the preceding sentence that is made on a basis accelerated from that set forth in an approved Project budget, the General Partner (a) represents in writing to the Partners that it has a good faith belief that the Project (or portion thereof covered by such budget) will be completed within the aggregate amount budgeted therefor and (b) provided the Board or the holders of the Preferred Units, as the case may be, with a reasonably detailed and diligenced presentation supporting such representation; provided, however, that no approval by the Board or the holders of Preferred Units shall be required with respect to organizational expenses of the Partnership and its related entities.*"

    d. Schedule C to the LPA (as amended by Amendment 2) provides, materially: "[t]*he General Partner will issue a financial report to the holders of the Preferred Units at least every calendar quarter* […] *This financial report will cover all entities within the*

*Partnership structure, and will include Project income and expenses and operating costs along with at least the following:*

- *Profit and loss and cash flow statements, in total and by major Project, showing actual versus budgeted results for the quarter* […] *then ended and including explanations of major variances to budget* […]
- *Detailed budget by major Project by quarter* […] *for the next twelve months* […]
- *Summary budget by major Project for each of the following two years, including operating income and expenses, and other items affecting cash flow*.

*In addition, the General Partner will present a schedule showing anticipated capital calls for the next four quarters and subsequent two years, reconciled to the detailed and summary cash flow budgets*".

e. Paragraph 20 (e)(ii) provides that the GP "*shall prepare, for each calendar year of the Partnership in advance of such year, a budget for the annual fee to be paid by the Partnership to ATLS (the 'ATLS Fee'). Such budget shall be presented to the Subject Limited Partner for approval no later than December 1 of the prior year … The Limited Partners shall make capital contributions to the Partnership to fund the ATLS Fee semi-annually in advance and the Management Fee annually in advance, in each case, as required by the General Partner, from time to time, in accordance with the Agreement. The amount of the ATLS Fee may also be modified from time to time by mutual agreement of the General Partner and the Subject Limited Partner. For the avoidance of doubt, the ATLS Fee shall be in addition to the Management Fee*".

f. Amendment 9, section 11 provides: "*ATLS shall pay the following expenses of the Partnership from the ATLS Fee: (i) except as set forth in Section 12, below, all compensation and benefits for employees (except to the extent paid from the Management Fee), (ii) all facilities and related overhead expenses, including rent, utilities, charges assessed by the lessor, property and general liability insurance, and communications, including phone and internet, (iii) office supplies and equipment, information technology support and software, (iv) publications, dues and charitable contributions, (v) public relations, marketing and advertising expenses, (vi) travel and*

*(vii) capital expenditures, including for furniture, fixtures, computers and other equipment, in each case, except as expressly provided in the following sentence*."

20. The Petitioners are the holders of a majority of the "Preferred Units". The GP is therefore required to obtain the Petitioners' approval for any budget for investments in "Projects".

21. The Petitioners' total contingent subscriptions for the purposes of Paragraph 5(a) of the LPA is US$2.425 billion (the "**Contingent Subscriptions**"). In particular:

    a. Pursuant to a subscription agreement between Ezbon and the Partnership dated 1 November 2012, Ezbon agreed that the amount of its contingent subscriptions would be US$726,750,000 (the "**Ezbon Subscription Agreement**").

    b. Pursuant to a subscription agreement between Blue Horizon and the Partnership dated 1 November 2012, Blue Horizon agreed that the amount of its contingent subscriptions would be US$698,250,000 (the "**Blue Horizon Subscription Agreement**").

    c. On 20 September 2020:

        i. Ezbon executed an amendment to the Ezbon Subscription Agreement which increased its contingent subscription by US$510,000,000 to US$1,236,750,000; and

        ii. Blue Horizon executed any amendment to the Blue Horizon Subscription Agreement which increased its contingent subscription by US$490,000,000 to US$1,188,250,000,

        (the "**Subscription Amendments**").

    d. Other than the subscription agreements identified above (the "**Subscription Agreements**") no other subscription agreements have been entered into by Ezbon, Blue Horizon or the Petitioners.

22. The Subscription Amendments were executed in the context of an amendment to the LPA executed on or around 9 September 2020 ("**Amendment 17**").

    a. Amendment 17 increased the number of "pools" from 2 to 3 (referred to in Amendment 17 as "Pool A", "Pool B" and "Pool C" by inserting paragraph 20(a) into the LPA).

    b. Paragraph 20(a) of the LPA envisaged that the Subject Limited Partners would have total contingent subscriptions in excess of those committed to under the Ezbon and Blue Horizon Subscription Agreements.

    c. The Subscription Amendments were entered into shortly after Amendment 17 was executed to increase the Subject Limited Partners total contingent subscriptions in the manner contemplated by Paragraph 20(a) of the LPA.

23. By or on around 14 December 2023, the entirety of the Contingent Subscriptions had been paid out pursuant to capital calls made by the GP under Paragraph 5(a)(ii) of the LPA. Since then, neither the Petitioners (nor their predecessors) have been obliged to contribute further capital to the Partnership under Paragraph 5(a) of the LPA.

24. Further capital contributions totalling US$242 million have since been made by the Petitioners (or their predecessors), without any obligation to do so. As noted above, to date the total capital contributed by the Petitioners to the Partnership is in excess of US$2.6 billion, comprising approximately 9~~98~~% of all capital contributions made to the Partnership.

## C. Ground 1: Justifiable and irretrievable loss of trust and confidence

25. The Petitioners have justifiably and irretrievably lost all trust and confidence in the GP's ability to manage the Partnership's affairs in the best interests of the Partnership as a whole.

26. The GP has seriously mismanaged the Partnership, acted in a manner calculated to prejudice the Petitioners and demonstrated a lack of probity in the conduct of its affairs by:

    a. Improperly (and in breach of duty) issuing ~~capital calls on 30 May 2025~~ the Disputed Capital Calls totalling over US$100 million ~~(the "**May 2025 Capital Calls**")~~. The ~~May 2025~~ Disputed Capital Calls were not made for proper purposes. They were made for

improper purposes of placing commercial pressure on the Petitioners: (a) in circumstances where they are not obliged to make further capital contributions; and (b) in the context of a break-down of the relationship between the Petitioners. Further, the ~~May 2025~~ Disputed Capital Calls were not made bona fide in the best interests of the Partnership as a whole (principally, the Petitioners) but were instead made in the interests of the GP and / or Dr Harrison and / or the portfolio companies. The Petitioners have brought separate proceedings in the Grand Court of the Cayman Islands by way of writ dated 2 June 2025 to establish (amongst other things) that they are not obliged to pay the ~~May 2025~~ Disputed Capital Calls (the "**Writ Proceedings**").

b. Issuing the Delaware Proceedings ~~(defined in paragraph 39(b) below)~~, and making numerous unfounded and untruthful allegations therein, in order to take control of the Partnership;

c. Improperly seeking to impose a penal default charge on the Petitioners. In the Delaware Proceedings the GP alleged~~s~~ that it was ~~it is~~ entitled to take 50% of the Petitioners' interest in the Partnership (the GP estimates the Partnership to be worth approximately US$4 billion) and to reallocate those assets to the other ~~limited partners~~ holders of "preferred units" (i.e. to Dr Harrison and his family trust, Les Pommes). In other words, Dr Harrison, acting via the GP, ~~has~~ commenced proceedings in Delaware in which he sought ~~seeks~~ to take billions of dollars of assets from the Petitioners and transfer those assets to himself (in circumstances where he has contributed minimal capital into the Partnership and where the clear wording of the LPA does not entitle him to take such action, see paragraphs 40-41 below).

d. Seeking to compel the Petitioners to make further contributions to the portfolio companies and has sought to make accelerated capital calls and unbudgeted capital calls without complying with its obligations under the LPA. By issuing the Delaware Proceedings the GP is acting in breach of its fiduciary duties to act in good faith in the interests of the Partnership as a whole and is clearly acting out of self-interest, and has not exercised its powers for a proper purpose.

d1. Knowingly misleading the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

d2. Misappropriating and dissipating Partnership assets.

d3. Making improper denials regarding the breakdown in the relationship between it and the Petitioners.

d4. Failing to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership, including by failing to maintain a list of partners and a register of partners in breach of the Partnership's constitutional documents and ELP Act and by taking inconsistent positions as to the extent of the Petitioners' capital commitments to the Partnership.

e. Improperly charging its expenses to the portfolio companies held by the Partnership.

f. Failing to provide necessary information to the Petitioners in a timely manner or at all, including to enable the Petitioners to determine whether to approve further budgets for portfolio companies or to scrutinise expenses which appear to have been improperly charged to the Partnership.

g. Failing to act in the best interests of the limited partners as a ~~whole by exposing the Partnership to open-ended, binding commitments to the portfolio companies and~~ in seeking to compel the Petitioners to provide further funding to the portfolio companies against their wishes and in breach of the LPA. In this regard, the GP's decision making (through Dr Harrison (as the controlling mind and will of the GP, and a director of many of the portfolio companies owned by the Partnership)) is infected by a conflict of interest.

Background to loss of trust and confidence

27. As set out above, the Partnership was formed following discussions between Dr Harrison and Dr Rybolovlev to make investments in the life science industry using capital provided from entities owned by the Trust. It was agreed at the outset that the limited partners would have a substantial degree of oversight as to how capital is invested, by their ability to review and elect whether to approve budgets for investments required to be presented by the GP. As also set out above, the GP is part of ATP, which has no meaningful business interests or capital

under management other than that belonging to the Partnership and which was founded and is managed by Dr Harrison.

28. From around 2021, the GP started to improperly charge the employee costs of ATP investment professionals to the Partnership's portfolio companies (see paragraphs 53 to 56 below).

29. In September 2023, following a series of disagreements between the limited partners and the GP, the Petitioners' predecessors, Ezbon and Blue Horizon, made a request to the GP pursuant to their rights under the LPA for the distribution of assets in the "Pool Braeburn" investment pool. The "Pool Braeburn" investment pool is funded solely by capital contributed by the Subject Limited Partner. Upon the formation of "Pool Braeburn" (pursuant to Amendment 20 of the LPA), the Subject Limited Partner was granted a right (under paragraph 21(d) of the LPA) to require the Partnership to distribute the assets within that pool on demand. The Subject Limited Partner subsequently demanded the distribution of assets in Pool Braeburn.

30. The GP improperly refused to comply with this request. In doing so, the GP asserted that it was entitled and bound to retain the Braeburn assets within the Partnership to ensure Ezbon and Blue Horizon would continue contributing capital to the Partnership. That was not a proper basis for the GP to refuse to comply with the distribution request. The GP also claimed that compliance with the distribution request would impact the GP's ability to obtain third party funding, which would in turn impact the financial position of the Partnership. As a consequence of the GP's threats that the financial position of the Partnership would be affected, Ezbon and Blue Horizon agreed not to pursue the distribution request.

31. In July 2024, the Petitioners made another request to the GP under the LPA for the distribution of assets in Pool Braeburn. The GP failed to comply, and the Petitioners issued proceedings in the Grand Court of the Cayman Islands seeking a declaration that the GP must distribute the Braeburn assets in accordance with the distribution request (the "**Braeburn Proceedings**").

32. In those proceedings, the GP claimed that it was unable to distribute the Braeburn assets to the Petitioners including because Braeburn Inc, one of the major assets within Pool Braeburn (and of the Partnership as a whole), had an "internal policy" prohibiting the transfer of ownership of the company from the Partnership to the Petitioners. The GP contended that the "internal policies" of Braeburn Inc included whatever the Braeburn Inc board considered was in Braeburn Inc's best interests to occur. That was not a proper basis for refusing to comply with the distribution request. The GP also contended that such a transfer would also

trigger an event of default under a loan agreement between Braeburn Inc and a third party, which would have a significant knock-on negative impact on the Partnership. At the relevant time, the Partnership was the sole shareholder and Dr Harrison was the chairman of the board of directors of Braeburn Inc. He exercised significant influence over the other directors and members of senior management. It is therefore inconceivable to think that Dr Harrison would not have been involved in implementing the aforesaid arrangements.

33. The parties entered into a settlement agreement in respect of the Braeburn Proceedings on 20 December 2024 (the "**Settlement Agreement**"), which provided, amongst other things, that the GP would use commercially reasonable efforts to remove or mitigate any contractual blocks or economic costs that may inhibit the distribution of the Braeburn assets to the Petitioners. Clause 5.1 of the Settlement Agreement:

    a. required the parties to bear their own legal costs and disbursements in respect of the proceedings and the Settlement Agreement, (notwithstanding any provision of the LPA which may provide otherwise); and

    b. expressly provided that the GP would not charge the Partnership or the portfolio companies for its legal costs and disbursements incurred in relation to the proceedings and the Settlement Agreement.

34. However, the relationship between the GP and the Petitioners has since continued to deteriorate substantially to a state of complete breakdown and there has now been a complete loss of any trust and confidence of the Petitioners in the GP's operation and management of the Partnership.

35. The catalyst for this loss of trust and confidence was the GP's behaviour in regards to seven (7) early-stage portfolio companies: (1) Deep Apple Therapeutics, Inc~~,~~ ("**Deep Apple**"), (2) Apertor Pharmaceuticals, Inc., (3) Evercrisp Biosciences, Inc., (4) Marlinspike Therapeutics, Inc~~,~~ ("**Marlinspike**"), (5) Red Queen Therapeutics, Inc., (6) Aethon Therapeutics, Inc. and (7) Initial Therapeutics, Inc. ("**Initial**") (the "**Early-Stage Companies**").

36. Dr Harrison is a director of each of the Early-Stage Companies. The GP has insisted on continuing to invest the Partnership's capital into the Early-Stage Companies even though the Petitioners consider them to be hopeless investments. The GP has also failed to adhere to the

milestones in the agreed budgets for the Early-Stage Companies and is seeking to call capital for these companies in breach of the LPA. Further and in addition, by virtue of the relief he seeks in the Delaware Proceedings, he is seeking capital on an accelerated basis in breach of the LPA.

37. The Petitioners maintain that they are not obliged to fund the Early-Stage Companies:

    a. First, the Partnership's limited partners' capital commitments are determined by the terms of the LPA, such that they are not required to make capital commitments to the Partnership which exceed their Contingent Subscription amount as set out in the Subscription Agreements (see paragraph 21 above). The Contingent Subscription amount is set out in the applicable Subscription Agreement(s). The Petitioners' total Contingent Subscription is US$2.425 billion, and they cannot be *required* to fund above that commitment. The GP's position is that the limited partners' capital commitments to the Partnership can be and have been increased above the Contingent Subscription amount through Amendments 17, 18 and 20 to the LPA. That is wrong. None of those amendment increased the Contingent Subscription amounts.

    b. Second, and in any event, under Paragraph 5(a)(ii) of the LPA, the GP may only invest in projects approved by the Petitioners "*in accordance with a budget therefor approved*" by the Petitioners. The budgets approved by the Petitioners provide for investments to be made into the Early-Stage Companies in certain specified amounts, subject to meeting certain specified milestones. The milestones under those respective budgets have not been met and no further capital commitment has been approved, in writing, by the Petitioners. The GP is also now seeking to call capital on an accelerated basis contrary to what is provided for in the budgets. The GP is not permitted to call for further capital absent written approval by the Petitioners, which the Petitioners have not provided. The GP's position is that the Petitioners have waived or forfeited their right to approve budgets and that, in any event, the GP is entitled to continue calling for capital irrespective of whether the milestones in an agreed budget have been complied with and regardless of whether it is calling capital on an accelerated basis to the budgets. There has however been no such waiver or forfeit and there is no such entitlement on the part of the GP.

38. The ongoing disagreement between the parties regarding budgeting issues resulted in Mr Yuri Bogdanov (CIO of Rigmora Holdings) emailing the GP on 15 May 2025. In that email, the Petitioners reiterated their position that they were not obliged to fund the Early-Stage Companies and that it was not in the best interests of the Partnership for further funding to be allocated to the Early-Stage Companies. In the same email, the Petitioners asked the GP to clarify its position, stating "*if you disagree with the above and consider that [the Petitioners are] obliged to contribute further capital to the Early-Stage Companies then please respond with a detailed explanation of your position. [The Petitioners] of course intend to comply with the requirements of the LPA and will be cooperative if you can demonstrate the LPA allows you to call further capital in regards to the Early-Stage Companies*" (the "**15 May Email**"). The GP did not respond to the 15 May Email, has refused to provide the requested information on the new budgets, and has accelerated capital calls when compared to forecasts sent shortly before issuing the said capital calls.

39. Rather than seek to consensually resolve the issues concerning the Early-Stage Companies and other budget issues that were being discussed between the parties, on 30 May 2025:

    a. The GP issued the ~~May 2025~~ Disputed Capital Calls purportedly requiring the limited partners to contribute US$109,960,926.00 million of capital to the Partnership by 13 June 2025 (save for a capital call made in respect of Replicate which is due on 17 June 2025); and

    b. The GP peremptorily issued a complaint against the Petitioners in the Delaware Court of Chancery seeking specific performance and equitable and declaratory relief in respect of the GP's and the limited partners' rights and obligations in respect of the Partnership (the "**Delaware Complaint**" and the "**Delaware Proceedings**"). The GP did not refer to the ~~May 2025~~ Disputed Capital Calls in the Delaware Proceedings.

40. In the Delaware Proceedings, the GP alleges that the 15 May Email amounts to an anticipatory breach of the LPA and/or a repudiation of "*the [Petitioners'] obligation to respond to capital calls*", the GP ~~seeks~~ had also sought specific performance to compel the limited partners to contribute up to US$545 million to the Partnership, whilst simultaneously contending that by reason of the 15 May Email the GP was entitled to apply a default charge to confiscate 50% of the limited partners' interest in the Partnership (the **"Default Charge"**), block their voting powers and remove their budget approval rights. The GP had also sought ~~seeks~~ to avoid

complying with the contractual default process which includes provisions enabling the Petitioners to remedy any such default (i.e. by payment) on the basis that it would be "*futile*" to do so (see paragraph 171 of the Delaware Complaint). In other words, the GP ~~seeks~~ had sought an order whereby the Petitioners must provide the Partnership with further capital of up to US$545 million (which it is alleged is the Petitioners' total unfunded capital commitment) ~~and nevertheless maintains~~ whilst maintaining that it can also issue a default charge against the Petitioners and confiscate billions of dollars of the Petitioners' assets even if they provide the capital sought.

41. As set out further below the Delaware Complaint and the ~~May 2025~~ Disputed Capital Calls ~~are~~ had evidently been designed to enable the GP to compel the Petitioners to contribute vast sums of further funding to the portfolio companies whilst engineering a default in order to impose a default charge to confiscate 50% of the Petitioners' interests in the Partnership (in the approximate sum of US$2 billion), which would fall to be redistributed to the ~~remaining limited partners~~ other holders of "preferred units" (i.e., Dr Harrison and his family trust) thereby allowing Dr Harrison to take control of the Partnership, notwithstanding the fact that he has contributed less than c. ~~12~~% of the Partnership's capital. The GP's intentions were laid bare in paragraph 192 of the Delaware Complaint, which states that the GP seeks an order preventing the Petitioners from "*interfering with [the GP] in the exercise of its discretion over the Fund once [the Petitioners are] deemed to be a Defaulting Partner*".

42. No GP acting reasonably and in good faith in the interests of Partnership would have commenced these proceedings in these circumstances.

43. Moreover, there was no proper basis for the GP's purported position. The 15 May Email is self-evidently not an anticipatory or repudiatory breach given that it said in terms that the Petitioners will comply with the terms of the LPA if the GP explains why it is entitled to call for further capital under the LPA. ~~For the avoidance of any doubt, the Petitioners do not accept that~~ In addition, the LPA does not entitle~~s~~ the GP to confiscate assets as alleged. The LPA is clear that the default charge enables the GP to reduce the number of preferred units and investor common units of a defaulting partner. Apart from Pool ATP IV, assets are not distributed by reference to the number of units held by a Limited Partner and are instead distributed in accordance with the specific distribution provisions for each pool as set out in the LPA.

43A The issuing of the Delaware Proceedings and the Disputed Capital Calls were the culmination of a long-term and highly choreographed strategy designed to place illegitimate pressure on the Petitioners to contribute further capital to the Partnership and to manufacture a situation where the GP could default the Petitioners (the "**Default Strategy**"). The existence of the Default Strategy falls to be inferred from the following matters:

a. The fact that the GP had instructed its US attorneys, Quinn Emanuel Urquhart & Sullivan ("**Quinn Emanuel**") to start work on a complaint against the Petitioners in Delaware by August 2024 (at the latest), many months before the 15 May Email had been sent.

b. The timing and size of the Disputed Capital Calls, which were not issued for proper purposes or *intra vires* under the LPA but were deliberately inflated and made for the improper purposes alleged at paragraphs [44A]-[44D] below.

c. The fact that in the Delaware Proceedings, the GP had improperly claimed to be entitled immediately to impose a Default Charge on the Petitioners without any need to serve a Default Notice on the Petitioners as required by paragraph 5(a) (see paragraph [40] above).

d. The fact that in the Delaware Proceedings, the GP had wrongly claimed that by imposing a Default Charge on the Petitioners it was entitled to strip the Petitioners of 50% of their economic interests in the Partnership and reallocate those interests to other partners (i.e. primarily to Dr Harrison and his family trust (see paragraph [43] above).

e. The fact that on 29 April 2025, the GP provided a funding plan to the Petitioners in which the GP proposed to reallocate funding away from the Early-Stage Companies (the "**April Funding Plan**"), only to withdraw that proposal when the Petitioners indicated that they were agreeable to it. In particular:

    i. At a meeting on 9 May 2025 attended by principals of the GP and the Petitioners, and during a call attended by principals and lawyers of the GP and the Petitioners on 13 May 2025, the Petitioners indicated that they were agreeable to the proposed reallocation of budgets, consistent with their

position that no further capital should be provided to the Early-Stage Companies as their future prospects were weak.

ii. However, during the call on 13 May 2025 Dr Harrison withdrew the reallocation proposal (despite considering it to be in the best interests of the Partnership).

iii. It is to be inferred from the forgoing that the GP made the reallocation proposal in the expectation that the Petitioners would not agree to it, and use their refusal as a basis for commencing proceedings against them in Delaware.

f. The fact that, since at the commencement of the Delaware Proceedings at the latest (and the Petitioners infer from before that date), the GP has (without notice to the Petitioners) approached at least 26 potential investors with a view to selling Partnership assets (portfolio companies) to them and / or transferring some or all of those assets (portfolio companies) to a new fund or funds managed by the GP. As recently as 4 October 2025, the GP (without notice to the Petitioners) sent a "Portfolio Lift-out Opportunity" presentation to at least 9 such entities (the "**October Presentation**"), offering an opportunity to "*take over a restructured, mature, stage-diversified portfolio biotech portfolio*".

43B. It is further inferred from the forgoing that the 15 May Email was used by the GP in bad faith as a pretext for implementing the Default Strategy.

43C. On 5 September 2025, shortly before the trial of the Delaware Proceedings was due to commence, the GP amended the relief sought in those proceedings. Following those amendments, the GP:

g. Abandoned its claim to be entitled to relief based solely on the 15 May Email.

h. Abandoned its claim for specific performance requiring the Petitioners s to contribute US$588.5m to the Partnership.

i. Abandoned its claim seeking an order permitting it to impose a Default Charge against all of the Petitioners' interests in the Partnership.

j. Sought a declaration that the Petitioners had breached the LPA by refusing to pay the Disputed Capital Calls.

k. Sought a declaration that the Petitioners had breached their obligations under the LPA to fund and approve budgets sufficient to qualify as a "Defaulting Partner".

l. Sought specific performance of the Petitioners alleged obligations to fund capital calls for the Early-Stage companies.

(the "**Amended Relief**")

43D. The Petitioners will rely on the fact that the GP had sought, and then abandoned, the extreme and unjustified relief originally pleaded in the Delaware Proceedings as demonstrating that the GP had improperly, and in breach of its fiduciary obligations, commenced the Delaware Proceedings to exert illegitimate pressure on them.

43E. Further, in seeking the Amended Relief in the Delaware Proceedings, the GP has acted in breach of the terms of an injunction issued by the Grand Court on 20 June 2025 and continued at a return date hearing on 1 August 2025 (the "**Writ Injunction**"). In those circumstances, any judgment obtained in favour of the GP in the Delaware Proceedings is not entitled to recognition in the Cayman Islands as being contrary to public policy. In particular:

a. By seeking a declaration that by reason of non-payment of the Disputed Capital Calls the Petitioners have breached their obligations under the LPA "*sufficient to qualify as a defaulting partner*" the GP is in breach of paragraph 1(a) of the Writ Injunction, which restrains it from "*taking any steps to designate, deem or treat [the Petitioners] as a "Defaulting Partner"…arising out of or in relation to the…non-payment of the [Disputed Capital Calls]*".

b. By seeking an order for specific performance of the alleged obligation to fund the Disputed Capital Calls, the GP is in breach of paragraphs 1(a) and / or (b) of the Writ Injunction. In particular, under paragraph 5(c)(iv) of the LPA the GP is only permitted to commence a lawsuit to collect an unpaid capital contribution upon a limited partner becoming a "Defaulting Partner". In commencing proceedings in Delaware seeking specific performance of the Petitioners' alleged obligation to fund the Disputed Capital

Calls, the GP is therefore either: (a) treating or taking steps to treat the Petitioners as a Defaulting Partner in relation to the non-payment of the Disputed Capital Calls or (b) acting in breach of paragraph 5(c)(iv) of the LPA.

c. By seeking an order which deems the Petitioners to have waived their rights to approve budgets, the GP is in breach of paragraph 1(a) of the Writ Injunction in that it is taking a step to designate, deem or treat the Petitioners as a Defaulting Partner by claiming that they have lost their rights to approve budgets under paragraph 18(f) of the LPA on the basis that they have not satisfied the Disputed Capital Calls.

Mismanagement / prejudicial conduct / lack of probity in the conduct of the Partnership's affairs

44. The GP has mismanaged the Partnership, acted prejudicially to the interests of the limited partners and demonstrated a serious lack of probity in the conduct of the Partnership's affairs, as detailed below.

*Improper issuing of the Disputed Capital Calls*

44A. In determining whether, and in what amount, to exercise its powers to call capital under the LPA, the GP is required to (a) act in good faith and in the interests of the Partnership; and (b) exercise its powers for proper purposes.

44B. In circumstances where the Petitioners have contributed approximately 98% of the capital invested into the Partnership and are the principal economic owners of the Partnership, the GP is required to have regard to the interests of the Petitioners when discharging its duty to act in good faith to act in the interests of the Partnership.

44C. The Disputed Capital Calls were made by the GP in breach of its fiduciary duties to (a) act in good faith and in the interests of the Partnership and (b) exercise its powers for proper purposes. In particular:

a. The Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made by the GP principally in the interests of Dr Harrison and / or Les Pommes for the improper purposes of enabling the GP to impose a Default Charge on the Petitioners which, on the GP's case, would enable it to redistribute 50% of the their

economic interests in the Partnership to the other holders of "preferred units" (principally, Mr Harrison and Les Pommes).

b. Further or in the alternative, the Disputed Capital Calls were not made in good faith in the interests of the Partnership but were made for the improper purpose of placing commercial pressure on the Petitioners to contribute further capital to the Partnership in the context of an ongoing dispute with the GP over the extent of their obligation to do so.

c. Further or in the alternative, the Disputed Capital Calls in respect of the Portfolio Companies were not made for the proper purposes of meeting any genuine or immediate funding need on the part of the Portfolio Companies in the amounts sought under the Disputed Capital Calls.

d. Further or in the alternative, the GP did not genuinely believe that it was in the best interests of the Partnership to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

44D. The breaches pleaded in paragraph [44C] above are evident from the following matters:

a. The fact that the GP is conflicted in its decision making in relation to the funding of the Portfolio Companies and the issuing of the Disputed Capital Calls by reason of: (a) the enormous economic benefits which Dr Harrison claims to be entitled to by imposing a Default Charge on the Petitioners; (b) Dr Harrison being the sole director of the GP and a director of each of the Portfolio Companies; and (c) Dr Harrison having carried interest entitlements in the investment pools containing the Early Stage Companies in circumstances where Dr Harrison has not contributed any capital to those pools.

b. The fact that the Disputed Capital Calls were all made on the same day and were issued by the GP without the GP first responding to the Petitioners' request, made in the 15 May Email, for the GP to provide an explanation of the basis on which the GP considered that they were obliged to contribute further capital to the Early-Stage Companies.

c. The size of the Disputed Capital Calls (in excess of US$101m), being far in excess of the amounts that the GP represented would be required:

   i. In the April Funding Plan provided to the Petitioners by the GP on 29 April 2025. The April Funding Plan stated that US$16.7m of funding was required in respect of the portfolio companies in Q2 2025.

   ii. In a spreadsheet which Dr Harrison (on behalf of the GP) circulated to Daniel Finkelman, Joseph Yanchik, and William Engels on 15 May 2025 (the "**15 May Spreadsheet**"). The 15 May Spreadsheet indicated that capital calls totalling US$19.5m would be made in respect of the portfolio companies.

   iii. In the October Presentation, which represented that a sum of US$50m would be sufficient to meet the funding needs of five Early-Stage Companies (Nereid Therapeutics Incorporated ("**Nereid**"), Marlinspike, Initial, Apertor Pharmaceuticals ("**Apertor**") and Nine Square Incorporated ("**Nine Square**") over a period of 36 months.

d. The fact that the Disputed Capital Calls were made in the context of a break-down of the relationship between the Petitioners and the GP and an ongoing dispute between the Petitioners and the GP over the extent of their Contingent Subscriptions into the Partnership.

e. The fact that the Disputed Capital Calls were the culmination of a long-term and highly choreographed Default Strategy against the Petitioners.

f. The fact that the Disputed Capital Calls were made by the GP minutes before the commencement of the Delaware Proceedings.

g. The fact that the Disputed Capital Calls included a capital call of US$7.5m in respect of Apertor in circumstances where:

   i. At the time of the capital call, Dr Harrison knew that that the Partnership was holding a capital contribution of US$1.6m made by the Petitioners in respect of Apertor on 21 May 2025.

ii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in emails dated 1 May 2025, 27 May 2025 and 30 May 2025 that Apertor was going to be wound up.

iii. At the time of the capital call, Dr Harrison had been informed by Dr Liras (on behalf of the Apertor board) in an email dated 30 May 2025 that US$850,000 was required to wind up Apertor.

iv. Apertor has in fact received the funds that were required to complete an orderly shutdown.

v. In the premises, when making the Disputed Capital Call in respect of Apertor, the GP knew that Apertor did not have any genuine commercial need for US$7.5m.

h. The fact that the Disputed Capital Calls included a capital call of US$9m in respect of Deep Apple in circumstances where:

i. At the time of that capital call, Dr Harrison had been informed by Dr Liras in an email dated 20 May 2025 that: a deal for third party funding was imminent; once that funding was received, Deep Apple had no need for additional funds and Deep Apple had sufficient funding to see it through to August 2025.

ii. Deep Apple announced a concluded funding deal with a third party called Novo Nordisk on 11 June 2025 pursuant to which it was eligible to receive up to US$812 million in payments, including an upfront payment of US$32.5 million.

iii. The GP has not withdrawn the Disputed Capital Call in respect of Deep Apple.

iv. In the premises, it is to be inferred that the GP's decision to make the Disputed Capital Call in respect of Deep Apple was not based on a genuine or good faith assessment of the funding requirements of Deep Apple.

i. The fact that the Disputed Capital Calls included US$47.8m in respect of the Early-Stage companies in circumstances where:

i. On 4 April 2025, Dr Harrison sent an email to Ms Anna Batarina (an employee of ATP at that time) stating that the reallocation of capital away from the Early-Stage Companies "*is the right business decision for the portfolio in ANY financing context*".

ii. The GP had proposed to reallocate capital away from the Early-Stage Companies in the April Funding Plan.

iii. In the premises, it is to be inferred the GP did not genuinely believe that it was in the best interests of the Partnership to continue to allocate further funding to the Early-Stage Companies either in the amounts sought under the relevant Disputed Capital Calls, or at all.

*The Delaware Proceedings*

45. As set out above, rather than seeking to reach a consensual solution with the Petitioners, the GP issued the Delaware Proceedings in an improper attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio companies, and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership.

46. In the Delaware Complaint, the GP has made a number of extremely serious allegations that the Petitioners are concertedly acting to undermine the position of the ~~Early-Stage Companies~~ portfolio companies to enable them to gain personal control over those companies (or some of them), outside of the Partnership. By way of example, the Delaware Complaint states:

a. "*…the Defendants' [have engaged in] premeditated financial destruction of* [REDACTED] *Delaware portfolio companies*" (paragraph 1);

b. "[the Defendants have] *arbitrarily and irrationally refusing to approve new budgets for* [REDACTED] *portfolio companies* [REDACTED]*, but whose initial funding has run out*" (paragraph 1);

c. "*The Family Office LP is now destroying these companies and the value ATP has created in the Fund. If not stopped at once, the Family Office LP will starve* [REDACTED] *of the financing needed to fund their respective missions*." (paragraph 6);

d. "*The Family Office LP's stated goal is to drive* [REDACTED] *portfolio into the ground so that the Family Office LP will no longer need to fund it, and then negotiate new terms and budgets only on* [REDACTED] *companies (if any) that they choose…The Family Office LP also appears to be positioning itself to cherry pick the Fund's clinical assets out of the rubble, using Family Office owned investment vehicles outside of the Fund's capital tree and contractual obligations. This scheme appears intended to ensure that the Family Office can evade its commitments…*" (paragraph 7);

e. "*Over the past eighteen months, the Family Office LP had hid its predatory intentions by feigning a willingness to meet reduced capital calls for* [REDACTED] *companies and negotiate new budgets for* [REDACTED] *companies.*" (paragraph 12);

f. "*These were different times in the working relationship between ATP and the Family Office LP, before the Family Office LP sought to rely on irrational pretexts to minimize its capital contributions to the Fund while eyeing select assets for future exploitation outside of the Fund*." (paragraph 69);

g. "*…the Family Office LP has capriciously withheld budget approvals, reduced approved budgets, cautioned emphatically against capital calls that provided anything more than "drip" financing*…" (paragraph 77);

h. "*…the Family Office LP has not only refused to discuss new budgets in good faith, but unleashed a new strategy to destroy* [the Partnership]." (paragraph 121); and

i. "*The* [Partnership] *has no adequate remedy at law for the violence the Family Office LP has inflicted on these companies*." (paragraph 150).

47. These allegations made by the GP in the Delaware Complaint are untruthful and wholly unfounded. The Petitioners have paid out the entirety of their Contingent Subscription so they are not obliged to contribute further capital. Further and in the alternative, the Petitioners, as the holders of the majority of the Preferred Units, are entitled to refuse to invest more of their capital into particular projects if the relevant budgets and associated milestones have not

been adhered to. In respect of certain of the Early-Stage Companies, the ~~May 2025~~ Disputed Capital Calls are not in accordance with the approved budgets. The Early-Stage Companies have to date failed to meet any, or sufficient, milestones specified in the investment memoranda attached to the approved budgets and the Petitioners have formed the view that the relevant portfolio companies are not viable investments. It would plainly be illogical and irrational for the Petitioners, as the limited partners of the Partnership with a c. 9~~8~~% stake in the Partnership's assets, to deliberately seek to "starve" otherwise viable portfolio companies, which have to date been funded exclusively by their capital contributions. Insofar as new budgets are concerned, the Petitioners have sought further information from the GP in order to assess the financial performance and merits of the proposed budgets but the GP has refused to provide the information sought.

48. The GP's pursuit of the Default Strategy and / or the Delaware Proceedings and the unfounded, incendiary and wholly inappropriate allegations made therein evidence the GP's serious lack of probity and demonstrate its improper management of the affairs of the Partnership. Those matters give rise to a justifiable loss of trust and confidence in the management of the GP by the Petitioners.

49. The Delaware Proceedings had ~~have~~ also evidently been brought for an improper purpose (including as part of the Default Strategy), to enable the GP to compel the Petitioners to contribute up to US$545 million of further funding to the Partnership in complete disregard of the provisions of the LPA, such funding being substantially in excess of the Petitioners' Contingent Subscriptions, including US$331.3 million for which the GP has not presented any budget to the Petitioners for approval (let alone obtained such approval) (~~see paragraph 51 below~~). The GP had also simultaneously ~~seeks~~ sought to engineer a default in order to impose a default charge on the Petitioners to confiscate 50% of their interests in the Partnership and thereby take control of the Partnership and billions of dollars of the Petitioners' assets, which would fall to be redistributed to Dr Harrison and his family. The GP also wishes to remove the Petitioners' right to approve new budgets so as to obtain control without the need for the Petitioners' approval of such budgets.

49A As pleaded in paragraph 43C above, the GP amended the relief sought in the Delaware Proceedings shortly before the trial of those proceedings was due to commence. However, the Petitioners will say that:

a. the relief originally pleaded in the Delaware Proceedings was wholly unjustified;

b. the relief originally pleaded in the Delaware Proceedings was included for improper purposes of exerting economic pressure on the Petitioners; and

c. the fact that it had been sought by the GP evidences the GP's serious lack of probity, its improper management of the affairs of the Partnership and gives rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

49B Further, the GP's conduct in the Delaware Proceedings has given rise to a justifiable loss of trust and confidence. In particular:

d. On 17 September 2025, the Petitioners issued a summons for the appointment of joint provisional liquidators over the Partnership (the "**JPL Summons**").

e. On 19 September 2025, the GP filed an emergency motion in Delaware seeking an anti-suit injunction preventing the Petitioners from pursuing the JPL Summons pending the outcome of the Delaware Proceedings (the "**Anti-Suit Injunction Motion**").

f. The Anti-Suit Injunction Motion was brought and pursued by the GP in breach of paragraph 18(g)(vi) of the LPA and / or in a manner that was vexatious and oppressive to the Petitioners and / or an unconscionable interference with the Cayman's Court's exclusive winding up jurisdiction. In support of these allegations, the Petitioners rely on the facts and maters set out at sub paragraphs (g)-(k) below.

g. Pursuant to paragraph 18(g)(vi) of the LPA, the GP contractually agreed to submit to the jurisdiction of the Cayman Court in respect of (among other matters) the JPL Summons. In breach of that contractual agreement, the GP sought by its Anti-Suit Motion to prevent the Petitioners from pursuing the JPLS summons. As a result of that breach and the other vexatious, oppressive and unconscionable conduct particularised at sub-paragraphs (h)-(k) below, it was not possible to move the JPL Summons at the hearing fixed for that purpose by the Cayman Court.

h. The GP moved the Anti-Suit Injunction Motion at a hearing before the Delaware Court on 19 September 2025 (the "**September Hearing**") at which it misrepresented to the

Delaware Court the effect of the PL Summons, and the Petitioners; conduct in connection with it, giving rise to a justifiable lack of trust and confidence. In particular:

i. The GP represented in a brief presented to the Delaware Court that in a letter sent to Walkers by Campbells on the 17 September 2025, the Petitioners had stated that "*unless ATP agrees by 10 am on September 19, to certain undertakings, it will seek emergency and expedited ex parte appointment of PLs from the Cayman Court*". Campbells' letter said no such thing. Instead, it requested for the GP to give certain undertakings pending an *inter partes* hearing of the PL Summons (which the letter proposed should occur on 31 October 2025), failing which the Petitioners "*will be forced to seek urgent relief without further notice to protect our clients' position until the PL Application is resolved*".

ii. The GP represented in a brief presented to the Delaware Court that the PL Summons was a "*frontal attack on this [Delaware] Court's jurisdiction and an attempt to circumvent this Court's orders expediting this action and denying Rigmora's Motion to Stay in favour of the later filed Cayman Proceedings that Rigmora previously lost*". That was untrue. The appointment of JPLs would not have interfered with the Delaware's Court's jurisdiction in any way.

iii. The GP represented in a brief presented to the Delaware Court that a PL under Cayman law is similar to a bankruptcy trustee under U.S. law "*Except here, the trustee would be hand-selected by Rigmora, which has a demonstrated purpose of starving the portfolio Companies*". That submission was false, in particular because it failed to acknowledge that a provisional liquidator is an officer of the Cayman Court, obliged to act independently in the best interests of the Partnership.,

iv. The GP represented in a brief presented to the Delaware Court that "*Rigmora appears to view a trial in Delaware as an unacceptable risk, and is attempting to mitigate that risk by displacing ATP as the Fund's general partner before trial as soon as possible*". That was false. The PL Summons: did not seek any orders removing ATP as the Fund's general partner and sought to appoint

provisional liquidators with a limited mandate which *did not include* taking over the conduct of the Delaware Proceedings.

v. The GP represented during submissions at the September Hearing that the JPL Summons would "*deprive this Court of the opportunity to fully adjudicate and remediate the breaches of contract that we have been litigating in this court since May*". That was untrue. The appointment of PLs would not have deprived the Delaware Court with the opportunity to fully adjudicate the issues before it.

vi. The GP represented during submissions at the September Hearing that if provisional liquidators were appointed in circumstances where the Delaware Court order the Rigmora LPs to fund US$215m of approved budgets, the PLs "*could send [the $215m] right back to Rigmora, instead of where it is supposed to go, which is in furtherance of the Fund's objectives*". That submission misrepresented the independence of provisional liquidators, and their obligation to act in the interests of the Partnership.

i. At a hearing in the Cayman Islands on 3 October 2025, the Cayman Court directed that the PL Summons be heard on 3-4 November 2025. On 13 October 2025 the GP signed a consent order agreeing that the PL Summons should be listed for a hearing on 3-4 November 2025.

j. Three days later (on 16 and 17 October 2025) the GP informed the Delaware Court of its intention to further pursue the Anti-Suit Injunction (which had been adjourned at the September Hearing) which it did by reply brief dated 19 October 2025. As an alternative, the GP suggested at the end of the trial of the Delaware Proceedings that the Delaware Court produce a judgment on the Delaware Proceedings in advance of 3–4 November 2025, or shortly thereafter, despite the Delaware Judge's indication of the difficulties she would have in producing a coherent judgment within that compressed period.

k. In the circumstances, faced with the risk of the Anti-Suit Injunction sought by the GP or the issuance as its request of a judgment on the Delaware Proceedings on a timescale so compressed as to prejudice the Delaware Court in fairly disposing of those proceedings and/or the Petitioners' in having fair opportunity to present its

case in those proceedings, the Petitioners had no realistic option but to seek to leave withdraw the JPL Summons.

*Wilful and persistent breaches of the LPA*

~~50. In the Delaware Complaint, the GP seeks specific performance to compel the limited partners to immediately fund prior approved but unfunded budgets in response to capital calls as and when they are received (see paragraph 14 of the Delaware Complaint). This amounts to an accelerated capital call, but the GP has wholly failed to comply with the requirements in clause 5(a)(ii) of the LPA (see paragraph 19(c) above) by providing any written assurances and/or diligenced presentation that the relevant project(s) will be completed within the aggregate amount budgeted therefor, and instead seeks to compel the Petitioners to meet accelerated capital calls in the absence of these assurances, by court order.~~

~~51. The GP also seeks specific performance to compel the Petitioners to provide further funding of up to US$331.3 million (see paragraph 164 of the Delaware Complaint). No budgets have been provided by the GP or approved by the Petitioners in respect of any such funding (which the GP accepts - see paragraph 5 of the Delaware Complaint). Indeed, the GP has not provided any information to the Petitioners about the intended use of the further funding, merely asserting in the Delaware Complaint that its use is "*including for those companies specifically named in Amendment No. 22 – Ascidian, Aulos, Nine Square, Nereid and Replicate*". This falls far short of the formal budget proposals which are required to be presented to the Petitioners for approval under the LPA, which budgets serve the further purpose of enabling the Petitioners to ensure that their capital is being applied in a proper manner.~~

52. In the Delaware Proceedings, the GP has sought ~~seeks~~ to circumvent the express provisions of the LPA in the Delaware Proceedings, to compel the Petitioners to provide vast sums of further funding, without specifying what those funds are to be used for and denying the Petitioners any oversight over how their funds are applied, contending that the Petitioners have "waived" or "forfeited" their right to approve budgets. The GP's attempts to obtain funding to be applied entirely at its own discretion without any oversight by the Petitioners demonstrates a serious lack of probity and mismanagement and has caused the Petitioners to lose trust and confidence in the GP's ability to manage the Partnership.

*The GP has knowingly misled the Petitioners into contributing capital to the Partnership*

52A. The GP has knowingly misled the Petitioners into contributing capital to the Partnership through making false representations as to the purposes for which that capital was required and / or would be used.

52B. The GP issued a capital call notice dated 15 January 2025 of US$1.6m in respect of Marlinspike (the "**Marlinspike January Call**"). By making the Marlinspike January Call, the GP represented that that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52C. The Petitioners paid the Marlinspike January Call by agreeing that the US$1.6m could be reallocated to Marlinspike from funds the Petitioners paid in respect of a 16 January 2025 capital call for Nine Square. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike January Call other than for the purposes of meeting Marlinspike's funding requirements.

52D. On 3 February 2025, the GP issued a capital call notice of US$400,000 in respect of Marlinspike (the "**Marlinspike February Call**", together with the Marlinspike January Call the "**Marlinspike Calls**"). By making the Marlinspike February Call, the GP represented that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements.

52E. On 13 February 2025 the Petitioners arranged for payment of the Marlinspike February Call, which the GP had received by the next day. In doing so, the Petitioners understood that the capital was being requested for, and would be used to meet, Marlinspike's funding requirements. Further, under the LPA the GP was not permitted to use the proceeds of the Marlinspike February Call other than for the purposes of meeting Marlinspike's funding requirements.

52F. In fact, contrary to the representations made by the GP and unknown to the Petitioners and in breach of the LPA, the GP did not intend to use and did not use the proceeds from the Marlinspike Calls to meet Marlinspike's funding requirements.

52G. Instead, the GP procured that the proceeds from the Marlinspike Calls were transferred to another portfolio company Nereid. In particular:

a. On 27 March 2025, Mr Finkelman on behalf of the GP sent an email to Willam Engels (CFO at ATP) and Jonathan Ravski (Accounting Manager at ATP) instructing them to wire US$1m of the proceeds from the Marlinspike Calls to Marlinspike "*but let them know that it is going right out the door to Nereid*".

b. On 27 March 2025, Mr Ravski emailed the accounting department at Marlinspike explaining that "*We have wired $1m under the Series A Agreement. Please note that these funds are to be used as a loan to Nereid as per discussions that took place*".

c. On 27 March 2025, the operator of Marlinspike's accounting mailbox responded saying "*this is the first we're hearing of this*".

d. On 28 March 2025, Marlinspike transferred US$1m as a loan to Nereid ("**Nereid Loan**").

52H. As at the date of the Marlinspike Calls and Nereid Loan, no approved budget was in place in respect of Nereid. In those circumstances, the GP was not permitted to call capital for Nereid from the Petitioners under paragraph 5(a)(ii) of the LPA. Paragraph 19(b) above is repeated.

52I. In the premises:

a. The representations referred to at paragraphs 52B and 52D above were knowingly false, in that the GP did not intend to use the proceeds from the Marlinspike Calls to meet the funding requirements of Marlinspike. Instead, the GP intended to use the proceeds (or a substantial portion thereof) to meet the funding requirements of Nereid (thereby circumventing the LPA's requirement that capital can only be called for a portfolio company in accordance with an approved budget).

b. The Petitioners were misled into contributing capital to the Partnership by the knowingly false representations of the GP.

c. Further, the GP breached the terms of the LPA by procuring for the proceeds of the Marlinspike Calls to be used other than for the purposes of meeting Marlinspike's funding requirements.

d. The GP's conduct has given rise to a justifiable loss of trust and confidence in its management of the Partnership's affairs.

*Misappropriations / dissipations of assets*

52J. Between 31 July 2025 and 8 August 2025 the Partnership received three payments totalling US$62,776,352.48 (the "**Q3 2025 Receipts**"). In particular:

a. A payment of US$20,035,952.54 on 31 July 2025.

b. A payment of US$41,736,871.3 on 1 August 2025.

c. A payment of US$13,528.64 on 8 August 2025.

52K. Between 4 August 2025 and 27 August 2025, the GP caused US$39,306,044 of the Q3 2025 Receipts to be paid away from the Partnership (the "**Q3 2025 Payments**"). In particular:

a. On 4 August 2025, US$20 million was transferred to the client account of the GP's US attorneys at Quinn Emanuel.

b. On 4 August 2025, US$8,906,044 was paid directly to ATLS in respect of alleged management fees.

c. Between 11 August 2025 and 27 August 2025 US$10.4m was paid to (or on account of) various portfolio companies.

52L. The GP did not disclose the existence of the Q3 2025 Receipts or the Q3 2025 Payments to the Petitioners. The Petitioners only became aware of their existence in September 2025 in correspondence prompted by answers given during the deposition of the GP's witnesses in the Delaware Proceedings.

52M. The Q3 2025 Receipts included a sum of US$41,736,871.3 received from Braeburn on 1 August 2025 (the "**Braeburn Prepayment**"). The circumstances in which the Braeburn Prepayment came to be received by the Partnership evidences the GP's serious lack of probity and gives

rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. The Braeburn Prepayment represented an early repayment of sums owed to the Partnership under certain convertible loan notes issued by Braeburn between October 2020 and August 2023 (the "**Braeburn Notes**").

b. The Braeburn Notes were not due to be repaid until March 2029 and earned the Partnership interest at 8% per annum.

c. Despite this, the GP approached Braeburn on dates unknown to offer a 10% discount on the principal owed under the Braeburn Notes in return for early repayment.

d. The Braeburn Prepayment was not in the best interests of the Partnership since it has resulted in the Partnership forgoing both capital and interest on the Braeburn Notes.

e. In procuring the Partnership to offer and accept the Braeburn Prepayment, the GP acted in breach of its fiduciary duties to act *bona fides* in the best interests of Partnership. It is to be inferred (including from the Q3 2025 Payments) that the Braeburn Prepayment was improperly procured by the GP at least in part for the purposes of funding its illegitimate litigation campaign against the Petitioners.

52N. Further, in making the Q3 2025 Payments, the GP has demonstrated a serious lack of probity and has improperly managed the affairs of the Partnership so as to give rise to a justifiable loss and confidence in the GP's management of the Partnership. In particular:

a. The Braeburn Notes were assets held in Pool Braeburn (being "debt securities" of Braeburn owned by the Partnership within the meaning of paragraph 21(a) of the LPA). As such, the GP was required to distribute the proceeds of the Braeburn Prepayment to the Petitioners in accordance with Paragraph 21(d) of the LPA. The Braeburn Prepayment was not available to be applied by the GP for any other purpose. Despite this, the GP improperly and in breach of the LPA funded the Q3 2025 Payments from the proceeds of the Braeburn Prepayment.

b. The GP's entitlement to deal with the remainder of the Q3 2025 Receipts is governed by paragraph 8(c) of the LPA (as amended pursuant to Amended 4 dated 1 April 2015). Paragraph 8(c) of the LPA provides that:

*"The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) and (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership and Intermediary expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with Budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior consent of the holders of a majority of the Preferred Units."*

c. Under paragraph 8(c) of the LPA, the GP was only permitted to apply the Q3 2025 Receipts towards investments in projects in a manner "*consistent with the applicable budgets"* or with the prior consent of the Petitioners as the holders of a majority of the Preferred Units.

d. In breach of the LPA, the GP used the Q3 2025 Receipts to make payments to portfolio companies where no approved budget exists and without the prior consent of the Petitioners. Those payments were improper, ought not to have been made and have dissipated the Partnership's assets. In particular:

i. On 11 August 2025, the GP transferred US$2 million from the Q3 2025 Receipts to the portfolio company Aethon Therapeutics ("**Aethon**"). The approved budget in place in respect of Aethon incorporates funding milestones that have not been met. As such, the payment to Aethon was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Aethon is conditional upon funding milestones being

met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Aethon pending the resolution of that dispute.

ii. On 14 August 2025, the GP transferred US$150,000 from the Q3 2025 Receipts to the portfolio company Nine Square and US$250,000 from the Q3 2025 Receipts to the portfolio company Nereid. There were no approved budgets in respect of Nine Square or Nereid and the Petitioners did not consent to those payments.

iii. On 21 August 2025, the GP transferred US$1.5 million from the Q3 2025 Receipts to the portfolio company Replicate Biosciences ("**Replicate**"). Under paragraph 26 of the LPA, the Petitioners' approval of a budget in respect of Replicate was expressly contingent upon "*at least $300 million being realised (including through deemed distributions) by [the Petitioners] on a sale or financing of its interest in ATP LLC*" (the "**Realisation Condition**"). The Realisation Condition has not been met. Accordingly, the payment to Replicate was not "in accordance with" an applicable budget within the meaning of paragraph 8(c) of the LPA, and the Petitioners did not consent to that payment.

iv. On 22 August 2025, the GP transferred US$100,000 from the Q3 2025 Receipts to the law firm Wilson Sonsini Goodrich & Rosati ("**Wilson Sonsini**") on account of Marlinspike, in discharge of legal fees owed by Marlinspike. The approved budget in place in respect of Marlinspike incorporates funding milestones that have not been met. As such, the payment to Marlinspike was not "consistent with" the applicable budget and the Petitioners did not consent to the payment. While the GP disputes, in the Writ Proceedings, that the budget in respect of Marlinspike is conditional upon funding milestones being met, the GP has nevertheless demonstrated a serious lack of probity in making the payment to Marlinspike pending the resolution of that dispute.

e. The GP has also acted with a serious lack of probity in continuing to seek to compel the Petitioners to pay the full amount of the Disputed Capital Calls following payment of the Q3 2025 Receipts to the portfolio companies (including, in addition to those

identified above, a payment of US$6m from the Q3 2025 Receipts to Ascidian on 11 August 2025 (being the full amount of the Disputed Capital Call in respect of Ascidian).

f. On 4 August 2025, the GP transferred US$20 million from the Partnership's bank accounts to Quinn Emanuel's client account in the US as a "reserve" to be available to discharge legal fees owed to Quinn Emanuel and Walkers. In causing that payment to be made, the GP has acted with a serious lack of probity in that: (a) legal costs incurred by the GP in connection with the proceedings in Delaware and the Cayman Islands are not properly incurred on behalf of the Partnership; (b) alternatively, the sum of $20 million is not a reasonable amount to incur on behalf of the Partnership in connection with the ongoing disputes; and (c) in any event, the GP ought to have retained that sum in the Partnership's own bank accounts and there was no proper justification for the GP to have caused it to be transferred away from the Partnership pending the outcome of the Petition.

52O. Further, the GP's failure to disclose the existence of the Q3 2025 Receipts and failure to seek validation orders under s.99 of the ELP Act evidences the GP's serious lack of probity and gives rise to a justifiable loss of trust and confidence in its management of the Partnership. In particular:

a. At the hearing of the return date for the Writ Injunction on 1 August 2025, the GP sought to vary the Writ Injunction in reliance upon the Third Affirmation of Dr Harrison dated 21 July 2025 ("**Harrison 3**").

b. In Harrison 3:

i. Dr Harrison asserted (at [125]) that: "*the Injunction Order would instead bring an immediate and ongoing halt to the Partnership's funding of the portfolio companies for the entire period the injunction Order remains in place*".

ii. Dr Harisson asserted, in support of the GP's application for fortification of the Petitioners' undertaking in damages, that "*Ascidian is presently being starved of the requisite funding to achieve [its] goals as a result of the Family Office's refusal to meet capital calls (including the 30 May Capital Calls) and approve budgets*".

c. By the time of the return date in respect of the Writ Injunction on 1 August 2025:

i. the GP and Dr Harrison knew that the Partnership had just received (or was about to receive) circ.US$62m;

ii. the GP and Dr Harrison intended to use those recently received (or imminently to be received) funds for the purposes of providing funding to the portfolio companies; and

iii. without prejudice to the generality of (ii) above, the GP and Dr Harrison intended to pay US$6m of those funds to Ascidian (being the full amount of the Disputed Capital Call in respect of that company).

d. By reason of the matters referred to in paragraph [52O(c)] above, the evidence referred to in paragraph [52O(b)] above was inaccurate and misleading to the knowledge of the GP and Dr Harrison.

e. In the premises, the GP demonstrated a serious lack of probity, giving rise to a justifiable loss of trust and confidence, by: (a) failing to correct the inaccurate and misleading evidence placed before the Court on 1 August 2025 and (b) continuing to rely on that evidence to seek a variation of the Writ Injunction on 1 August 2025.

*Improper denials*

52P. The GP has denied that the relationship between the GP and the Petitioners has deteriorated substantially and denied that there has been a breakdown of trust and confidence between it and the Petitioners, including:

a. At paragraph 47 of its Defence to the Petition.

b. At paragraph 75(e) of its Defence to the Petition.

c. At [18(c)(xi)] of a skeleton argument filed on behalf of the GP for the hearing of the return date of the Writ Injunction, which claimed that: "*The Family Office commenced the present hostilities on 15 May 2025 by repudiating its funding commitments to the Partnership*".

d. At the hearing of the return date of the Writ Injunction on 1 August 2025, when the GP's leading counsel submitted to the Court that: (i) in May 2025 the GP was "*in good faith, still operating under the assumption that the relationship was working well*" and (ii) that any breakdown in the relationship between the parties "*stems from my learned friend's clients' actions in May this year when it decided unilaterally not to pay the capital calls or approve budgets*".

52Q. Those denials and statements were untrue and improperly made. The GP has been exploring ways to commence litigation against the Petitioners and manufacture a situation where it can default the Petitioners for many months. Paragraph 43A above is repeated. In those circumstances:

a. The GP has been aware of a serious deterioration in the relationship between it and the Petitioners for months before May 2025. The GP did not and does not honestly believe otherwise.

b. In May 2025, the GP was not operating under the assumption that the relationship between it and the Petitioners was working well. The GP did not and does not honestly believe otherwise.

c. The GP knew that the breakdown in the relationship between the parties did not stem from the Petitioners' failure to pay the Disputed Capital Calls. The GP did not and does not honestly believe otherwise.

52R. The GP's improper denials of the existence and extent of deterioration of the relationship between it and the Petitioners, evidence the GP's serious lack of probity, demonstrate its improper management of the affairs of the Partnership and has given rise to a justifiable loss of trust and confidence in its ability to manage the Partnership.

*Failure to maintain records in the manner of a reasonably competent general partner*

52S. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a list of partners and register of partners, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. Under paragraph 16(b) of the LPA, the GP is required "*at all times*" to maintain a list containing the names, addresses and subscriptions of the limited partners of the Partnership (the "**List of Partners**").

b. Under section 29(1) of the ELP Act, the GP is required to maintain "*a register of limited partners which shall contain the name and address of each partner of the exempted limited partnership, the date on which a person became a limited partner and the date on which a person ceased to be a limited partner*" (the "**Register of Partners**"). Under section 29(6) of the ELP Act it is a criminal offence for a general partner to fail to comply with its obligation to maintain a Register of Partners.

c. In breach of paragraph 16(b), the GP has failed to maintain a List of Partners.

d. In breach of section 29(1) of the ELP Act, the GP has failed to maintain a Register of Partners.

52T. The GP has failed to act in the manner of a reasonably competent general partner in its management of the affairs of the Partnership by failing to maintain a consistent position as regards the extent of the Petitioners' Contingent Subscriptions, giving rise to a justifiable loss of trust and confidence in its ability to manage the Partnership. In particular:

a. A reasonably competent general partner is required to maintain accurate internal records of the extent of each limited partner's Contingent Subscriptions and undrawn Contingent Subscriptions.

b. Following the agreement of Amendment 20 in June 2021, the GP has presented 10 different figures to explain the extent of the Petitioners' Contingent Subscriptions in respect of the Partnership, ranging from US$2.5bn to US$2.946bn. It is to be inferred that the GP has failed to maintain any, or any accurate or satisfactory, records of the Petitioners' Contingent Subscriptions in respect of the Partnership.

c. Since May 2025 the GP has presented 13 different explanations of the size of the Petitioners' undrawn Contingent Subscriptions ranging from US$494,119,277 to US$590,736,444. It is to be inferred that the GP has failed to maintain any, or any accurate

or satisfactory, records of the Petitioners' undrawn Contingent Subscriptions in respect of the Partnership.

*Recharging costs to the portfolio companies*

53. Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17), ATLS receives an annual fee (the "**ATLS Fee**") payable during the term of the Partnership which is funded by capital contributions of limited partners holding preferred units. The ATLS Fee is required to be applied towards certain expenses of the Partnership incurred in managing the Partnership, including compensation and benefits for employees, and facilities and related overhead expenses (Section 11 of Amendment 9). Pursuant to Paragraph 20(e)(ii) of the LPA (as amended by Amendment 20), the GP is required to prepare a yearly budget for the ATLS Fee which is presented to the "Subject Limited Partner" (i.e. the Petitioners) no later than 1 December on the previous year. The Petitioners then have sole authority to either approve or reject the ATLS Fee budget. In the event a budget for the ATLS Fee is not approved in a calendar year, the approved budget for such year will be the most recently approved budget (subject to some exceptions in relation to extraordinary, non-recurring expenses).

54. However, since 2021, the GP has improperly charged the employee costs of ATP investment professionals to the Partnership's portfolio companies, which costs ought to be covered by the ATLS Fee approved by the Petitioners. In particular:

    a. The Partnership's consolidated financial statements for the years ended 2023 and 2024 show that the Partnership's expenses exceeded the capital calls paid by the limited partners. To fund the gap between Partnership's expenses and capital calls paid (principally by the Petitioners), the GP received investment income, comprising: (i) interest income; and (ii) service revenue from affiliated entities.

    b. The Petitioners understand that the revenue in (ii) above comprises support service costs illegitimately charged to portfolio companies in breach of the LPA.[2]

[2] "Service revenue from affiliated entities" is described in the notes to the Partnership's consolidated financial statements as "*ATLS, ATLS (UK), and ATPR provide administrative, technical and strategic consulting services to other entities within the Partnership group and the Partnership's portfolio companies. Revenue from services provided to the entities within the consolidated group are eliminated upon consolidation. Services*

c. Dr Harrison confirmed by email dated 8 December 2023 that "*ATP employees [are] filling critical roles at certain Portfolio Companies*" and "*those Portfolio Companies* [are] *reimbursing ATP for a portion of the employment costs incurred for those employees*". Dr Harrison also provided the Petitioners with a report from Price Waterhouse and Cooper dated 17 March 2023 (the "**PwC Report**") which confirmed that ATLS had entered into a services arrangement with the portfolio companies for the purposes of charging the portfolio companies costs associated with the provision of management and scientific research and advisory services.[3]

d. Further, the proposed, unapproved ATLS Fee budgets prepared by the GP for 2021 through 2025 included a credit for "*Investment Professionals – Portfolio Reimbursement*".

e. In December 2023, the Petitioners raised with Dr Harrison that the proposed ATLS Fee budgets for 2024 purported to assign costs which ought properly to be covered by the ATLS Fee, in breach of the LPA. Dr Harrison responded, stating that he disagreed but provided no reasons. The budget for the 2024 ATLS Fee was not agreed.

f. The GP's charging of ATP employee costs to the Partnership's portfolio companies is a breach of Paragraph 20(e)(ii) of the LPA (as amended by Amendments 10 and 17) and Section 10 of Amendment 9 (as amended by Amendments 10 and 17). Further or in the alternative, the GP's recharging of expenses to the Partnership's portfolio companies is a breach of Paragraph 8 of the LPA (as amended), as it deprives the Petitioners of income they would have received via the distribution mechanisms in the LPA.

55. The Petitioners are also concerned that the GP has been inappropriately incurring travel expenses for investment professionals which appear to be exorbitant. In particular, the ATLS Fee Budgets for 2024 and 2025 respectively budget for travel for investment professionals at US$690,000 for 2024 and US$625,000 for 2025.

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*provided may include internal costs, such as employee expenses and certain overhead expenses, and external costs incurred from third party providers.*"

[3] For the avoidance of doubt, the PwC Report was a transfer pricing study, which estimated an arm's length range of returns applicable to the provision of certain support services by ATLS to the Partnership's portfolio companies. The PwC Report did not concern whether the assignment of such costs to the Partnership's portfolio companies was permissible under terms of the LPA.

56. The GP's recharging of expenses to the Partnership's portfolio companies, and charging exorbitant travel expenses, demonstrates a serious lack of probity and mismanagement. The charging of expenses to the portfolio companies also gives rise to a serious conflict of interest (see further below), which has resulted in the Petitioners' loss of trust and confidence in the GP.

*Failure to provide information*

57. The GP has failed or refused to provide the Petitioners with information about the operation of the Partnership that would otherwise enable the Petitioners to assess the financial position of the clinical stage companies in order to determine whether new budgets ought to be approved, and to determine whether those managing the Partnership are acting in accordance with their duties. In particular:

    a. The GP refused to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Aulos Bioscience Inc. and Ascidian Therapeutics Inc.

    b. The GP refused or failed to provide sufficient information or answer the Petitioners' questions about the budget and future plans of Replicate, which is developing self-replicating RNA immunotherapies. The GP is not entitled to call for capital in respect of Replicate because it has not complied with the various conditions that must be met before capital can be called under the current budget. Paragraph 26 of the LPA (introduced by Amendment 22) provides that any budget approved by the Petitioners for Replicate after the execution of Amendment 22 will be contingent upon certain realisations being achieved (through deemed distributions) by the Petitioners on a sale or financing of its interest in the entity formerly known as ATP Life Science Sub LLC , now known as BBN Life Science Sub LLC, (the "**Royalty Refinancing**"). Such realisations have not been realised (including through deemed distributions) by the Petitioners. Despite this, the GP now contends and seeks an order from the Delaware Court confirming that the Petitioners have waived or forfeited their right to approve budgets (see paragraphs 23, 163 and 191 of the Delaware Complaint), in a further and altogether more ambitious attempt to deny the Petitioners access to information about the financial position of the portfolio companies. Separately, the GP contends

that Paragraph 26 of the LPA (as amended by Amendment 22) required the Petitioners to pursue Royalty Financing in short order (see paragraph 122 of the Delaware Complaint).

c. The GP refused or failed to provide supporting information or an explanation as to why the capital call notice issued on 7 February 2025 in respect of uncalled Partnership expenses for the second half of 2024 was reduced from the previous call (and it falls to be inferred that the reduction was because the GP's legal expenses had been improperly charged to the Partnership – see further paragraph 65 below).

d. The GP has also failed to provide any further information about legal expenses charged to the Partnership in 2024 (see further paragraph 65 below).

e. The GP has failed to respond to requests for information regarding the purportedly binding nature of obligations purportedly owed by limited partners in their personal capacity to third parties, and of obligations owed by the Partnership to the portfolio companies (see further paragraph 63 below). The GP has also failed to provide copies of documentation evidencing such obligations, including the investment management agreements entered into between the Partnership and the portfolio companies.

f. The GP has failed or refused to respond to requests for information about the basis on which it contends that the limited partners are required to continue to fund the portfolio companies, notwithstanding those companies' failure to hit milestones or adhere to business plans set out in the agreed budgets. Rather than provide this information, the GP instead seeks to rely on the Petitioners' requests as an anticipatory breach of the LPA in the Delaware Complaint (see paragraph 170 of the Delaware Complaint).

58. The Petitioners have at all material times been entitled to information which enables them to determine whether the GP is acting in accordance with its duties and obligations, including the books, records, accounts and assets of the Partnership (see Clause 16(b)-(c) of the LPA, and section 22 of the ELP Act). The Petitioners are also entitled to receive (and the GP is obliged to provide) financial reports at least every calendar quarter in respect of all entities within the Partnership structure, which must include individual project income, expenses and operating costs, and must show actual versus budgeted results for the relevant period and

explain any major variances to the budget (see Schedule C to the LPA). The GP has not only denied the Petitioners their rights to this information but seeks to permanently deprive the Petitioners of their rights in the Delaware Proceedings. Even the limited information provided by the GP to the Petitioners confirms that the GP has committed serious breaches of duty which has resulted in the Petitioners' loss of trust and confidence in the GP.

Conflicts of interest and/or breach of fiduciary duty to act in good faith in the interests of the Partnership

59. The GP has a conflict of interest and/or has breached its fiduciary duties to act in good faith in the interests of the Partnership.

~~*Improperly issuing capital calls*~~

~~*60.* The GP's issuance of capital calls of over US$100 million on 30 May 2025 to be paid by 13 June 2025/17 June 2025 (i.e. the May 2025 Capital Calls - which are not referenced in the Delaware Proceedings) amounts to a further breach of the GP's duty to act in good faith in the interests of the Partnership. The May 2025 Capital Calls were not issued for proper purposes or *intra vires* under the LPA, as it is evident from the timing of the capital calls, coinciding with the issue of the Delaware Complaint, that the capital calls are part of the GP's litigation strategy to apply improper pressure to the Petitioners through threats of default and/or its broader strategy to take control of the Partnership. The scale and nature of the May 2025 Capital Calls is also inconsistent with the funding scenario prepared by the GP on 30 April 2025 in which the GP proposed to cut the budgets for the Early-Stage Companies so as to commit only $1 million to one Early-Stage Company (Red Queen) as part of an orderly winding down of those companies. It can be inferred that the GP does not consider that the Early-Stage Companies are viable investments and/or worthy of deploying significant capital given the terms of that funding proposal. Notwithstanding, the GP has called $47.8 million in capital for Early-Stage Companies pursuant to the May 2025 Capital Calls.~~

~~*Attempt to compel the limited partners to provide further funding to the portfolio companies*~~

~~61. As set out above, the Delaware Proceedings have been designed to attempt to persuade the Delaware Court to compel the Petitioners to provide further funding for the portfolio~~

~~companies and/or to engineer a default to enable the GP to confiscate 50% of the Petitioners' interest in the Partnership. In particular, the GP seeks in the Delaware Complaint, amongst other things, "*a declaratory judgment that [the Petitioners are] currently in material breach of [their] contractual duties under the LPA and [have] waived [their] right to approve budgets*" (paragraph 163) or alternatively, specific performance requiring the Petitioners to fund capital calls in excess of the level of their Contingent Subscription and compelling the Petitioners to consider further budgets (paragraph 164). The GP also seeks a declaratory judgment that the Petitioners are in breach of their funding and budget approval obligations, and an order that the GP is entitled to impose a default charge against the Petitioners' interests in the Partnership or the investment pools to which its purported default relates (paragraphs 188-190).~~

62. The Petitioners' continued funding of ~~portfolio companies~~ the Early Stage Companies is in the interests of those companies, the GP and its employees, and ATP (not in the interests of the Partnership~~'s~~). The portfolio companies are co-founded and managed by executives from the GP, including by Dr Harrison himself, (see paragraph 32 of the Delaware Complaint) who would remain employed thereby, and the GP would be able to continue charging the portfolio companies for expenses which ought to be covered by the ATLS Fee. ATP, of which Dr Harrison is founder and Managing Director, is also wholly dependent on the continued funding of the Partnership (and ATP's continued involvement therein) as ATP has no meaningful business interests or capital under management other than that belonging to the Partnership, which has been almost entirely contributed by the Petitioners. Further, Dr Harrison is a director of each of the portfolio companies and owes fiduciary duties to them. It is in the interests of the portfolio companies (many of which are said, by the GP, to be in a state of financial distress) to obtain as much funding from the Partnership as possible but it is not necessarily in the interests of the Partnership to continue to provide such funding. The GP has a demonstrable conflict of interest, as a result of which the Petitioners have lost trust and confidence in its ability to manage the Partnership.

62A. Further, the GP has: (a) denied that it is subject to any conflict of interest (including at [76] of its Defence to the Petition); (b) failed to take any steps to manage that conflict, including when considering whether and in what amount to call capital from the Petitioners in May 2025; and (b) refused to accept the Petitioners' proposal on 3 July 2025 for the appointment of an independent conflict director. Those denials and failures have given rise to a further justifiable loss of trust and confidence in the GP's ability to manage the Partnership.

*Exposure of the Partnership to binding and open-ended funding commitments to loss-making portfolio companies*

63. The GP has also unjustifiably exposed the Partnership to open-ended funding commitments in respect of the portfolio companies. In particular, the Delaware Complaint says as follows:

a. The Complaint refers at paragraph 85 to a letter sent by Dr Harrison to the Petitioners on 29 November 2022 in which he stated that: *"a default by [a limited partner] in respect of a particular pool would put the Fund as a whole in breach of its obligations to its counterparties and expose the Fund as a whole to damages"*; and

b. The Complaint states at paragraph 143:

*"The contention that the Family Office LP's consent is required before capital can be called where there have been changes in milestones or "business plans" also has no support in the language of the LPA or the parties' course of dealings. Nor could it,* ***because ATP's funding commitments to the individual portfolio companies are defined by binding funding agreements. ATP's agreements with portfolio companies often include an initial share purchase investment, plus (i) an option for ATP to purchase additional shares on the same terms, and (ii) obligations for ATP to purchase additional shares at the request of the company board. Those additional share purchase obligations may or may not be tied to the company achieving certain milestones.*** *For example, the Series A Preferred Stock Purchase Agreement executed between ATP and portfolio company* [REDACTED] *on December 6, 2021 included (a) an initial* [REDACTED] *investment by ATP and (b) an obligation for ATP to purchase up to* [REDACTED] *in additional shares at the request of the* [REDACTED] *board. Only a portion of the obligation was tied to the completion of certain company milestones. That obligation requires ATP to invest as much as* [REDACTED] *in* [REDACTED]*. To date, ATP has invested* [REDACTED] *in* [REDACTED]*, which is short of ATP's total potential obligation to the company under the agreement.* ***Should the additional funding obligations become due, then the Family Office LP's refusal to meet a*** [REDACTED] ***capital call would cause ATP to breach its agreement with the portfolio company.***" (emphasis added)

64. As set out above, the continued funding of the portfolio companies is in the interests of the portfolio companies, the GP (and ATP), not the Partnership and the limited partners. The GP has also failed to provide information to the Petitioners about the Partnership's purportedly binding commitments to fund the portfolio companies, notwithstanding the Petitioners' requests that it do so (see paragraph 57 above). The GP's apparent decision to commit the Partnership to unconditional funding commitments unnecessarily exposes the Partnership to potential claims and is a fetter of the Petitioners' discretion to approve budgets, and the GP's

~~subsequent lack of probity has justifiably caused the Petitioner to lose trust and confidence in the GP.~~

*Charging personal legal expenses to the Partnership*

65. The ~~petitioners are also concerned that the~~ GP's personal legal expenses have been improperly charged to the Partnership and ATLS (as a wholly-owned subsidiary of the Partnership), ~~which also comprises a~~ in breach of the Settlement Agreement and LPA. This falls to be inferred from the following matters:

    a. The expense report exhibited to the GP's December 2024 capital call notice dated 12 December 2024 included a line item for "Legal Expenses for Partnership". Mr Bogdanov queried these expenses in an email to Dr Harrison dated 23 December 2024, saying "[o]*ne item, '**Legal Expenses for Partnership**,' stands out as significantly higher compared to previous years (USD 1.9 million versus USD 0.56 million in H2 2023)*".

    b. On 20 December 2024, Patrik Blochlinger, the Chief Legal Officer of Rigmora Holdings, emailed Daniel Finkelman (the General Counsel of Apple Tree Partners) to request details of the legal expenses, stating that he believed the GP's legal expenses of the Braeburn Proceedings had erroneously been charged to the Partnership.

    c. Mr Finkelman responded on 23 December 2024, stating that the invoices had been reviewed, and that the GP had discovered that one invoice in the amount of US$30,692.50 was inadvertently paid by the Partnership when it should have been allocated to the GP. Mr Finkelman noted that this had been corrected and a revised capital call for fund expenses was issued. Mr Finkelman noted, however, that the GP wished to discuss with the Petitioners the "*allocation*" of various expenses incurred by the GP in relation to the Braeburn Proceedings.

    d. Several further requests were made for and on behalf of the Petitioners for an explanation as to the Partnership's significantly higher legal expenses in 2024, together with supporting invoices and narratives from the relevant law firms.

e. Dr Harrison confirmed on 29 December 2024 that the GP would review the relevant expenses. However, the GP has refused to provide the Petitioners with underlying invoices and narratives on grounds of privilege. The GP agreed to reduce some legal expenses. Nevertheless, the Petitioners consider the legal expenses to be excessive. It falls to be inferred that the invoices and narratives concern legal expenses incurred by the GP in relation to the Braeburn Proceedings, which expenses cannot be charged to the Partnership. The GP's lack of probity and conflict of interest has resulted in the Petitioners' loss of trust and confidence in the GP.

f. The expense report exhibited to one of the GP's ~~May 2025~~ Disputed Capital Calls indicates that "Legal Expenses for Partnership" for January – May 2025 are US$7.86 million. These legal expenses are significantly higher than in prior periods and the Petitioners infer that the GP has sought to include legal costs in connection with the Delaware Proceedings and/or any other anticipated litigation costs in connection with the dispute between the GP and the Petitioners.

65A. Further, the GP caused legal invoices for Quinn Emanuel, Wachtell, Lipton, Rosen & Katz ("**WLRK**"), Walkers, Maples Group and Ms Sue Prevezer KC relating to the Braeburn Proceedings to be paid in breach of: (i) clause 5.1 of the Settlement Agreement, which required the GP to pay its legal costs in relation to the Braeburn Proceedings and the Settlement Agreement using its own money and not to use money belonging to the Partnership (including money held by subsidiaries of the Partnership); and/or (ii) Paragraph 20(e)(ii) of the LPA, which only permits ATLS to spend money in accordance with approved or deemed approved budgets for the ATLS Fee:

**Quinn Emanuel**

a. Legal invoices totalling c. $800,000 were issued by Quinn Emanuel between September 2024 and April 2025 in respect of a matter called "*Delaware Factual Investigation and Potential Claims*". The Partnership's general ledgers for 2024 and 2025 reveal these invoices were paid out of the Partnership's assets. The (unredacted) narratives for these invoices further reveal that time was spent on work in connection with the Braeburn Proceedings.

b. A further four invoices totalling c. $472,000 were issued by Quinn Emanuel between September to December 2024 in connection with a matter called "*Cayman Litigation*". The invoices contained the following description: "*For professional services through* [date] *in connection with assisting Cayman counsel in the defense of an action brought by the Limited Partners of ATPLSV seeking a court order requiring the distribution of the assets of Braeburn*" (i.e. the Braeburn Proceedings). The 2024 general ledger for ATLS reveal that all four invoices were paid for by ATLS.

**WLRK**

c. Six invoices were issued by WLRK between December 2024 – May 2025. Five of these invoices (totalling $1.356m) were charged to the Partnership, whilst one invoice (totalling $400,000) was charged to ATLS. Fee narratives have not been disclosed for WLRK's work during the aforementioned period, but as WLRK was heavily involved in negotiating the Settlement Agreement in late 2024 it is inferred that this work was in connection with the Braeburn Proceedings and the Settlement Agreement.

**Walkers**

d. In November and December 2024, Walkers issued two invoices for work performed in respect of a matter called *"Advice Regarding Potential Claims by ATP Against Rigmora".* The November 2024 invoice (totalling $28,929.24) was paid by the Partnership, whilst the December 2024 invoice (totalling $34,612.68) was paid by ATLS.

e. Between November 2024 to January 2025, Walkers issued three invoices (totalling $750,121.25) in connection with a matter called "*Claim by Rigmora Funds Against ATP*". It falls to be inferred that this matter related to Walkers' representation of the GP in the Braeburn Proceedings. The (unredacted) narratives for these invoices reveal that time was spent on tasks related to the Braeburn Proceedings and the Settlement Agreement. All three invoices were paid by ATLS.

**Maples**

f. In September and October 2024, Maples (the GP's former Cayman attorneys in the Braeburn Proceedings) issued two invoices in connection with a matter titled "*Dispute with Unicorn Biotech Ventures One Ltd and Dispute with Unicorn Biotech Ventures Two Ltd*". The invoices were paid by ATLS and totalled $426,169.96.

**Sue Prevezer KC**

g. In October 2024, Sue Prevezer KC issued one invoice (totalling £54,611) for work performed in September 2024. The fee narratives are redacted for privilege, but the invoice was issued in connection with work on "*ATP III GP LTD*" and was paid by ATLS.

h. In November 2024, Sue Prevezer KC issued three invoices (totaling £205,812.18) in connection with work on *"FSD 236 OF 2024: UNICORN V ATP CAYMAN PROCEEDINGS"* (i.e. the Braeburn Proceedings). These invoices were paid by ATLS.

## D. Ground 2: Loss of substratum

66. Given the GP's stated intention to pursue an investment strategy which involves the continued funding of the portfolio companies against the wishes and to the detriment of the Petitioners and without complying with the express provisions of the LPA to obtain limited partners' approval for budgets for investments, and the GP's evident intention to confiscate 50% of the Petitioners' interests in the Partnership and take control thereof, the substratum of the Partnership has been lost. The Partnership is no longer being run in accordance with the reasonable expectations of the limited partners or in accordance with the LPA.

## E. Ground 3: Need for an independent investigation into the Partnership's affairs

67. For all of the reasons set out in Ground 1, there is evidently a need for a proper, independent investigation into the Partnership's affairs.

**Conclusion**

68. For the reasons set out above, it is respectfully submitted that it is just and equitable that the Partnership be wound up.

**Nomination of Joint Official Liquidators**

69. The Petitioners nominate **Mr Alexander Lawson** and **Mr Barry Lynch** of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands for appointment as joint official liquidators of the Partnership.

**YOUR PETITIONERS THEREFORE HUMBLY PRAY THAT:**

1. The Partnership be wound up pursuant to Section 36(3) of the ELP Act and Section 92(e) of the Companies Act, and/or pursuant to section 35 of the Partnership Act (2025 Revision).

2. Mr Alexander Lawson and Mr Barry Lynch of Alvarez & Marsal Cayman Islands Limited, Flagship Building, PO Box 2507, 2nd Floor, 142 Seafarers Way, George Town, Grand Cayman KY1-1104, Cayman Islands be appointed as Joint Official Liquidators of the Partnership (the "**JOLs**") with such powers as the Court deems necessary for the orderly winding up of the Partnership.

3. All rights or property of every description of the Partnership, including all choses in action, held or deemed to be held by the GP shall vest in the JOLs without the requirement for further formalities and shall be held by the JOLs in accordance with the law.

4. The JOLs' powers are exercisable to the exclusion of the GP and the GP shall forthwith have no authority or power to act in relation to the Partnership or its property or affairs other than at the direction of and/or with the written consent of the JOLs.

5. The JOLs shall have leave to apply under section 36(3)(g) of the ELP Act for further orders and directions.

6. The Petitioners' costs of and incidental to the Petition shall be paid forthwith out of the assets of the Partnership as an expense of the liquidation.

7. Such further or other relief as this Honourable Court deems fit.

Dated this 6th day of June 2025

Amended 20 November 2025

Campbells LLP

_____

**Campbells LLP**
Attorneys-at-Law for the Petitioners

**NOTE:** This Amended Petition is intended to be served on the Partnership and the GP at Walkers (Cayman) LLP, 190 Elgin Avenue, George Town, Grand Cayman, KY1-9001, Cayman Islands. ~~Maples Corporate Services Limited, PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman, KY1 1104, Cayman Islands.~~

**NOTICE OF HEARING**

TAKE NOTICE THAT the hearing of this petition will take place at the Law Courts, George Town, Grand Cayman, on 12 January 2026 at 10.00 am/pm.

Any correspondence or communication with the Court relating to the hearing of this petition should be addressed to the Registrar of the Financial Services Division of the Grand Court at PO Box 495, Grand Cayman, KY1-1106, telephone 345 949 4296.

**EXHIBIT J**

Walkers

**BY EMAIL**

8 September 2025 Our Ref: JG/SW/RB/197133

Campbells LLP
Floor 4, Willow House
Cricket Square
Grand Cayman KY1-9010
Cayman Islands

**Attention: Liam Faulkner, Hugo Farmer and Jordie Fienberg**

Dear Sirs

**UNICORN BIOTECH VENTURES ONE LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR ONE LP) AND UNICORN BIOTECH VENTURES TWO LTD (IN ITS CAPACITY AS GENERAL PARTNER OF RIGMORA BIOTECH INVESTOR TWO LP) V ATP III GP, LTD (IN ITS CAPACITY AS GENERAL PARTNER OF ATP LIFE SCIENCE VENTURES, L.P.)**
**CAUSE NO. FSD 146 OF 2025 (JAJ)**

**IN THE MATTER OF ATP LIFE SCIENCE VENTURES, L.P.**
**CAUSE NO.: FSD 151 OF 2025 (JAJ)**

1. We refer to your first letter of 5 September 2025. Unless otherwise stated we adopt the definitions used in your letter and our previous correspondence.

**The funding emergency caused by the Rigmora LPs**

2. We are surprised by the tenor of your letter, both with regard to your clients' claim to be unaware of the Braeburn Repayment (which we address further below) and the implication that there may be something improper in the Investment Deals or the information provided to your clients in respect of the same.

3. As you are aware, the Delaware Proceedings, Cayman Writ Action and Winding Up Petition all concern your clients' obligation to fund the Partnership through capital calls and to approve budgets for the further investment in the Partnership's portfolio companies. Those issues will be determined by the Delaware Court following the hearing listed for 18-19 September 2025, i.e., in ten days.

4. In the meantime, our client has been placed in an impossible position, whereby it is unable to discharge its duties to the Partnership, both with regard to funding the Partnership's portfolio companies and in respect of the Partnership's expenses. This situation has been caused

solely by your clients starving the Partnership of funding by refusing to meet capital calls or approve budgets in accordance with their obligations under the LPA.

5. The situation the Partnership finds itself in is an emergency. If the Partnership is unable to fund the portfolio companies, those companies will collapse – along with any value they hold for the Partnership. This will have a devastating impact on the value of the Partnership, not to mention the termination of multiple ground-breaking medical research projects.

6. The interim funding discussions between our respective clients have been fruitless. In the circumstances, our client has had no choice but to find alternative means of funding the Partnership's essential expenditure to avoid the catastrophic consequences noted at paragraph 5 above. Similarly, the portfolio companies have had to rely on sources of funding outside of the Partnership. There is nothing improper about that. All transactions undertaken by any portfolio company are fully authorised by their charters, SPAs, etc., and boards.

**The Braeburn Repayment and Tendyne Earnout**

7. At the outset, we note that it is plainly incorrect to suggest that our client would be required to provide your clients with information regarding the Braeburn Repayment either during the negotiation phrase or immediately upon execution of the deal. The obligations under both section 22 of the ELP Act and paragraph 16(b) and (c) of the LPA relate to a limited partner's right to request (and receive) information.

8. Neither provision imposes an obligation on the general partner to inform limited partners of every business transaction concerning the Partnership as and when it arises. That is in line with sections 14(1) and 20 of the ELP Act and paragraph 2(b) of the LPA, which provide that the day-to-day management of an exempted limited partnership is a matter for the GP. Instead, the LPA imposes annual and quarterly reporting obligations on the GP. Your clients, in a thinly veiled attempt to support their false narrative of the GP providing inadequate information, now attempt to imply there are more stringent reporting obligations than those it agreed to under the terms of the LPA (or indeed, are provided for under the ELP Act).

9. In response to your questions regarding the Braeburn Repayment, we confirm that the repayment constituted an early repayment by Braeburn Inc. of certain convertible loan notes. The Partnership offered the Braeburn board of directors a 10% discount in return for early repayment, which the Braeburn board accepted in order to reduce its interest payments.[1]

10. Notwithstanding the fact that our client was not required to inform your clients of the Braeburn Repayment until the Q3 2025 Quarterly Report, it rejects the claim that the first your clients were aware of the Braeburn Repayment was through Yanchik's Deposition. Mr Yanchik even stated in his deposition that your clients "*had been receiving all the iterations of the documents."* Further, on 28 July 2025, Patrik Blochlinger and Yuri Bogdanov were both copied to an email from Sarah Gohary of Wilson Sonsini Goodrich & Rosati, attaching the latest draft Loan and Security Agreement, making it clear from the content of her email that the

[1] We confirm that Dr Harrison and Mr Yanchik recused themselves from the Braeburn board vote in this respect.

agreement now included the option for Braeburn to make a prepayment of the convertible notes up to US$42 million and that the prepayment would occur "*substantially concurrently with the Second Amendment [i.e. the Loan and Security Agreement] Effective Date*". Your clients raised no objections or concerns upon receiving this email.

11. The repayment received was US$41,736,871.30 on 1 August 2025. In addition, on 31 July 2025, the Partnership received a post-closing earnout payment from Abbott Laboratories in the amount of US$20,025,952.54 in respect of an exit from Tendyne, an older investment of the Partnership ("**Tendyne Earnout**"). As at 1 August 2025, the Partnership therefore held funds of US$61,762,823.84 from these two sources combined (the "**Q32025 Receipts**").[2]

12. The terms of the LPA are clear that the GP is entitled to apply these funds to (a) invest in projects and (b) discharge the Partnership's own expenses. Paragraph 8(c) of the LPA (as amended pursuant to Amendment 4 dated 1 April 2015) provides that:

> *"The General Partner shall cause the Partnership to distribute in cash to the Partners, promptly from time to time, any amounts held by the Partnership which remain after the Partnership has made, or established reserves to make, tax distributions and Tracking Unit distributions which are required by Paragraphs 8(a) end (b), respectively, except to the extent that the General Partner reasonably determines that such amounts may be necessary for paying Partnership and Intermediary expenses, liabilities and other obligations (including investments in Projects consistent with the applicable budgets) and establishing reserves therefor, in each case in accordance with budgets approved by the Board or as provided for in this Agreement in the case of the Management Fee and indemnification obligations, or as otherwise determined by the General Partner with the prior written consent of the holders of a majority of the Preferred Units."* (emphasis added)

13. In the circumstances, the GP is entitled, under the terms of the LPA, to apply the US$61,762,823.84 to the extent necessary to discharge the Partnership's expenses and invest in the portfolio companies, and has done so, as more particularly set out below.

14. The Schedule to this letter sets out all payments made to and from the Partnership's bank account from 31 July 2025 to 4 September 2025. These payments are explained in more detail below. All are types of expenditure that the GP has discharged on behalf of the Partnership for years, without any objection from your clients until recently. The total in outgoing payments since 31 July 2025 made using the Q32025 Receipts is $39,306,044.00. The remaining sum of US$22,456,779.84 is in the Partnership's Banc of California account.

15. In pre-empting any arguments your clients might attempt to run with regard to these being payments made with "their" money, your clients cannot continue to gloss over the reality of the relationship between the parties. If Dr Rybolovlev had wanted to set up a personal investment vehicle over which he had complete control, he could have done so. However, he wanted Dr Harrison's knowledge, expertise, ability and network. In order for Dr Rybolovlev to access

[2] The Partnership's bank account held c.US$2,021,608.60 at the time of the Tendyne Earnout. However, all but c.US$152,000 of this was funds received pursuant to previous capital calls and was therefore ring-fenced for use by the portfolio company in question.

those benefits, the parties agreed to a partnership structure, run by a general partner, pursuant to the Cayman Islands statutory provisions which put that general partner in control of the business. It also included the so-called "*draconian*" default provisions, of which Dr Rybolovlev was well aware when he entered into the LPA via his affiliated entities and which were, and remain, necessary to ensure the proper operation of the Partnership. Dr Harrison explained clearly at the time why the global default mechanism was essential to the effective functioning of the Partnership, and Dr Rybolovlev entered into the arrangement on that basis. Those default measures have gone unchanged for nearly 14 years and throughout 22 amendments.

16. Dr Rybolovlev, through your clients, has now manufactured allegations of there being a breakdown in trust and confidence in order to extricate himself from his contractual obligations – obligations that he well understood and would have been well advised about – because he cannot or does not want to comply with his obligations for further funding. This will be brought out in evidence in both the Delaware and Cayman Proceedings. Given the constraints on the GP in light of the injunction order made by the Cayman Islands Court, the GP must, acting in the best interests of the Partnership, take steps to preserve the Partnership and its assets until such time as your clients' Winding Up Petition has been determined.

**Application of Q32025 Receipts**

*Funding the essential needs of, and investments in, portfolio companies with approved budgets*

17. The following companies have essential funding needs relating to running costs and/or research and development pursuant to approved budgets. The following payments have therefore been made:[3]

| | **Payment made (US$)** |
|---|---|
| Ascidian | 6,000,000 |
| Aethon | 2,000,000 |
| Replicate | 1,500,000 |
| Evercrisp | 250,000 |

18. In the case of the US$6,000,000 budget for Ascidian, this is reflective of the capital call dated 30 May 2025 and represents the total remaining budget for Ascidian. As explained in Dr Harrison's third affidavit in cause number FSD 146 of 2025 (JAJ), US$6,000,000 represents only a small fraction of the funds that Ascidian needs to stay on track with its groundbreaking research into congenital blindness. However, after re-forecasting their budgets, Ascidian management indicated that a US$6,000,000 injection of funding would make a difference to their ability to keep their clinical trial on track. Given the starvation of funding from the Partnership, Ascidian has had to make deep budget cuts and explore alternative funding, hence the discussions with Eli Lilly (described further below) which, assuming the deal closes, comes just in time for Ascidian to make up a portion of missing capital (combined with budget

[3] The payments to Initial Therapeutics and Apertor listed in the Schedule were made from money held pursuant to prior capital calls and were not made from the Q32025 Receipts.

cuts and the US$6,000,000 from the Partnership). Without further funding, Ascidian would have gone to cash zero during the fourth quarter of 2025.

19. The US$2,000,000 paid to Aethon was made to support the company's collaboration agreement with Revolution Medicines, a public biotech company. Revolution Medicines made it clear they had concerns as to Aethon's viability in light of your clients' default and were disinclined to continue the relationship unless Aethon could demonstrate some minimum viability. The Partnership's venture partner overseeing the investment, Paul Jardine, indicated that US$2,000,000 should be sufficient to preserve the Revolution Medicines relationship in the immediate term. However, it is a far cry from the amount Aethon needs to drive its programmes forward.

20. The US$1,500,000 paid to Replicate represents the total amount remaining in Replicate's budget prior to the closing of an upcoming LATAM partnership with Instituto Butantan for the continued development of Replicate's rabies vaccine candidate, which is due to close in Q3 2025.

21. There are payments to Evercrisp totalling US$250,000. Evercrisp has essential funding needs to the end of the year in relation to wages, severance pay, insurance and legal expenses (c. US$555,000) and payments to creditors (c. US$247,000).

22. The basis for the Partnership making these payments is clear: this is expenditure representing the bare minimum for Evercrisp to continue to function. Without it, Evercrisp would collapse; a situation that would mean irreparable harm being caused to the Partnership before the disputes between the parties are resolved. The same is true of all the Early-Stage portfolio companies that do not receive funding.

*Funding the needs of Nereid and Nine Square*

23. There are two portfolio companies with requirements to preserve asset value for the benefit of the Partnership, where small payments have been made as follows:

| | **Payments made (US$)** |
|---|---|
| Nereid | 250,000 |
| Nine Square | 150,000 |
| **TOTAL** | **400,000** |

24. These payments were made to meet severance costs and other payments relating to asset preservation, pending the resolution of the present Court proceedings. Your clients cannot seriously object to the Partnership making funds available to meet such critical expenditure in circumstances where the reason these companies are unable to survive is because of your clients' unreasonable refusal to approve further budgets. Moreover, as your clients are aware, these companies have legally-binding obligations in relation to payroll and taxes, in respect of which the officers and directors of the company may be held personally liable.

*ATLS Fee*

25. On 4 August 2025, the Partnership discharged US$8,906,044 overdue in respect of the 2H 2025 ATLS Fee.

26. As your client will be aware, the bi-annual fee due to ATLS does not require any fresh budget approval in the same manner as projects relating to portfolio company expenditure. The LPA contains a specific mechanism for the payment of these fees and for the approval of the level of the fee. If the parties are not able to reach agreement on the fee level, the LPA provides that the amount payable shall be the amount last approved by the parties. Your clients defaulted on the capital call that would have covered the ATLS Fee for the second half of 2025. The GP is therefore entitled to utilise the Q32025 Receipts to discharge the ATLS Fee (which, amongst other things, cover the salaries of the GP's employees) and it is certainly holding the ring and in the best interests of the Partnership as a whole that this is paid, to enable the Partnership to continue to function.

*Legal Fees*

27. The Partnership's legal fees have already been the subject of *inter partes* correspondence. At the outset, we note that the Partnership's transfer of US$20 million into the client account of Quinn Emanuel, does not in itself constitute a disposition of the Partnership's property, as those funds remain beneficially owned by the Partnership. The US$20 million is intended to be available to discharge both Quinn Emanuel's and Walkers' fees in relation to all the current legal proceedings between the parties.

28. In addition to the provisions of paragraph 8(c) of the LPA, as we have previously set out in correspondence, paragraph 11 of Amendment 9 to the LPA dated 22 December 2017 provides that, with the exception of certain defined expenses that are paid from the ATLS Fee, the Partnership shall be responsible for all other reasonable expenses of the Partnership, which Partnership expenses shall be funded by capital contributions made by the holders of Preferred Units in accordance with the LPA, including without limitation professional fees, including legal expenses for the Partnership (including the Partnership's in-house counsel), and all expenses relating to any actual or threatened litigation or proceedings involving the Partnership. As a result, the legal fees that the GP has incurred on behalf of the Partnership fall to be paid by the Partnership. In circumstances where your clients have refused to meet any further capital calls, it is plain that paragraph 8(c) can and should be read so as to cover those legal expenses that would otherwise be met from capital calls.

29. With regard to the funding of the Delaware Proceedings, the Partnership needs, and is entitled to access Partnership funds in order to prosecute genuine and *bona fide* litigation in Delaware, in circumstances where that is necessary to resolve the disputes between the parties.

30. We note you have previously sought to rely on paragraph 15(c) of the LPA to argue that the GP is not entitled to utilise Partnership funds to discharge its legal costs in respect of the Cayman Proceedings, however, this is a misreading of the provision. The paragraph provides that:

> *"The Partnership may pay the expenses incurred by an Indemnified Party in defending any action, suit or proceeding in advance of the final disposition thereof, upon receipt of a written undertaking by such Indemnified Party to repay such payment if he shall be determined not to be entitled to indemnification therefor as provided herein; provided that no such advance payment by the Partnership to an Indemnified Party shall be made with respect to expenses incurred as a result of any action, suit or proceeding initiated against such Indemnified Party by the holders of a majority of the Preferred Units."*

31. The provision is only applicable to legal expenses incurred by an Indemnified Party defending any action taken against that Indemnified Party and, similarly in respect of the carve out at the end of the paragraph, where proceedings are "*initiated against such Indemnified Party.*" It therefore has no application to legal expenses incurred by the Partnership.

32. The Cayman Writ Action has been initiated against the ATP III GP Ltd (in its capacity as general partner of ATP Life Science Ventures, LP). It is clear that paragraph 15(c) does not apply to the Cayman Writ Action.

33. With regard to the Winding Up Petition, whilst we note there is an unresolved dispute between the parties as to the correct respondent to the Winding Up Petition we note:

    (a) the Court has not directed that the GP be added as a respondent. Any legal costs are necessarily being incurred by the Partnership as the subject of a winding up petition presented against it; and

    (b) for reasons that we have already aired in correspondence and in the Partnership's skeleton argument for the 1 August 2025 hearing, your contention that the Winding Up Petition should proceed as an *inter partes* proceeding between your clients and the GP in its own right, has no proper basis in law.

34. Furthermore, paragraph 18(g)(iv) of the LPA provides that:

> *"In determining what action, if any, shall be taken against a Limited Partner in connection with such Limited Partner's breach of this Agreement, the General Partner shall seek to obtain a favorable result (as determined by the General Partner in its sole discretion) for the Partnership and the other Partners, and the General Partner, in its sole discretion, may take different actions with respect to multiple Limited Partners that breach the same provisions. To the fullest extent permitted by law, each Limited Partner hereby specifically agrees that, in the event such Limited Partner violates the terms of this Agreement, such Limited Partner shall not be entitled to claim that the Partnership or any of the other Partners are precluded, on the basis of any fiduciary or other duty arising in respect of such Limited Partner's status as such, from seeking any of the remedies permitted under this Agreement or applicable law."* (emphasis added)

35. The terms of the LPA are therefore clear. Where a limited partner has breached the LPA (which, for the reasons set out in the Delaware Complaint, your clients have) the GP may take such action as it considers necessary in its sole discretion and that action is taken *"for the*

*Partnership and the other Partners."* This would naturally extend to defending a winding up petition brought by a limited partner with the goal of avoiding the consequences of its breaches under the LPA and as a blatant retaliatory move for the filing of the Delaware Complaint.

36. In any event, paragraph 15(c) cannot sensibly be read so to leave a GP acting on behalf of the Partnership, completely powerless to protect the Partnership against an attack by your clients even where that attack was improper and meritless. That would be to allow your clients to win any litigation by default simply by bringing it.

37. In the circumstances, our client is entitled to draw on Partnership funds to discharge the legal expenses it incurs acting in its capacity as GP of the Partnership. We would also stress that the level of the legal fees has escalated entirely due to your clients' actions in bringing two sets of parallel proceedings in the Cayman Islands. These costs continue to be exacerbated by correspondence such as this, where our client is forced to explain ordinary course of business actions. Your clients well know these activities are ordinary course, but, for strategic reasons, seek to portray them as improper. As the Chancellor of the Delaware Court noted in the Motion to Stay hearing on 27 June 2025, the Cayman Islands filings were reactionary in nature and she declined to grant a stay, as to do so would credit your clients for "*their forum selection maneuvers*". The same principle applies to the legal expenses now being incurred on behalf of the Partnership. Your clients chose to bring duplicative and unwarranted legal proceedings in the Cayman Islands despite the existence of the Delaware proceedings, and cannot now complain of the costs that are being incurred as a result of that decision.

38. You will also note that there was a payment of US$250,000 to Wilson Sonsini Goodrich Rosati on 22 August 2025. This payment was made on behalf of Initial Therapeutics ($77,000), Marlinspike ($100,000) and Nereid ($73,000).

**Validation of transactions**

39. As we set out in our letter of 10 July 2025, our client is cognisant of the provisions of section 99 of the Companies Act (2025 Revision). As you will be aware, section 99 does not operate to prevent companies or partnerships from operating in the ordinary course of business where there is an extant winding up petition. The Cayman Islands Courts have also made it clear that it is entirely possible for a retrospective application for validation of a transaction to be brought.

40. In a recent judgment of Asif J, he noted that, *"there is no difference in the principles to be applied where validation is sought retrospectively, but it should be possible for the evidence presented to the court in support of the application for retrospective validation more directly to address the impact of the transaction on the statutory requirement under s.99 of maintaining the status quo."*[4]

41. Asif J further noted that such transactions may even be adopted by a liquidator even if a winding up order is ultimately made:

[4] *AllFunds Bank S.A. v Rasmala Trade Finance Fund* (unreported Judgment 20 March 2025) at [17]

> *"In my judgment, it is important to bear in mind that where a winding up petition has been presented against a company, whether or not a validation order is sought or granted does not of itself prevent the company from continuing to carry out its normal business and does not prevent its directors from causing the company to enter into appropriate transactions. It simply has the result that such transactions may be susceptible to avoidance by the liquidator if a winding up order is made in due course. In fact, it is not uncommon for a liquidator in such a situation to adopt transactions that are bona fide and are not prejudicial to the company and the persons interested in the liquidation."*[5]

42. The transactions set out above clearly lie within the boundaries of transactions that it would be highly appropriate for the Court to validate, if an application for validation were made. They are exactly of the nature that "holds the ring" to ensure the survival of the Partnership and/or its assets until determination of the Winding Up Petition, although that is without prejudice to our client's position that truly "holding the ring" would involve the Partnership continuing to invest in the portfolio companies in line with the express stated purpose in the LPA. Our client is therefore confident that were a validation application made (whether retrospectively or prospectively) in respect of any of the transactions or payments outlined above, such transactions would be validated by the Cayman Islands Court. However, our client does not consider it necessary to trouble the Court with an urgent application for prospective validation in relation to transactions that are entirely ordinary course, in circumstances where it is clear from the Cayman Islands jurisprudence that a retrospective application is entirely possible (and in some cases preferable).

43. Our client will therefore make an application to Court seeking the validation of the above transactions if and when it considers it appropriate to do so.

**Investment Deals**

44. Finally, we address the Investment Deals referred to in your letter. We have already set out above why your clients are unjustified in using the Investment Deals as supposed evidence of our client withholding information improperly. In any event, your clients have now received the relevant transaction documents via our client's US lawyers, Quinn Emmanuel.

45. As Quinn Emmanuel set out in their email accompanying the disclosure of the transaction documents, the Q2 2025 Quarterly Report (the "**Q2 Report**") sent to your clients on 4 September provided such information as was appropriate in relation to the Investment Deals, as at the end of Q2 2025. It is therefore simply not the case that the GP is not meeting its reporting obligations. The Investment Deals all concluded in Q3 and would have been included in the Q3 2025 Quarterly Report.

46. By way of further information in respect of the Investment Deals:

    (a) Replicate: the Q2 Report refers to Replicate "*advancing discussions for three strategic partnerships*" including, *inter alia*, Novo Nordisk. As you are aware, this deal (a

[5] *Ibid* at [54]

Collaboration and Licence Agreement) closed on 26 August 2025. Whilst the overall deal figure is US$550 million, the upfront payment that Replicate will receive is an extremely modest US$6,500,000, with other payments either made by Novo Nordisk in the negotiated deal to fund its own project at Replicate or subject to milestones to be achieved in the collaboration. Furthermore, the Novo Nordisk deal relates to a particular preclinical collaboration. This is plainly not a case of a wholesale satisfaction of all of Replicate's funding needs.

(b) Aulos: the Q2 Report states that *"[o]wing to budget approval disputes arising in the Litigation, the company structured an interim financing round led by the family office of its CEO, an experienced oncology pharmaceutical and biotech executive. ATP did not participate*". The financing that concluded in August 2025 was not a Series B financing (in respect of which Dr Ehlers was mistaken) but a convertible note financing and was for only US$9,427,432.33.

The Partnership did not participate in this financing, given your clients' refusal to even discuss new budgets that would have allowed them to do so. To put this refusal into context, Aulos is a clinical-stage company that is currently trialling a drug for the treatment of deadly cancer that is showing promise in patients for whom other treatments have failed. The August 2025 financing was to ensure the continuation of the current phase 2 clinical trial. The total funding needs to conclude the trial are around US$20 million. It will be apparent that the funding actually raised falls far short of what is required and the company will run out of funding by year end. The provision of emergency funding from its CEO is not how a biotech company, much less a clinical-stage company, operates and has caused serious reputational damage to the Partnership as the investor that should be providing these funds.

The Partnership's lack of participation in the latest financing not only excludes the Partnership from a potentially lucrative business opportunity but has grave consequences for the lives of the patients relying on the clinical trial continuing.

*(c)* Ascidian: the Q2 Report refers to *"[c]ollaboration discussions"* with Eli Lilly. Our client wishes to make clear that it is far from certain that the transaction between Ascidian and Eli Lilly will close and when. This was acknowledged by Dr Ehlers' in his deposition: *"Never underestimate how slowly big pharma can move. But they've been -- I've -- it could be as early as October that it closes. That would be frigging land speed record for big pharma, but they like us, we like them…So as early as October, and certainly, I hope no later than January."* The deal would not close until Q4 2025 at the earliest, if it closes at all. Your clients will be aware of the deal between Ascidian and Astellas last year, which fell through at the very last minute (i.e. after signature pages were prepared for execution documents), indicative of the precarious nature of the Eli Lilly deal at term sheet stage,

The disclosure of the Ascidian/Eli Lilly term sheet deck to your clients at this juncture is without prejudice to our client's position that such disclosure is premature and outside the scope of what your clients would be entitled to, even pursuant to section 22 ELP Act or paragraph 16(b) or (c) of the LPA. However, the document has been provided to put to

bed the meritless allegation of our client being obstructive with regard to the provision of information.

(d) Galvanize: the Q2 Report refers to "*term sheet discussions regarding a Series C financing in the amount of $100 million to be led by Sofinnova Partners, with what was emerging as an oversubscribed book of major institutional investors.*" The Partnership's participation in this transaction was limited to the conversion of an old promissory note into stock and did not involve the Partnership providing any additional funds. The purpose of the financing is for Galvanize's ongoing operations.

47. It is unclear from your letter whether your clients contend there is something improper in the Investment Deals themselves. However, it should be apparent that there would be no credible basis for such a contention. The Investment Deals are, largely, transactions between portfolio companies and third parties. They represent steps taken by the portfolio companies in the face of being starved of funding from the Partnership. They are in no respects an adequate substitute for the proper financing by the Partnership.

48. We trust the information in this letter will bring an end to this particularly unproductive line of correspondence.

Yours faithfully

Walkers (Cayman) LLP

**WALKERS (CAYMAN) LLP**

**SCHEDULE OF PAYMENTS**

| DATE | AMOUNT | PAYMENT DETAILS | NOTES |
|---|---|---|---|
| 31/07/2025 | $20,025,952.54 | Incoming wire – Tendyne earnout payment | |
| 01/08/2025 | $41,736,871.30 | Incoming wire – Braeburn Repayment | |
| 04/08/2025 | ($20,000,000.00) | Outgoing wire – Quinn Emanual Urquhart Sullivan | |
| 04/08/2025 | ($8,906,044.00) | Payment of 2H 2025 ATLS Fee | |
| 08/08/2025 | $13,528.64 | Payment from Tendyne | Return of funds from Tendyne litigation escrow account. In 2020, the Partnership put $335,025 into the litigation account along with other investors to total $500,000. Of that $500,000, c.$20,000 remained at the time of the earnout. Since there are no more earnouts, the remaining funds were distributed pro rata to the investors who contributed to the litigation escrow. |
| 11/08/2025 | ($2,000,000.00) | Outgoing wire to Aethon Therapeutics | |
| 11/08/2025 | ($6,000,000.00) | Outgoing wire to Ascidian Therapeutics | |
| 14/08/2025 | ($120,000.00) | Outgoing wire to Evercrisp Biosciences | |
| 14/08/2025 | ($150,000.00) | Outgoing wire to Nine Square Therapeutics | |
| 14/08/2025 | ($250,000.00) | Outgoing wire to Nereid Therapeutics | |
| 14/08/2025 | ($575,000.00) | Outgoing wire to Initial Therapeutics | Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout). |
| 21/08/2025 | ($1,500,000.00) | Outgoing wire to Replicate Biosciences | |
| 22/08/2025 | ($250,000.00) | Outgoing wire to Wilson Sonsini Goodrich Rosati | |
| 27/08/2025 | ($130,000.00) | Outgoing wire to Evercrisp Biosciences | |
| 04/09/2025 | ($42,410.00) | Outgoing wire to Apertor Pharmaceuticals | Applied against funds held pursuant to prior capital calls (i.e. not settled from Braeburn Repayment or Tendyne Earnout). |

**EXHIBIT K**

A T P

**VIA EMAIL**

May 30, 2025

To :

Attention : Directors
Rigmora Biotech Investor Two LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

Attention : Directors
Rigmora Biotech Investor One LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

cc :

Rigmora Holdings Limited
A. Kolonchina@rigmora.com
A.Yakovlev@rigmora.com
Payments@rigmora.com
S. Schneider lpdesk@juliusbaer.com

***RE : Capital Call – Apertor***

Dear Alexey:

In accordance with the terms of the First Amended and Restated Limited Partnership Agreement, as amended (the "LPA"), of ATP Life Science Ventures, L.P. (the "Partnership"), a capital contribution of $7,100,000 is called from the Partners within 10 business days of the date when this notice is deemed given pursuant to the LPA, i.e., two calendar days after this email is sent. The funds are being called in connection with the Partnership's investment in Apertor Pharmaceuticals, Inc. Please refer to Exhibit A for the allocation of this Capital Call across the various pools.

The contribution per item is as follows:

| Item: | Pool Allocation: | Call Amount |
|---|---|---|
| Evercrisp | Pool V-2 | $ 7,100,000 |
| Total contribution | | $ 7,100,000 |

The Partner contributions are as follows:

| Partner Name | Contribution Amount |
|---|---|
| Rigmora Biotech Investor Two LP | $ 3,621,000 |
| Rigmora Biotech Investor One LP | 3,479,000 |
| Total contribution | $ 7,100,000 |



Joint Exhibit
JX-1391
C.A. No. 2025-0607-KSJM

Payment should be made pursuant to the wiring instructions below. **Please include the reference "ATP Life Science Ventures, L.P." on the wire to ensure proper and timely delivery of the relevant funds**.

| | |
|---|---|
| Bank: | Banc of California, 11611 San Vicente Blvd., Suite 500, Los Angeles, CA 90049 |
| ABA#: | 122238200 |
| For Credit of: | ATP Life Science Ventures, L.P. |
| Credit Account Number: | 1002146841 |

If you have any questions, please do not hesitate to call me at 646-833-9000.

Best personal regards,

ATP III GP, Ltd.
General Partner

By:

Seth L. Harrison, Director

**Exhibit A:**

| Partner | Pool | Unfunded Commitment Prior to Current Capital Call | Amount Called Fees/Expenses | Amount Called Investments | Unfunded Commitment Including Current Capital Call |
|---|---|---|---|---|---|
| **Rigmora Biotech Investor Two LP** | ATP IV | - | - | - | - |
| **Rigmora Biotech Investor One LP** | ATP IV | - | - | - | - |
| **Seth L. Harrison** | ATP IV | - | - | - | - |
| **Les Pommes LLC** | ATP IV | - | - | - | - |
| **Total Pool IV Call** | | - | - | - | - |
| **Rigmora Biotech Investor Two LP** | Pool V-1 / V-2 | 220,722,145.66 | - | 3,621,000.00 | 217,101,145.66 |
| **Rigmora Biotech Investor One LP** | Pool V-1 / V-2 | 212,066,369.17 | - | 3,479,000.00 | 208,587,369.17 |
| **Total Pool V-1/V-2 Call** | | 432,788,514.83 | - | 7,100,000.00 | 425,688,514.83 |
| **Rigmora Biotech Investor Two LP** | Pool V-3 | 49,919,397.43 | - | - | 49,919,397.43 |
| **Rigmora Biotech Investor One LP** | Pool V-3 | 47,961,827.57 | - | - | 47,961,827.57 |
| **Seth L. Harrison** | Pool V-3 | 183,668.11 | - | - | 183,668.11 |
| **Les Pommes LLC** | Pool V-3 | 206,663.70 | - | - | 206,663.70 |
| **Total Pool V-3 Call** | | 98,271,556.81 | - | - | 98,271,556.81 |
| **Rigmora Biotech Investor Two LP** | Pool Braeburn | 10,030,019.19 | - | - | 10,030,019.19 |
| **Rigmora Biotech Investor One LP** | Pool Braeburn | 9,636,685.04 | - | - | 9,636,685.04 |
| **Total Pool Braeburn Call** | | 19,666,704.23 | - | - | 19,666,704.23 |
| **Total** | | 550,726,775.87 | - | 7,100,000.00 | 543,626,775.87 |

A T P

**VIA EMAIL**

May 30, 2025

To :

Attention : Directors
Rigmora Biotech Investor Two LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

Attention : Directors
Rigmora Biotech Investor One LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

cc :

Rigmora Holdings Limited
A. Kolonchina@rigmora.com
A.Yakovlev@rigmora.com
Payments@rigmora.com
S. Schneider lpdesk@juliusbaer.com

***RE : Capital Call – Marlinspike***

Dear Alexey:

In accordance with the terms of the First Amended and Restated Limited Partnership Agreement, as amended (the "LPA"), of ATP Life Science Ventures, L.P. (the "Partnership"), a capital contribution of $6,300,000 is called from the Partners within 10 business days of the date when this notice is deemed given pursuant to the LPA, i.e., two calendar days after this email is sent. The funds are being called in connection with the Partnership's investment in Marlinspike Therapeutics, Inc. Please refer to Exhibit A for the allocation of this Capital Call across the various pools.

The contribution per item is as follows:

| Item: | Pool Allocation: | Call Amount |
|---|---|---|
| Marlinspike | Pool V-2 | $ 6,300,000 |
| Total contribution | | $ 6,300,000 |

The Partner contributions are as follows:

| Partner Name | Contribution Amount |
|---|---|
| Rigmora Biotech Investor Two LP | $ 3,213,000 |
| Rigmora Biotech Investor One LP | 3,087,000 |
| Total contribution | $ 6,300,000 |



Joint Exhibit
JX-1397
C.A. No. 2025-0607-KSJM

Payment should be made pursuant to the wiring instructions below. **Please include the reference "ATP Life Science Ventures, L.P." on the wire to ensure proper and timely delivery of the relevant funds**.

| | |
|---|---|
| Bank: | Banc of California, 11611 San Vicente Blvd., Suite 500, Los Angeles, CA 90049 |
| ABA#: | 122238200 |
| For Credit of: | ATP Life Science Ventures, L.P. |
| Credit Account Number: | 1002146841 |

If you have any questions, please do not hesitate to call me at 646-833-9000.

Best personal regards,

ATP III GP, Ltd.
General Partner

By:

Seth L. Harrison, Director

## Exhibit A:

| Partner | Pool | Unfunded Commitment Prior to Current Capital Call | Amount Called Fees/Expenses | Amount Called Investments | Unfunded Commitment Including Current Capital Call |
|---|---|---|---|---|---|
| Rigmora Biotech Investor Two LP | ATP IV | - | - | - | - |
| Rigmora Biotech Investor One LP | ATP IV | - | - | - | - |
| Seth L. Harrison | ATP IV | - | - | - | - |
| Les Pommes LLC | ATP IV | - | - | - | - |
| Total Pool IV Call | | - | - | - | - |
| Rigmora Biotech Investor Two LP | Pool V-1 / V-2 | 213,531,145.66 | - | 3,213,000.00 | 210,318,145.66 |
| Rigmora Biotech Investor One LP | Pool V-1 / V-2 | 205,157,369.17 | - | 3,087,000.00 | 202,070,369.17 |
| Total Pool V-1/V-2 Call | | 418,688,514.83 | - | 6,300,000.00 | 412,388,514.83 |
| Rigmora Biotech Investor Two LP | Pool V-3 | 34,700,496.39 | - | - | 34,700,496.39 |
| Rigmora Biotech Investor One LP | Pool V-3 | 33,339,729.73 | - | - | 33,339,729.73 |
| Seth L. Harrison | Pool V-3 | 127,672.87 | - | - | 127,672.87 |
| Les Pommes LLC | Pool V-3 | 143,657.82 | - | - | 143,657.82 |
| Total Pool V-3 Call | | 68,311,556.81 | - | - | 68,311,556.81 |
| Rigmora Biotech Investor Two LP | Pool Braeburn | 10,030,019.19 | - | - | 10,030,019.19 |
| Rigmora Biotech Investor One LP | Pool Braeburn | 9,636,685.04 | - | - | 9,636,685.04 |
| Total Pool Braeburn Call | | 19,666,704.23 | - | - | 19,666,704.23 |
| Total | | 506,666,775.87 | - | 6,300,000.00 | 500,366,775.87 |

A T P

**VIA EMAIL**

May 30, 2025

To :

Attention : Directors
Rigmora Biotech Investor Two LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

Attention : Directors
Rigmora Biotech Investor One LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

cc :

Rigmora Holdings Limited
A. Kolonchina@rigmora.com
A.Yakovlev@rigmora.com
Payments@rigmora.com
S. Schneider lpdesk@juliusbaer.com

***RE : Capital Call – Red Queen***

Dear Alexey:

In accordance with the terms of the First Amended and Restated Limited Partnership Agreement, as amended (the "LPA"), of ATP Life Science Ventures, L.P. (the "Partnership"), a capital contribution of $6,400,000 is called from the Partners within 10 business days of the date when this notice is deemed given pursuant to the LPA, i.e., two calendar days after this email is sent. The funds are being called in connection with the Partnership's investment in Red Queen Therapeutics, Inc. Please refer to Exhibit A for the allocation of this Capital Call across the various pools.

The contribution per item is as follows:

| Item: | Pool Allocation: | Call Amount |
|---|---|---|
| Red Queen | Pool V-2 | $ 6,400,000 |
| Total contribution | | $ 6,400,000 |

The Partner contributions are as follows:

| Partner Name | Contribution Amount |
|---|---|
| Rigmora Biotech Investor Two LP | $ 3,264,000 |
| Rigmora Biotech Investor One LP | 3,136,000 |
| Total contribution | $ 6,400,000 |



Joint Exhibit
JX-1398
C.A. No. 2025-0607-KSJM

Payment should be made pursuant to the wiring instructions below. **Please include the reference "ATP Life Science Ventures, L.P." on the wire to ensure proper and timely delivery of the relevant funds**.

| | |
|---|---|
| Bank: | Banc of California, 11611 San Vicente Blvd., Suite 500, Los Angeles, CA 90049 |
| ABA#: | 122238200 |
| For Credit of: | ATP Life Science Ventures, L.P. |
| Credit Account Number: | 1002146841 |

If you have any questions, please do not hesitate to call me at 646-833-9000.

Best personal regards,

ATP III GP, Ltd.
General Partner

By:

Seth L. Harrison, Director

**Exhibit A:**

| Partner | Pool | Unfunded Commitment Prior to Current Capital Call | Amount Called Fees/Expenses | Amount Called Investments | Unfunded Commitment Including Current Capital Call |
|---|---|---|---|---|---|
| **Rigmora Biotech Investor Two LP** | ATP IV | - | - | - | - |
| **Rigmora Biotech Investor One LP** | ATP IV | - | - | - | - |
| **Seth L. Harrison** | ATP IV | - | - | - | - |
| **Les Pommes LLC** | ATP IV | - | - | - | - |
| **Total Pool IV Call** | | - | - | - | - |
| **Rigmora Biotech Investor Two LP** | Pool V-1 / V-2 | 223,986,145.66 | - | 3,264,000.00 | 220,722,145.66 |
| **Rigmora Biotech Investor One LP** | Pool V-1 / V-2 | 215,202,369.17 | - | 3,136,000.00 | 212,066,369.17 |
| **Total Pool V-1/V-2 Call** | | 439,188,514.83 | - | 6,400,000.00 | 432,788,514.83 |
| **Rigmora Biotech Investor Two LP** | Pool V-3 | 49,919,397.43 | - | - | 49,919,397.43 |
| **Rigmora Biotech Investor One LP** | Pool V-3 | 47,961,827.57 | - | - | 47,961,827.57 |
| **Seth L. Harrison** | Pool V-3 | 183,668.11 | - | - | 183,668.11 |
| **Les Pommes LLC** | Pool V-3 | 206,663.70 | - | - | 206,663.70 |
| **Total Pool V-3 Call** | | 98,271,556.81 | - | - | 98,271,556.81 |
| **Rigmora Biotech Investor Two LP** | Pool Braeburn | 10,030,019.19 | - | - | 10,030,019.19 |
| **Rigmora Biotech Investor One LP** | Pool Braeburn | 9,636,685.04 | - | - | 9,636,685.04 |
| **Total Pool Braeburn Call** | | 19,666,704.23 | - | - | 19,666,704.23 |
| **Total** | | 557,126,775.87 | - | 6,400,000.00 | 550,726,775.87 |

A T P

**VIA EMAIL**

May 30, 2025

To :

Attention : Directors
Rigmora Biotech Investor Two LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

Attention : Directors
Rigmora Biotech Investor One LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

cc :

Rigmora Holdings Limited
A. Kolonchina@rigmora.com
A.Yakovlev@rigmora.com
Payments@rigmora.com
S. Schneider lpdesk@juliusbaer.com

***RE : Capital Call – Initial***

Dear Alexey:

In accordance with the terms of the First Amended and Restated Limited Partnership Agreement, as amended (the "LPA"), of ATP Life Science Ventures, L.P. (the "Partnership"), a capital contribution of $7,000,000 is called from the Partners within 10 business days of the date when this notice is deemed given pursuant to the LPA, i.e., two calendar days after this email is sent. The funds are being called in connection with the Partnership's investment in Initial Therapeutics, Inc. Please refer to Exhibit A for the allocation of this Capital Call across the various pools.

The contribution per item is as follows:

| Item: | Pool Allocation: | Call Amount |
|---|---|---|
| Initial | Pool V-1 | $ 7,000,000 |
| Total contribution | | $ 7,000,000 |

The Partner contributions are as follows:

| Partner Name | Contribution Amount |
|---|---|
| Rigmora Biotech Investor Two LP | $ 3,570,000 |
| Rigmora Biotech Investor One LP | 3,430,000 |
| Total contribution | $ 7,000,000 |



Joint Exhibit
JX-1395
C.A. No. 2025-0607-KSJM

Payment should be made pursuant to the wiring instructions below. **Please include the reference "ATP Life Science Ventures, L.P." on the wire to ensure proper and timely delivery of the relevant funds**.

| | |
|---|---|
| Bank: | Banc of California, 11611 San Vicente Blvd., Suite 500, Los Angeles, CA 90049 |
| ABA#: | 122238200 |
| For Credit of: | ATP Life Science Ventures, L.P. |
| Credit Account Number: | 1002146841 |

If you have any questions, please do not hesitate to call me at 646-833-9000.

Best personal regards,

ATP III GP, Ltd.
General Partner

By:

Seth L. Harrison, Director

**Exhibit A:**

| Partner | Pool | Unfunded Commitment Prior to Current Capital Call | Amount Called Fees/Expenses | Amount Called Investments | Unfunded Commitment Including Current Capital Call |
|---|---|---|---|---|---|
| Rigmora Biotech Investor Two LP | ATP IV | - | - | - | - |
| Rigmora Biotech Investor One LP | ATP IV | - | - | - | - |
| Seth L. Harrison | ATP IV | - | - | - | - |
| Les Pommes LLC | ATP IV | - | - | - | - |
| Total Pool IV Call | | - | - | - | - |
| Rigmora Biotech Investor Two LP | Pool V-1 / V-2 | 217,101,145.66 | - | 3,570,000.00 | 213,531,145.66 |
| Rigmora Biotech Investor One LP | Pool V-1 / V-2 | 208,587,369.17 | - | 3,430,000.00 | 205,157,369.17 |
| Total Pool V-1/V-2 Call | | 425,688,514.83 | - | 7,000,000.00 | 418,688,514.83 |
| Rigmora Biotech Investor Two LP | Pool V-3 | 49,919,397.43 | - | - | 49,919,397.43 |
| Rigmora Biotech Investor One LP | Pool V-3 | 47,961,827.57 | - | - | 47,961,827.57 |
| Seth L. Harrison | Pool V-3 | 183,668.11 | - | - | 183,668.11 |
| Les Pommes LLC | Pool V-3 | 206,663.70 | - | - | 206,663.70 |
| Total Pool V-3 Call | | 98,271,556.81 | - | - | 98,271,556.81 |
| Rigmora Biotech Investor Two LP | Pool Braeburn | 10,030,019.19 | - | - | 10,030,019.19 |
| Rigmora Biotech Investor One LP | Pool Braeburn | 9,636,685.04 | - | - | 9,636,685.04 |
| Total Pool Braeburn Call | | 19,666,704.23 | - | - | 19,666,704.23 |
| Total | | 543,626,775.87 | - | 7,000,000.00 | 536,626,775.87 |

A T P

**VIA EMAIL**

May 30, 2025

To :

Attention : Directors
Rigmora Biotech Investor Two LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

Attention : Directors
Rigmora Biotech Investor One LP
3076, Sir Francis Drakes Highway
Road Town, Tortola,
British Virgin Islands

cc :

Rigmora Holdings Limited
A. Kolonchina@rigmora.com
A.Yakovlev@rigmora.com
Payments@rigmora.com
S. Schneider Ipdesk@juliusbaer.com

***RE : Capital Call –ATLS Fee, Partnership Expenses & Syntimmune Expenses***

Dear Alexey:

In accordance with the terms of the First Amended and Restated Limited Partnership Agreement, as amended (the "LPA"), of ATP Life Science Ventures, L.P. (the "Partnership"), a capital contribution of $19,371,099 is called from the Partners within 10 business days of the date when this notice is deemed given pursuant to the LPA, i.e., two calendar days after this email is sent. The funds are being called to reimburse ATLS for the remaining fund-level Partnership expenses incurred between December 2024 and May 2025 that were advanced by ATLS, the ATLS Fee and Syntimmune expenses. Please refer to Exhibit A for the allocation of this Capital Call across the various pools. A detailed breakdown of the 1H 2025 Partnership Expenses is included in Exhibit B.

The contribution per item is as follows:

| Item: | Pool Allocation: | Call Amount |
|---|---|---|
| 2025 Partnership Expenses (December 2024 – May 2025) | All Pools | $ 9,465,055 |
| ATLS Fee | All Pools | 8,906,044 |
| Syntimmune Expenses | ATP-IV | 1,000,000 |
| **Total Contribution** | | $ 19,371,099 |

The Partner contributions are as follows:

| Partner Name | Contribution Amount |
|---|---|
| Rigmora Biotech Investor Two LP | $ 6,865,315 |
| Rigmora Biotech investor One LP | 6,478,444 |
| Seth L. Harrison | 12,865 |
| Les Pommes LLC | 14,475 |
| Total Contribution | $ 19,371,099 |

Payment should be made pursuant to the wiring instructions below. **Please include the reference "ATP Life Science Ventures, L.P." on the wire to ensure proper and timely delivery of the relevant funds**.

| | |
|---|---|
| Bank: | Banc of California, 11611 San Vicente Blvd., Suite 500, Los Angeles, CA 90049 |
| ABA#: | 122238200 |
| For Credit of: | ATP Life Science Ventures, L.P. |
| Credit Account Number: | 1002146841 |

If you have any questions, please do not hesitate to call me at 646-833-9000.

Best personal regards,

ATP III GP, Ltd.
General Partner

By:

Seth L. Harrison, Director

**Exhibit A:**

| Partner | Pool | Unfunded Commitment Prior to Current Capital Call | Amount Called Fees/Expenses | Amount Called Investments | Unfunded Commitment Including Current Capital Call |
|---|---|---|---|---|---|
| **Rigmora Biotech Investor Two LP** | ATP IV | - | 738,598.22 | - | - |
| **Rigmora Biotech Investor One LP** | ATP IV | - | 709,634.59 | - | - |
| **Seth L. Harrison** | ATP IV | - | 2,717.41 | - | - |
| **Les Pommes LLC** | ATP IV | - | 3,057.54 | - | - |
| **Total Pool IV Call** | | - | 1,454,007.76 | - | - |
| **Rigmora Biotech Investor Two LP** | Pool V-1 / V-2 | 210,318,145.66 | 5,598,930.69 | - | 204,719,214.97 |
| **Rigmora Biotech Investor One LP** | Pool V-1 / V-2 | 202,070,369.17 | 5,379,365.30 | - | 196,691,003.87 |
| **Total Pool V-1/V-2 Call** | | 412,388,514.83 | 10,978,295.99 | - | 401,410,218.84 |
| **Rigmora Biotech Investor Two LP** | Pool V-3 | 31,652,652.39 | 2,757,972.29 | - | 28,894,680.10 |
| **Rigmora Biotech Investor One LP** | Pool V-3 | 30,411,405.73 | 2,649,819.03 | - | 27,761,586.70 |
| **Seth L. Harrison** | Pool V-3 | 116,458.87 | 10,147.85 | - | 106,311.02 |
| **Les Pommes LLC** | Pool V-3 | 131,039.82 | 11,418.11 | - | 119,621.71 |
| **Total Pool V-3 Call** | | 62,311,556.81 | 5,429,357.28 | - | 56,882,199.53 |
| **Rigmora Biotech Investor Two LP** | Pool Braeburn | 10,030,019.19 | 769,813.46 | - | 9,260,205.73 |
| **Rigmora Biotech Investor One LP** | Pool Braeburn | 9,636,685.04 | 739,624.75 | - | 8,897,060.29 |
| **Total Pool Braeburn Call** | | 19,666,704.23 | 1,509,438.21 | - | 18,157,266.02 |
| **Total** | | 494,366,775.87 | 19,371,099.24 | - | 476,449,684.39 |

Exhibit B:

| Sum of Amount ($) | Column Labels | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2024 | | 2024 Total | 2025 | | | | | 2025 Total | Grand Total |
| Row Labels | Nov | Dec | | Jan | Feb | Mar | Apr | May | | |
| **ATP IV** | | | | | | | | | | |
| Audit | - | | - | | 2,782.50 | | | | 2,782.50 | 2,782.50 |
| Communications (Phone and Internet) | 69.36 | 38.49 | 107.85 | 24.46 | 38.56 | 38.46 | 38.37 | | 139.85 | 247.70 |
| Credit Facility Fee | 0.01 | - | 0.01 | 24.02 | 24.02 | 24.02 | | | 72.06 | 72.07 |
| Director and Officer Insurance | - | - | - | 421.91 | 421.91 | 421.91 | 421.91 | 421.91 | 2,109.55 | 2,109.55 |
| Facilities Expense | (0.66) | 16.20 | 15.54 | 158.96 | 158.96 | 164.47 | 64.86 | 141.95 | 689.20 | 704.74 |
| In-House Counsel | (9.98) | 1.50 | (8.48) | 2,037.04 | 1,888.18 | 1,918.42 | 1,918.42 | 1,918.42 | 9,680.48 | 9,672.00 |
| Investment Consultants | (19.06) | 49.70 | 30.64 | 95.48 | 116.56 | 76.34 | 117.81 | 133.85 | 540.04 | 570.68 |
| Investment Travel | 262.52 | (414.41) | (151.89) | 0.50 | 1,328.04 | 354.85 | | | 1,683.39 | 1,531.50 |
| Investment Travel - JPM | | 148.04 | 148.04 | 4,623.31 | (806.47) | | (100.62) | | 3,716.22 | 3,864.26 |
| IT Support | (1.43) | 114.11 | 112.68 | 152.74 | 126.57 | 135.23 | 14.29 | 121.41 | 550.24 | 662.92 |
| Legal Expenses for Partnership | 3,542.38 | 943.80 | 4,486.18 | 535.32 | 7,342.29 | 730.56 | 378.65 | 178,862.50 | 187,849.32 | 192,335.50 |
| Property and General Liability Insurance | (0.13) | (0.02) | (0.15) | 34.14 | 33.90 | 33.98 | 33.98 | 33.98 | 169.98 | 169.83 |
| Rent | - | - | - | 1,143.56 | 1,143.56 | 3,158.91 | 3,158.91 | 3,158.91 | 11,763.85 | 11,763.85 |
| Subscription Based Database | 5.39 | (2.31) | 3.08 | 390.11 | 397.88 | 394.76 | | | 1,182.75 | 1,185.83 |
| Tax | 1,048.26 | 627.07 | 1,675.33 | | | 849.75 | 1,158.75 | | 2,008.50 | 3,683.83 |
| **ATP IV Total** | **4,896.66** | **1,522.17** | **6,418.83** | **9,641.55** | **14,996.46** | **8,301.66** | **7,205.33** | **184,792.93** | **224,937.93** | **231,356.76** |
| **V-1** | | | | | | | | | | |
| Audit | - | | - | | 16,695.00 | | | | 16,695.00 | 16,695.00 |
| Communications (Phone and Internet) | 416.16 | 230.90 | 647.06 | 146.79 | 231.33 | 230.76 | 230.22 | | 839.10 | 1,486.16 |
| Credit Facility Fee | - | - | - | 144.20 | 144.20 | 144.20 | | | 432.60 | 432.60 |
| Director and Officer Insurance | - | - | - | 2,531.31 | 2,531.31 | 2,531.31 | 2,531.31 | 2,531.31 | 12,656.55 | 12,656.55 |
| Facilities Expense | (3.94) | 97.22 | 93.28 | 953.75 | 953.75 | 986.83 | 389.14 | 851.67 | 4,135.14 | 4,228.42 |
| In-House Counsel | (59.90) | 9.02 | (50.88) | 12,222.19 | 11,329.04 | 11,510.52 | 11,510.52 | 11,510.52 | 58,082.79 | 58,031.91 |
| Investment Consultants | (114.38) | 298.13 | 183.75 | 6,572.82 | 11,730.64 | 661.99 | 4,767.82 | 803.07 | 24,536.34 | 24,720.09 |
| Investment Travel | 1,575.11 | (2,486.43) | (911.32) | 3.00 | 7,968.25 | 2,129.07 | | | 10,100.32 | 9,189.00 |
| Investment Travel - JPM | | 888.25 | 888.25 | 27,739.87 | (4,838.81) | | (603.74) | | 22,297.32 | 23,185.57 |
| IT Support | (8.55) | 684.71 | 676.16 | 916.47 | 759.41 | 811.46 | 85.74 | 728.44 | 3,301.52 | 3,977.68 |
| Legal Expenses for Partnership | 22,396.05 | 5,662.75 | 28,058.80 | 3,211.93 | 49,120.02 | 10,930.61 | 5,939.08 | 1,073,175.00 | 1,142,376.64 | 1,170,435.44 |
| Property and General Liability Insurance | (0.85) | (0.12) | (0.97) | 204.85 | 203.37 | 203.84 | 203.84 | 203.84 | 1,019.74 | 1,018.77 |
| Rent | - | - | - | 6,861.37 | 6,861.37 | 12,635.64 | 12,635.64 | 12,635.64 | 51,629.66 | 51,629.66 |
| Subscription Based Database | 32.07 | (13.96) | 18.11 | 2,340.47 | 2,386.92 | 2,368.41 | | | 7,095.80 | 7,113.91 |
| Tax | 6,289.56 | 3,762.39 | 10,051.95 | | | 5,098.50 | 6,952.50 | | 12,051.00 | 22,102.95 |
| Valuations | | | | | | | 14,000.00 | | 14,000.00 | 14,000.00 |
| **V-1 Total** | **30,521.33** | **9,132.86** | **39,654.19** | **63,849.02** | **106,075.80** | **50,243.14** | **58,642.07** | **1,102,439.49** | **1,381,249.52** | **1,420,903.71** |
| **V-2** | | | | | | | | | | |
| Audit | - | | - | | 50,085.00 | | | | 50,085.00 | 50,085.00 |
| Communications (Phone and Internet) | 1,248.49 | 692.70 | 1,941.19 | 440.37 | 693.98 | 692.27 | 690.65 | | 2,517.27 | 4,458.46 |
| Credit Facility Fee | - | - | - | 432.59 | 432.59 | 432.59 | | | 1,297.77 | 1,297.77 |
| Director and Officer Insurance | - | - | - | 7,593.76 | 7,593.76 | 7,593.76 | 7,593.76 | 7,593.76 | 37,968.80 | 37,968.80 |
| Facilities Expense | (11.81) | 291.67 | 279.86 | 2,861.26 | 2,861.26 | 2,960.50 | 1,167.43 | 2,555.01 | 12,405.46 | 12,685.32 |
| In-House Counsel | (179.71) | 27.05 | (152.66) | 36,666.60 | 33,987.12 | 34,531.57 | 34,531.57 | 34,531.57 | 174,248.43 | 174,095.77 |
| Investment Consultants | 1,656.88 | 2,894.35 | 4,551.23 | 7,718.42 | 15,644.99 | 4,189.82 | 16,303.43 | 2,409.18 | 46,265.84 | 50,817.07 |
| Investment Travel | 4,725.34 | (7,459.28) | (2,733.94) | 9.00 | 23,904.75 | 6,387.21 | | | 30,300.96 | 27,567.02 |
| Investment Travel - JPM | | 2,664.76 | 2,664.76 | 83,219.59 | (14,516.44) | | (1,811.23) | | 66,891.92 | 69,556.68 |
| IT Support | (25.65) | 2,054.14 | 2,028.49 | 2,749.39 | 2,278.21 | 2,434.35 | 257.22 | 2,185.32 | 9,904.49 | 11,932.98 |
| Legal Expenses for Partnership | 67,188.15 | 16,988.30 | 84,176.45 | 9,635.80 | 147,360.07 | 32,791.85 | 17,817.27 | 3,219,525.00 | 3,427,129.99 | 3,511,306.44 |
| Marketing | 10,260.00 | | 10,260.00 | | | | | | | 10,260.00 |
| Property and General Liability Insurance | (2.57) | (0.36) | (2.93) | 614.56 | 610.11 | 611.52 | 611.52 | 611.52 | 3,059.23 | 3,056.30 |
| Rent | - | - | - | 20,584.10 | 20,584.10 | 18,953.46 | 18,953.46 | 18,953.46 | 98,028.58 | 98,028.58 |
| Subscription Based Database | 96.24 | (41.88) | 54.36 | 7,021.24 | 7,160.59 | 7,105.05 | | | 21,286.88 | 21,341.24 |
| Tax | 18,868.67 | 11,287.18 | 30,155.85 | | | 15,295.50 | 20,857.50 | | 36,153.00 | 66,308.85 |
| Valuations | | | | | | | 63,000.00 | | 63,000.00 | 63,000.00 |
| **V-2 Total** | **103,824.03** | **29,398.63** | **133,222.66** | **179,546.68** | **298,680.09** | **133,979.45** | **179,972.58** | **3,288,364.82** | **4,080,543.62** | **4,213,766.28** |
| **V-3** | | | | | | | | | | |
| Audit | - | | - | | 33,390.00 | | | | 33,390.00 | 33,390.00 |
| Communications (Phone and Internet) | 832.32 | 461.80 | 1,294.12 | 293.58 | 462.66 | 461.52 | 460.44 | | 1,678.20 | 2,972.32 |
| Credit Facility Fee | - | - | - | 288.39 | 288.39 | 288.39 | | | 865.17 | 865.17 |
| Director and Officer Insurance | - | - | - | 5,062.45 | 5,062.45 | 5,062.45 | 5,062.45 | 5,062.45 | 25,312.25 | 25,312.25 |
| Facilities Expense | (7.87) | 194.44 | 186.57 | 1,907.49 | 1,907.49 | 1,973.65 | 778.28 | 1,703.32 | 8,270.23 | 8,456.80 |
| In-House Counsel | (119.81) | 18.04 | (101.77) | 24,444.36 | 22,658.07 | 23,021.05 | 23,021.05 | 23,021.05 | 116,165.58 | 116,063.81 |
| Investment Consultants | (228.75) | 2,443.21 | 2,214.46 | 1,145.63 | 8,364.37 | 1,120.07 | 7,451.25 | 1,606.13 | 19,687.45 | 21,901.91 |
| Investment Travel | 3,150.22 | (4,972.88) | (1,822.66) | 6.00 | 15,936.49 | 4,258.13 | | | 20,200.62 | 18,377.96 |
| Investment Travel - JPM | | 1,776.50 | 1,776.50 | 55,479.72 | (9,677.62) | | (1,207.48) | | 44,594.62 | 46,371.12 |
| IT Support | (17.10) | 1,369.43 | 1,352.33 | 1,832.92 | 1,518.80 | 1,622.89 | 171.48 | 1,456.88 | 6,602.97 | 7,955.30 |
| Legal Expenses for Partnership | 45,187.61 | 19,066.01 | 64,253.62 | 6,423.86 | 98,240.05 | 21,861.24 | 11,878.17 | 2,146,350.00 | 2,284,753.32 | 2,349,006.94 |
| Property and General Liability Insurance | (1.72) | (0.25) | (1.97) | 409.71 | 406.74 | 407.68 | 407.68 | 407.68 | 2,039.49 | 2,037.52 |
| Rent | - | - | - | 13,722.73 | 13,722.73 | 6,317.82 | 6,317.82 | 6,317.82 | 46,398.92 | 46,398.92 |
| Subscription Based Database | 64.16 | (27.91) | 36.25 | 4,680.78 | 4,773.67 | 4,736.66 | | | 14,191.11 | 14,227.36 |
| Tax | 12,579.11 | 7,524.79 | 20,103.90 | | | 10,197.00 | 13,905.00 | | 24,102.00 | 44,205.90 |
| Valuations | 6,000.00 | | 6,000.00 | | | | 14,000.00 | | 14,000.00 | 20,000.00 |
| **V-3 Total** | **67,438.17** | **27,853.18** | **95,291.35** | **115,697.62** | **197,054.29** | **81,328.55** | **82,246.14** | **2,185,925.33** | **2,662,251.93** | **2,757,543.28** |
| **Braeburn** | | | | | | | | | | |
| Audit | - | | - | | 8,347.50 | | | | 8,347.50 | 8,347.50 |
| Communications (Phone and Internet) | 208.08 | 115.45 | 323.53 | 73.39 | 115.67 | 115.38 | 115.11 | | 419.55 | 743.08 |
| Credit Facility Fee | - | - | - | 72.09 | 72.09 | 72.09 | | | 216.27 | 216.27 |
| Director and Officer Insurance | - | - | - | 1,265.57 | 1,265.57 | 1,265.57 | 1,265.57 | 1,265.57 | 6,327.85 | 6,327.85 |
| Facilities Expense | (1.97) | 48.61 | 46.64 | 476.87 | 476.87 | 493.41 | 194.57 | 425.83 | 2,067.55 | 2,114.19 |
| In-House Counsel | (29.96) | 4.51 | (25.45) | 6,111.10 | 5,664.52 | 5,755.26 | 5,755.26 | 5,755.26 | 29,041.40 | 29,015.95 |
| Investment Consultants | (57.19) | 422.07 | 364.88 | 286.41 | 349.69 | 229.04 | 353.44 | 401.53 | 1,620.11 | 1,984.99 |
| Investment Travel | 787.56 | (1,243.22) | (455.66) | 1.50 | 3,984.12 | 1,064.54 | | | 5,050.16 | 4,594.50 |
| Investment Travel - JPM | | 444.12 | 444.12 | 13,869.93 | (2,419.42) | | (301.87) | | 11,148.64 | 11,592.76 |
| IT Support | (4.27) | 342.36 | 338.09 | 458.23 | 379.70 | 405.73 | 42.87 | 364.22 | 1,650.75 | 1,988.84 |
| Legal Expenses for Partnership | 37,054.00 | 6,323.38 | 43,377.38 | 2,226.97 | 23,815.31 | 28,445.37 | 48,968.92 | 536,587.50 | 640,044.07 | 683,421.45 |
| Property and General Liability Insurance | (0.43) | (0.06) | (0.49) | 102.42 | 101.68 | 101.92 | 101.92 | 101.92 | 509.86 | 509.37 |
| Rent | - | - | - | 3,430.68 | 3,430.68 | 1,052.97 | 1,052.97 | 1,052.97 | 10,020.27 | 10,020.27 |
| Subscription Based Database | 16.04 | (6.99) | 9.05 | 1,170.16 | 1,193.38 | 1,184.12 | | | 3,547.66 | 3,556.71 |
| Tax | 3,144.78 | 1,881.20 | 5,025.98 | | | 2,549.25 | 3,476.25 | | 6,025.50 | 11,051.48 |
| Valuations | | | | 45,000.00 | | 21,000.00 | | | 66,000.00 | 66,000.00 |
| **Braeburn Total** | **41,116.64** | **8,331.43** | **49,448.07** | **74,545.32** | **46,777.36** | **63,734.65** | **61,025.01** | **545,954.80** | **792,037.14** | **841,485.21** |
| **Grand Total** | **247,796.83** | **76,238.27** | **324,035.10** | **443,280.19** | **663,584.00** | **337,587.45** | **389,091.13** | **7,307,477.37** | **9,141,020.14** | **9,465,055.24** |