Docket #0340 Date Filed: 02/17/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
Apple Tree Life Sciences, Inc., *et al.*,[1]	Case No. 25-12177 (LSS)
Debtors.	(Jointly Administered)
	Re: Docket Nos. 228 & 305

REPLY IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF ORDER (I) AUTHORIZING USE OF FUNDS TO (A) FUND PORTFOLIO COMPANIES, (B) PAY MANAGEMENT COMPANY EXPENSES AND (C) PAY CHAPTER 11 EXPENSES, AND (II) GRANTING RELATED RELIEF

[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); Red Queen Therapeutics, Inc. (8563); Evercrisp Biosciences, Inc. (4437); Nine Square Therapeutics, Inc. (4503); and Nereid Therapeutics Incorporated (8493). 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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The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this reply (the "Reply") in response to the *Objection of Rigmora Biotech Investor One LP and Rigmora Biotech Investor Two LP to Debtors' Motion for Entry of Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief* [Docket No. 305 (sealed); Docket No. 310 (redacted)] (the "Objection") to the *Debtors' Motion for Entry of Order (I) Authorizing Use of Funds to (A) Fund Portfolio Companies, (B) Pay Management Company Expenses and (C) Pay Chapter 11 Expenses, and (II) Granting Related Relief* [Docket No. 228 (sealed); Docket No. 261 (redacted); Docket No. 291 (unredacted)] (the "Second Funding Motion"),[2] and respectfully state as follows:

PRELIMINARY STATEMENT

1. Pursuant to the Second Funding Motion, the Debtors seek to use cash to provide funding to ten Portfolio Companies and otherwise pay for the administrative expenses of these chapter 11 cases. These ten Portfolio Companies will use the requested cash to continue with their work that Rigmora disrupted last year when it refused to honor capital calls. The work is not new but work that had already been planned, yet on a budget that reflects the fact that many of the Portfolio Companies had to terminate employees (who are not being hired back) and had to shut down laboratories. And it is work that is not only value-maximizing but, as the Delaware Chancery Court founds, in the public interest. These facts clearly demonstrate that the Debtors' proposed use of funds satisfies section 363(b) of the Bankruptcy Code because, distilled to the core issue, it is the business of the Partnership Debtor to invest capital in early-stage life science companies and

[2] The capitalized terms not otherwise defined shall have the meanings ascribed to them in the Second Funding Motion or in the First Day Declarations (as defined in the Second Funding Motion).

it is the business of the GP Debtor (and its undisputed contractual right) to make the business decisions of the Partnership Debtor. In that respect, at the February 19 hearing, the Debtors expect to present the testimony of four witnesses, including two witnesses (Meenu Karson and Paul Eisenberg) who are fiduciaries of several of the Portfolio Companies.

2. The funding is sourced from cash on hand that the Partnership Debtor received on December 22, 2025, under this Court's *Order Authorizing the Debtors to Open New Segregated Bank Account* [Docket No. 79] (the "Funding Account Order") establishing a segregated account to hold the proceeds of the award (the "Segregated Account"), when the Delaware Chancery Court ordered Rigmora to specifically perform by paying the money to the GP Debtor. The Delaware Chancery Court's order was carried out when Rigmora ***agreed*** to having the money sent to the Partnership Debtor, confirming that the Partnership Debtor ***exists***. In other words, the Delaware Chancery Court ordered specific performance of the payment of money for the Partnership Debtor to use to continue the Debtors' important work because it is their property.[3]

3. The Debtors only request to use funds through the end of July 2026. By that time, the Debtors fully expect to be able to proceed with and confirm a plan of reorganization that pay creditors in full and treats all equity owners of the Debtors, including Rigmora, equitably.

4. Rigmora objects, based on its putative belief that the ten Portfolio Companies are hopeless investments and that the Funding Motion is throwing good money after bad. That may have been Rigmora's basis for seeking to wind up the Partnership Debtor prepetition, but we now know that Rigmora wants to keep all of the value in these estates for itself. Rather than limn the exact contours of why each Portfolio Company should be starved of funding, Rigmora ends its

[3] And, as this Court knows, the Debtors have also filed a debtor in possession financing motion [Docket No. 313] (the "DIP Financing Motion") that provides an alternative if this Court were to find that Rigmora somehow has rights to block the use of the cash on hand (which, as demonstrated herein, it should not). But even the DIP Financing Motion validates the good business judgment of funding the ten Portfolio Companies.

objection requesting that all funding should be denied. Obj. ¶¶ 64-65. Now, Rigmora itself has "proposed" a financing (purportedly on behalf of the Partnership Debtor and from property of these estates) for eight of the ten Portfolio Companies, including all seven Portfolio Companies that Rigmora told the Cayman court were "hopeless investments."[4] Only in the last few days, discovery has revealed that Rigmora is actively seeking to team up with a competitor to fund the Portfolio Companies and keep them together, albeit in yet another breach of what Rigmora agreed to under the LPA.

5. Specifically, Rigmora states that the Second Funding Motion should be denied "as a matter of law" that "no factual showing" can overcome. Obj. ¶ 11. In doing so, it gives up the game. Despite Rigmora's lamentations to the Court that it wishes nothing more than to engage in productive discussions with the Debtors regarding existential funding and in fact does want the Portfolio Companies funded, despite numerous efforts to engage in constructive dialogue, Rigmora has made clear that it intends to do everything in its power to block the Debtors' reorganization efforts—no matter the cost to the Portfolio Companies' life-saving research, the Partnership Debtor's return on investment, and numerous other stakeholders, creditors, and partners. The Bankruptcy Code's protections exist to preserve estate value for all of the Debtors' employees, creditors, and investors—not just Rigmora.

[4] The two that Rigmora has not proposed to fund are Aulos and Replicate—two companies that advanced to the clinical-stage which Rigmora never targeted as "hopeless investments." Aulos is the one engaged in clinical stage cancer trials.

REPLY

I. The Proposed Funding Represents a Sound Exercise of the Debtors' Business Judgment

6. Rigmora's Objection demonstrates that it really wants to substitute its own self-aggrandizing plan for the Portfolio Companies by blocking the Debtors' proposed funding.[5] To this end, the Objection presents a catalogue of Rigmora's views regarding the prudence of the Debtors' proposed funding. Rigmora's views bear little weight given the wide discretion afforded the Debtors to operate their business in accordance with ***their own business judgment***. It does not matter that Rigmora disagrees with the Debtor's plan; the Debtors, as the debtors in possession and with the right to manage the Debtors' affairs, have the right to transact with estate funds, subject only to the Court's approval, which should be granted so long as the Debtors do not act arbitrarily or capriciously and articulate a "reasonable basis" for their decisions. *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) ("courts will generally not entertain objections to the debtor's conduct." (citation omitted)); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that "[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

7. To suggest otherwise would be the equivalent to Rigmora serving as a (highly-conflicted) chapter 11 trustee without having met the standard for replacing the debtors in possession. Rigmora has ***no*** statutory or contractual right to supplant the management of the Partnership Debtor or the GP Debtor; Rigmora owns equity that had some prepetition consent rights, but the Bankruptcy Code now mandates that use of property is subject to section 363. To

[5] In the same paragraph of the Exempted Limited Partnership Act (the "ELP Act") that Rigmora endorses to justify its efforts to impermissibly control Debtor assets, the Cayman court asserts that "[a] limited partner is not permitted to take part in the conduct of the business." *Aquapoint LP v Xiaohu Fan* [2025] UKPC 56 at [33]). Unsurprisingly, Rigmora fails to reconcile this directive with its persistent intrusions into the management of the Partnership Debtor's business.

say Rigmora's business judgment trumps the Debtors is the same thing as saying the Debtors should be displaced, as they would if a court were to grant the extraordinary remedy of a chapter 11 trustee. Rigmora cannot meet that standard, so it filed the Objection.

8. The remainder of the Objection catalogues Rigmora's litany of complaints. First, the Objection makes much of the Debtors' previous observations that the Partnership Debtor's business depends on its ability to spend available funds. Rigmora finds the idea that an investment fund exists to spend money so controversial that it concludes the Debtors' advisors must be operating under some sort of conflict.[6] Instead, says Rigmora, the Partnership Debtor exists to "generate a return on the Fund's investments." Obj. ¶ 67. A moment of scrutiny reveals the defects in this logic. Rigmora does not explain how the Partnership Debtor could generate a return on its investments without first making those investments, or, in other words, ***spending money***. It has been the business of the Partnership Debtor for over a decade to identify early-stage companies to invest in and, once identified, to invest. As long as the Partnership Debtor believes it is a smart business decision to do so and there is a reasonable basis for such belief, that business judgment is to be respected.

9. Interestingly, Rigmora does not dispute the Partnership Debtor's immense success ***under the direction of the GP Debtor*** for years. As the Delaware Chancery Court found, it is Rigmora's own business problems that caused it to take disruptive steps in late 2024 and early 2025, leading to the GP Debtor appropriately commencing litigation to compel Rigmora to honor its contractual obligations to ***fund*** Portfolio Companies. Bogdanov Tr. 172:12-19 (Rigmora acknowledging that the Chancery Judgment made such finding).

[6] Rigmora declines to identify the basis of this allegation or explain how it justifies risking the Portfolio Companies' collapse due to lack of funding, but instead gestures generally to its objection to the retention of the Debtors' chosen advisors. Obj. ¶ 67 n.43. If Rigmora wishes the Court to consider its argument for denial of the Funding Motion based on supposedly conflicted fiduciaries, it must first make that argument.

10. Nor does Rigmora dispute that it labeled seven of the ten Portfolio Companies as "hopeless investments" when it sought to wind up the Partnership Debtor in June 2025 (which it repeated as late as November 2025) but now wants to see all seven funded. Moreover, one of the seven—Deep Apple—attracted over $800 million in investment commitments from Novo Nordisk in the summer of 2025 (*after* Rigmora called it a "hopeless investment"), proving that the business judgment of the GP Debtor was (and remains) sound and that Rigmora's judgment relies solely on non-scientists and non-experts. And Rigmora does not explain how the Partnership Debtor could generate a return on its investments if it succeeds in starving those investments, the Portfolio Companies, of the funding necessary to continue operations and preserve basic intellectual property rights.

11. Second, Rigmora claims that the Debtors have offered insufficient evidence to allow Rigmora to determine that what is good for Portfolio Companies is good for Partnership Debtor. This makes no sense (and defies the record). Again, the business judgment standard does not require Rigmora to evaluate and agree with the Debtors' decisions. The idea that it is in the Partnership Debtor's interest to prudently preserve the value of the Portfolio Companies which comprise its entire value portfolio simply ignores the nature of a Debtors' business—to invest in and grow portfolio companies which the Debtors have done very successfully. And Rigmora's new theme (realizing that its "hopeless investment" argument was wrong then and more wrong now) blames the Debtors for not providing information about the Portfolio Companies. That new theme ignores the immense record to the contrary in the Chancery Court. In this case, Rigmora has noticed more than a dozen depositions and taken not less than five depositions (with more scheduled) and received tens of thousands of documents in production on top of months of

discovery and testimony on these exact same issues before the Chancery Court.[7] And, of course, at the February 19 hearing, the Debtors will present four witnesses to support their business judgment.

12. Third, Rigmora asserts that the Debtors' hesitance to ***grant unrestricted access to their intellectual property to a competitor (RTW) that has recently expressed interest in the exact programs it now seeks to inspect*** somehow displays bad faith. The recklessness of Rigmora's demand to hand the estate's crown jewels over to RTW Investments, LP ("RTW") cannot be overstated, and the Debtors have made numerous attempts to help Rigmora understand the danger this would cause to the Debtors' business—essentially spilling state secrets to a competitor through expert witness espionage.

13. Rigmora knows exactly what competitive advantage this information would grant RTW because as late as January 15, 2026, Rigmora was communicating with the RTW, ***and Dr. Paul Lu specifically***, about a plan to take over the Partnership Debtor and Portfolio Companies and hand management to RTW. The Debtors have even taken the step to disqualify Dr. Lu. The Debtors refusal divulge proprietary information to a competitor with competing portfolio companies demonstrates the Debtors' good business judgment and Rigmora's lack of it.

14. Fourth, Rigmora points to four prepetition cherry-picked emails in which Debtor employees question the direction of certain Portfolio Companies.[8] But the fact that the Debtors' extensive production contains only four emails criticizing certain of the Debtors' operations actually supports a finding that the Debtors' management remains aligned regarding value of the

[7] The Chancery Court 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. *See ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at *2 (Del. Ch. Dec. 5, 2025).

[8] Rigmora made the same arguments to the Delaware Chancery Court, yet the Delaware Chancery Court made findings that the GP Debtor acted in good faith and compelled Rigmora to honor the capital calls. Again, the Objection functionally seeks to undo every finding of the Chancery Judgment.

Portfolio Companies and the direction of the larger enterprise. Rigmora then presents its own criticisms regarding the wisdom of the Debtors' planned funding, arguing that its opinions must be addressed before the Debtors make any attempt to fund the Portfolio Companies.

15. The Debtors do not require Rigmora's consent to spend the Debtors' own money. And the Debtors' have already retained an independent director to act for the Partnership Debtor's best interests. In contrast, Rigmora has spent the entirety of these cases, and seven months before that, opposing the Debtors' every effort to preserve the Debtors' businesses and maximize the value of their estates.

16. Finally, Rigmora suggests that the Debtors should sit idle until the Court denies its motion to dismiss [Docket No. 204 (sealed); Docket No. 205 (redacted)] (the "Motion to Dismiss" or "MTD") or accept short-term funding subject to Rigmora's heavy-handed, value-decimating control. These cases have not, and the Debtors expect will not, be dismissed, nor will Rigmora be allowed to force a liquidation of the Debtors estates through litigation outside the Court's purview. Therefore, the Debtors intend to continue their efforts to effectuate a value-maximizing restructuring and successful resolution of these cases, notwithstanding Rigmora's perpetual opposition.

II. This Court Should Reject Rigmora's "No Property" and "No Use" Positions

A. Res Judicata Bars Rigmora's Argument

17. Rigmora's lead argument that the Partnership Debtor does not own the Segregated Account that holds the proceeds of the Chancery Court litigation has no place in opposing the Second Funding Motion. It asserts that the Partnership Debtor holds no assets because it does not exist, and those assets therefore belong only to the limited partners. Obj. ¶ 26 ("[The GP]…hold[s] assets on trust for the limited partners, where the Fund, as an ELP, lacks personhood and cannot hold such assets itself"); MTD ¶ 6 (referencing "the LPs' rights as owners of the solvent Fund's

assets"). For Rigmora, the result of such a legal construct is that "the[] assets that the Debtors seek to bring before this Court for reallocation to the Debtor Portfolio Companies, or sale to some hypothetical new LPs, are not theirs to dispose of." Obj. ¶ 38. In short, Rigmora argues that the Debtors cannot use the Segregated Account because those funds belong to Rigmora—which begs the question of what the Chancery Judgment accomplished.

18. Rigmora's arguments cannot be reconciled with the Chancery Judgment's central holding that granted specific performance and required Rigmora to pay $97 million to the Partnership Debtor so that those funds can be used. *ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at *33 (Del. Ch. Dec. 5, 2025). Upon payment, the funds became property of the Debtors' estates. 11 U.S.C. § 541(a)(7). If the Partnership Debtor never possessed property, and it instead belonged to Rigmora, the Chancery Judgment would essentially be an order for Rigmora to transfer property to itself, an outcome that renders the Chancery Judgment a nullity. As a result, the Partnership Debtor's ownership of its own assets gives meaning to the Chancery Judgment. *First Mortg. Corp. v. United States*, 961 F.3d 1331, 1338–39 (Fed. Cir. 2020) ("A defendant is precluded […] if (1) the claim or defense asserted in the second action was a compulsory counterclaim that the defendant failed to assert in the first action, or (2) *the claim or defense represents what is essentially a collateral attack on the first judgment*." (citing *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n.1 (1974)); *Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d 1320, 1324 (Fed. Cir. 2008) ("A defendant is precluded [if] the claim or defense represents what is essentially a collateral attack on the first judgment" (citing, amongst others, Restatement (Second) of Judgments for the proposition that, under § 18(2) of the Restatement, "defenses raised, or which could have been raised, in first action are not precluded in subsequent action, except when used to attack the judgment in the first action," and, under § 22(2) of the

Restatement, if "'successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action'")).[9]

19. Rigmora's argument that the Debtors cannot "dispose of" the $97 million in the Segregated Account amounts to an improper collateral attack on the Chancery Court Judgment; the Chancery Court found that the GP Debtor made the May 30 Capital Calls in good faith to use the resulting capital, and, by ordering specific performance, the court unequivocally intended to end the "funding freeze" that Rigmora had improperly tried to impose. *See ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at *1, *33. Moreover, multiple statements of fact contained in the Chancery Judgment show that the Partnership Debtor owns its own assets. *See, e.g.*, Chancery Judgment at 10 ("The parties agreed to capitalize the Fund with $1.5 billion initially"), 11 ("Rigmora also agreed to "make such other capital contributions and payments to the Fund as provided for in the LPA"), 12 n.68. ("ATLS is a wholly owned subsidiary of the Fund…").

20. Because the ownership of the Partnership Debtor's assets, including the Segregated Account, has already been determined by the Chancery Court, Rigmora cannot now argue a new legal theory that impairs the rights granted by the Chancery Court Judgment. Claim preclusion

[9] Federal courts must give preclusive effect to the judgments of the state court. *See In re Marvel*, 138 B.R. 451, 452 (Bankr. D. Del. 1992) (recognizing application of Full Faith and Credit Act, 28 U.S.C. 1738 requires same preclusive effect as would be given in Delaware Court). In turn, federal courts must give state court judgments the same preclusive effect that the issuing state courts would give them. *Moncrief v. Chase Manhattan Mortg. Corp.*, 275 F. App'x 149, 153 (3d Cir. 2008). In Delaware, res judicata also applies to defenses which were not raised, but which could have properly been considered and determined in the prior action. *State v. Phillips*, Del.Ch., 400 A.2d 299, 307 (1979), *aff'd Phillips v. State, ex rel. Dept. of Nat. Res.*, Del. Supr., 449 A.2d 250 (1982). Nor does the pendency of an appeal affect this result. *Wilson v. Brown*, 2011 WL 55953, at *2 (Del. Super. Jan. 3, 2011) ("Delaware courts have rejected Plaintiffs' argument that the appeal of a judgment renders it non-final for res judicata; *Playtex Family Prods., Inc. v. St. Paul Surplus Lines Ins. Co*., 564 A.2d 681, 684 n.2 (Del. Super. 1989) ("the Courts of this state have indicated that the better view is that judgments on appeal are final for res judicata purposes."); *see also Maldonado v. Flynn*, 417 A.2d 378, 384 (Del. Ch. 1980) (the "better view is that a judgment being appealed will support the application of the doctrine of res judicata"). *See also Campbell v. Lake Hallowell Homeowners Ass'n*, 852 A.2d 1029, 1039 (Ct. Spec. App. Md. 2004) (noting that the rule "that a pending appeal does not affect the finality of a judgment" is now "followed by a majority of the states," including Delaware).

also bars Rigmora from arguing that the Debtors are not entitled to use the funds arising from the May 30 Capital Calls because the Delaware Chancery Court already decided that the Debtors can use the proceeds of those calls. Any different conclusion renders the Chancery Judgment a nullity. *See Nasalok Coating Corp. v. Nylok Corp.*, 522 F.3d at 1328-29 ("[A]llowing Nasalok to proceed on its cancellation petition would undoubtedly impair Nylok's rights as established in the infringement action, in particular its rights under the injunction, and would constitute a collateral attack on the district court's judgment."); *In re Kwok*, 663 B.R. 386, 399 (Bankr. D. Conn. 2023) (finding res judicata applied to the issue of whether an escrow account was property of the estate following alter ego judgment for trustee).

21. After the Partnership Debtor filed its chapter 11 case, the funds were in fact paid into the Segregated Account in the name of the Partnership Debtor. *See also* Funding Account Order. Rigmora paid that amount to the Partnership Debtor on December 22, 2025. Property of the estate includes "any interest in property that the estate acquires after the commencement of the case." 11 U.S.C. §§ 541(a)(7); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 204–05 (1983). By its plain terms, section 541(d) only applies to property held by the debtor as of the commencement of the case.

22. When the Delaware Chancery Court rendered its judgment but before the order was finalized, Rigmora expressly required that the funds should be paid directly to the Partnership Debtor (and not the GP Debtor). Rigmora never argued that the Partnership Debtor would not actually own the cash in settling the terms of the Chancery Judgment either in the Chancery Judgment or in settling the Funding Account Order. Instead, Rigmora agreed to the form of the Chancery Court Judgment that required that the funds be placed in the Segregated Account in the

name of the Partnership Debtor. Therefore, Rigmora cannot now argue that the Partnership Debtor owns nothing because it does not exist; Rigmora has waived that argument.[10]

B. The Court Must Determine the Meaning of the ELP Act as a Question of Law, Not of Fact

23. Rigmora's only substantive argument can be easily distilled into one sentence: the Debtors' assets actually belong to Rigmora, solely because Rigmora's interpretation of Cayman case law says so.[11] Consequently, Rigmora dedicates the bulk of the Objection to a factual overview of Cayman law, showing that historically, the ELP Act has been interpreted by Cayman courts to grant title to the limited partnership's property to the limited partners and not to the partnership itself. This soliloquy contains no legal analysis and is wrong on its face, but, according to Rigmora, it nevertheless robs the Court of jurisdiction over the Debtors' Chapter 11 cases.

24. But that is not a jurisdictional argument; it is a bid to discharge the Court of the right to interpret foreign law conferred to it by Federal Rule of Civil Procedure 44.1, as made applicable to these proceedings by Bankruptcy Rule 9017. Pursuant to that rule, the Court may give due consideration to Cayman cases interpreting the ELP statute, but it must make its own legal determination. *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 36 (2018) ("A federal court should accord respectful consideration to a foreign government's submission, but is not bound to accord conclusive effect to the foreign government's statements.").

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[10] Moreover, Rigmora agreed, by consenting to entry of the Funding Account Order, that the Partnership Debtor open the bank account to hold the very same postpetition funds the Debtors propose to use in the Second Funding Motion. *See Funding Account Order*, ¶ 1 ("The Debtors are directed to immediately open a new segregated bank account for Debtor ATP Life Science Ventures, L.P. . . . which shall be used to hold the $96,960,925.88 to be paid by the Rigmora LPs in accordance with the [Chancery Judgment]."). Rigmora's argument leads to the absurd result that the Funding Account Order directed Rigmora to transfer $97 million to a Debtor that "cannot and does not hold assets as a matter of Cayman law . . . ." Obj. ¶ 51. Sustaining Rigmora's Objection will mean that this Court's Funding Account Order is illusory; and that cannot be correct.

[11] Rigmora presented a declaration of a purported Cayman law expert in support of the Motion to Dismiss but did not do so in support of its Objection. The Debtors have sought to depose this expert but, because of health reasons, the expert is not available until February 22—after the hearing on the Second Funding Motion. Thus, Rigmora cannot rely on anything from this untested expert in support of the Objection.

25. In *Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, the Supreme Court examined this concept at length, outlining the deliberate shift from the common law practice of treating foreign law as a "question of fact" to allowing courts discretion to determine foreign law as a "question of law." 585 U.S. 33, 42 (2018) ("Ranking questions of foreign law as questions of fact, however, 'had a number of undesirable practical consequences.'" (citation omitted)). This effort culminated in Rule 44.1, which provides, in relevant part, that "[i]n determining foreign law, the court may consider any relevant material or source …. The court's determination must be treated as a ruling on a question of law." Fed. R. Civ. P. 44.1. United States courts are not permitted, much less required, to abdicate their jurisdictional authority and blindly accept the legal determination of a foreign court. *Animal Sci. Prods., Inc,* 585 U.S. at 36. ("Because the Second Circuit ordered dismissal of this case on the ground that the foreign government's statements could not be gainsaid, we vacate that court's judgment").

26. As a result, while Cayman case law may inform the Court's interpretation of the ELP Act, the Court must also follow long-standing, established principles of statutory interpretation. *United States v. Malka*, 602 F. Supp. 3d 510, 547 (S.D.N.Y. 2022) ("As with construing the statutory language of domestic law, 'statutory construction [of foreign law] generally begins with an analysis of the language of the statute and, if that language is clear, ends there as well.'"). Rigmora wholly abandons this exercise, but it is critical to the Court's adjudication of these issues.

C. The Clear Language of the ELP Act Provides that the Debtors' Estate Is Property of the Partnership, Not Its Investors

27. Rigmora ignores the statutory language of the ELP. As the Court correctly observed at the start of these cases, the plain language of the statute does not allow the limited partners full control over the Debtors' estate. *See* First Day Hearing Tr. 55: 4-13 (Court: "But it

doesn't say that. It does not say that the assets are held in trust for the benefit of a limited partner. It says that any rights or property of every description of the exemptive limited partnership…shall be held by the general partner upon trust as an asset of the exemptive limited partnership; not of the limited partners, but of the exemptive limited partnership in accordance with the terms of the partnership agreement, which he hasn't pointed me to the partnership agreement to say there is something different."). This makes sense both in terms of statutory construction and the purpose of a limited partnership.

28. Section 16(1) of the ELP Act states, in relevant part, that "[a]ny rights or property…shall be held or deemed to be held by…the general partner… upon trust as **an asset of the exempted limited partner*ship* in accordance with the terms of the partnership agreement**." ELP Act 16(1) (emphasis added).[12] Because the language of the ELP Act has a plain and obvious meaning, the Court's determination of Cayman law should end here. *See Malka*, 602 F. Supp. 3d at 547; *Knight Cap. Partners Corp. v. Henkel Ag & Co., KGaA*, 290 F. Supp. 3d 681, 687–88 (E.D. Mich. 2017) ("And any exercise in statutory construction 'must begin with the plain language of the statute because the 'language of the statute is the starting point for interpretation, and it should also be the ending point if the plain meaning of that language is clear.'") (quoting *Michigan Flyer LLC v. Wayne Cty. Airport Auth.*, 860 F.3d 425, 428 (6th Cir. 2017)); *SEC v. Gibraltar Global Securities, Inc.*, 2015 WL 1514746, at *2 (S.D.N.Y. Apr. 1, 2015) (same).

29. When applying the ELP Act to the facts of this case, the key terms are "exempted limited partnership" and "partnership agreement." Regarding the former, it is well known that a

[12] In full, Section 16(1) of the ELP Act states: "[a]ny rights or property of every description of the exempted limited partnership, including all choses in action and any right to make capital calls and receive the proceeds thereof that is conveyed to or vested in or held on behalf of any one or more of the general partners or which is conveyed into or vested in the name of the exempted limited partnership shall be held or deemed to be held by the general partner and if more than one then by the general partners jointly, upon trust as an asset of the exempted limited partnership in accordance with the terms of the partnership agreement."

limited **partner** is an entity entirely distinct from the limited **partner*ship***. *Kenworthy v. Hargrove*, 855 F. Supp. 101, 107 (E.D. Pa. 1994) ("All of these claims allege injury to the limited partnership Private Bank, rather than to the Limited Partners individually"). The assets held in trust by the GP therefore belong to the Partnership Debtor; they do not belong to Rigmora. *ESG Cap. Partners II, LP v. Passport Special Opportunities Master Fund, LP*, 2015 WL 9060982 at *5 (Del. Ch. Dec. 16, 2015) ("By statute, a limited partnership is a separate entity, and individual partners do not have any rights in specific partnership property"). The LPA, serving as the partnership agreement referenced in the statute, confirms that the partnership must be treated as its own entity. The LPA defines the partnership as a "Person," ensures that it receives treatment as a partnership for United States Federal income tax purposes, Ex. C (LPA § 2(m)), and prohibits the parties from taking any action that would be "inconsistent with the treatment of the Partnership ***as a partnership*** …." *Id.* (emphasis added).

30. In contrast, Rigmora cannot point to *any* provision of the LPA that contemplates granting its limited partners control over the Partnership Debtors' assets. Indeed, the LPA expressly gives Rigmora narrow, limited rights. Its argument therefore finds no grounds in statutory text, and it cannot be given credence.

D. The Conduct of the Partnership Debtor and Rigmora Confirms the Partnership Debtor Exists and Owns Property

31. Rigmora ignores some key facts. Since its formation, the Partnership Debtor has existed (and is a "person" under the LPA), signing contracts and being listed as the owner of numerous Portfolio Companies. Rigmora fully accepted this for years. And it necessarily recognized it when Rigmora affirmatively offered to pay the Delaware Chancery Court judgment

funds directly to the Partnership Debtor.[13] If the Partnership Debtor did not exist and the funds were just the limited partners' funds, what was the point? Rigmora makes no attempt to answer this.

32. The majority of Rigmora's argument rests on one case, *Kuwait Ports Authority v Port Link GP* Ltd [2023 (1) CILR 50]. Rigmora cites this case numerous times in the Motion to Dismiss and Motion for Relief from Stay; it is cited fifteen times in the Objection alone. However, other than conclusory statements, Rigmora has never provided any substantive discussion of the rationale underlying this opinion, which holds that the ELP Act should be given meaning contrary to the statute's text and interpreted to provide limited partners ownership over partnership assets.

33. On this shaky foundation, Rigmora refutes the Bankruptcy Court's authority to oversee these Chapter 11 Cases. MTD ¶ 14 ("funding cannot be ordered by this Court because it does not have jurisdiction over the assets"). It maintains that the Court has no choice but to defer Rigmora's own judgement, ignore the clear text of the statute, dismiss these cases, and, in doing so, deprive the Debtors of their right to manage their estates in accordance with their own business judgment. The Court must reject this demand.

E. The Bankruptcy Code Relieves the Debtors of the Restrictions to Transfer Contained in the LPA

34. Rigmora takes issue with the use of the capital calls to fund Portfolio Companies outside of previously contemplated budgets, pointing to statements made by the Chancery Court regarding the Debtors' prepetition rights independent of the protections of the Bankruptcy Code. Rigmora appears to argue that rather than pursue the tailored funding of essential needs contemplated by the Second Funding Motion, resulting in a $36 million surplus, the Debtors

[13] Rigmora also has repeatedly acknowledged that the Partnership is a "Creditor" in its subscription agreement with the Debtors, showing that the Partnership can take on debt, and does in fact exist.

should instead spend the entirety of their cash on hand in accordance with budgets from May 2025 that the parties constructed in vastly different circumstances.

35. This approach contains no legal basis. As the Debtors explained, section 1107 of the Bankruptcy Code grants the debtor-in-possession the same rights afforded a bankruptcy trustee to take the actions necessary to facilitate a restructuring free from contractual restrictions. Moreover, section 363(b) authorizes the Debtors to use estate funds for any purpose, subject only to the Bankruptcy Court's approval and discretion. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 155 (D. Del. 1999) ("Section 363(b) should be interpreted liberally to provide a bankruptcy judge with substantial freedom to tailor his orders to meet differing circumstances") (citation and internal marks omitted); *see also In re American Home Mortg. Holdings, Inc.*, 402 B.R. 87, 103 (Bankr. D. Del. 2009) (authorizing contract's assignment under section 363(b) of the Bankruptcy Code in derogation of contractual consent rights).

36. Rigmora ignores this argument entirely, and instead examines at length the limits of the rights granted to the Debtors under section 541(c), a provision that the Second Funding Motion does not even reference. Obj. ¶¶ 60-63. Rigmora provides no reasoning to support its belief that either section 541(c) or section 541(d) overrides section 363.[14] The Debtors have made clear that they seek to use available funds in accordance with section 363. *See* Motion ¶ 50 ("[B]y operation of Bankruptcy Code section 363, the Debtors are not restricted in their use of the funds obtained from the capital calls, even if deviating from their previously intended purpose"). On this point, the Objection is silent.

[14] Regardless, section 541(c) applies to statutory, not contractual, rights. And as the Debtors explained, even if Rigmora could prove a trust relationship, Rigmora's argument based on section 541(d) fails because under the terms of the LPA, the GP Debtor has not only legal title but also an equitable interest in the Partnership Debtor's assets. *See* Second Funding Motion ¶ 47.

37. Rigmora regulates its single attempt to distinguish the authority contained in the Second Funding Motion to a footnote in which it references *Am. Home Mortgs.*, which stands for the proposition that to the extent that the LPA contains a provision restricting use of funds, that restriction does not limit a debtors' right to transfer estate property, but instead provides a mechanism for Rigmora to recover damages for breach. 402 B.R. at 103 (Bankr. D. Del 2009) ("the Debtors may transfer contract rights where applicable [] law provides them the power to do so"); *see* Second Funding Motion ¶ 49.

38. As discussed above, an accurate reading of the ELP Act creates no restriction on the partnership's right to transfer its own property. Relatedly, the Delaware Chancery Court already acknowledged that a reallocation of the Partnership Debtor funds is justified to mitigate the harm that Rigmora caused to the Portfolio Companies. *See ATP III GP, Ltd. v. Rigmora Biotech Inv. One LP*, 2025 WL 3496987, at *27 (Del. Ch. Dec. 5, 2025) ("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. 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."). Indeed, even if Rigmora were successful in its winding-up petition, funding out-of-budget Portfolio Companies still has to occur. *See* Motion ¶ 44 n.24 (noting that official liquidations appointed by the Cayman Court would likely seek permission to pay Portfolio Companies with the Partnership Debtor's and that the Cayman Court's discretion to authorize that payment would not be restricted by the LPA).

39. In response to *American Home*, Rigmora observes that the district court states that the loan servicing agreement at issue "speaks not to the [debtor's] *power* to assign . . ., but rather to its *right* to assign." Obj. ¶ 60 n.39. But the context of that quote makes clear that it actually

supports the Debtors' argument. The court goes on to find that, as a direct result of this distinction, "DBSP's 'anti-assignment rights,' such as they are, are not in the nature of a 'defense' but, rather, are in the nature of a 'claim' that is subject to sale 'free and clear' under section 363(f)(5) and Folger Adam." *Am. Home Mortg.*, 402 B.R. at 103. It further notes that "even if a provision of the Master Agreement prohibited assignment of the Loan Servicing Agreement without DBSP's consent, such provision would, as discussed above, be invalidated by section 363(l) of the Bankruptcy Code." *Id.* Rather than confront the meaning of this holding, Rigmora once again falls back on its foundational, futile claim that Cayman law overrides the Bankruptcy Code, eliminating all rights and protections it might otherwise confer.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in the Second Funding Motion.

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Respectfully submitted,

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