

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

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SILVERPEAK STRATEGIC PARTNERS LP, :  
and PHOENINCA INVESTMENTS LLC, :

Plaintiffs, :

v. :

BAKER & MCKENZIE LLP, BAKER & :  
MCKENZIE INTERNATIONAL, and :  
ESTUDIO LUIS ECHECOPAR GARCÍA :  
S.R.L., :

Defendants. :

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Index No.

**COMPLAINT**

Plaintiffs Silverpeak Strategic Partners LP (“Silverpeak”) and Phoeninca Investments LLC (“PI”), by and through undersigned counsel, for their claim against Baker & McKenzie LLP, Baker & McKenzie International, and Estudio Luis Echecopar García S.R.L. (“Estudio Echecopar”) (collectively “Baker McKenzie”), allege as follows:

**NATURE OF THE ACTION**

1. This is a breach of fiduciary duty action against the law firm Baker McKenzie. The dispute concerns Baker McKenzie’s representation of Silverpeak, and its affiliate, PI, in connection with the formation of a joint venture with LITASCO Pan Americas, LLC f/k/a Lukoil Pan Americas LLC (“Lukoil”) to distribute diesel fuel in Peru, and its subsequent representation of Lukoil in litigation concerning the same subject matter as its prior representation of Plaintiffs.

2. In 2016, Silverpeak retained Baker McKenzie’s Peruvian office, Estudio Echecopar, to provide advice on a potential transaction to sell diesel fuel in Peru. With Baker McKenzie as its counsel, Silverpeak identified Lukoil as a potential joint venture partner, and negotiated the terms and structure of the joint venture. Baker McKenzie advised Silverpeak and

PI in connection with the negotiation of the definitive deal documents governing this joint venture, including a Joint Organization, Financing and Operating Agreement (“JOFOA”) and a related diesel fuel supply agreement (the “Fuel Supply Agreement”).

3. In breach of its duties to Plaintiffs, Baker McKenzie now represents Lukoil in two pending lawsuits between Lukoil and PI arising out the joint venture, which, among other things, involve allegations of breach of the JOFOA, the very contract that Baker McKenzie had assisted plaintiff in negotiating and finalizing.

4. Plaintiffs seek damages in an amount to be determined at trial to remedy Baker McKenzie’s misconduct.

#### **PARTIES AND OTHER RELEVANT PERSONS AND ENTITIES**

5. Plaintiff Silverpeak Strategic Partners LP is a private investment management firm with its principal place of business in the State of New York, County of New York.

6. Plaintiff Phoeninca Investments LLC is a Delaware limited liability company. PI is wholly owned by several entities affiliated with Silverpeak and its owners. PI is managed by Silverpeak.

7. Defendant Baker & McKenzie LLP is a limited liability partnership organized under the laws of the State of Illinois and is a member of Baker & McKenzie International. Baker & McKenzie LLP has a New York office.

8. Defendant Baker & McKenzie International is a Swiss verein with member law firms around the world.

9. Defendant Estudio Luis Echeopar García S.R.L. is a limited liability company organized under the laws of Peru and is a member firm of Baker & McKenzie International.

10. Non-party LITASCO Pan Americas, LLC f/k/a Lukoil Pan Americas LLC is a limited liability company organized under the laws of Delaware with its principal place of business at 3200 Kirby Drive, Suite 900, Houston, Texas 77098. On information and belief, LITASCO Pan Americas, LLC changed its name from Lukoil Pan Americas LLC in December 2024. Lukoil Pan Americas LLC is the contracting party to the JOFOA. On information and belief, Lukoil is a wholly owned subsidiary (directly or indirectly) of LITASCO SA, a Swiss entity that is in turn wholly owned (directly or indirectly) by Lukoil PJSC, a Russian multinational oil and gas corporation headquartered in Moscow, Russia.

11. Non-party Phoeninca Holdings LLC (“Phoeninca Holdings”) is a Delaware limited liability company. Lukoil and PI are, effectively, joint owners of Phoeninca Holdings. Their ownership of Phoeninca Holdings is structured through what are known as “Interests”—a term defined in the JOFOA—that they hold in Phoeninca Holdings.

12. Non-party Phoeninca Peru S.R.L. (“Phoeninca”) is a limited liability company organized under the laws of Peru. Phoeninca is an indirect subsidiary of Phoeninca Holdings.

### **JURISDICTION AND VENUE**

13. Venue in New York County is proper pursuant to New York Civil Practice Law and Rules (“CPLR”) § 503.

14. This Court has personal jurisdiction over Baker & McKenzie LLP, Baker & McKenzie International, and Estudio Ehecopar pursuant to New York’s long-arm statute, CPLR § 302(a). Baker McKenzie lawyers from its Peruvian office, member firm Estudio Ehecopar, provided advice to Silverpeak employees located in New York. Baker McKenzie lawyers located in its New York office, including a Baker McKenzie partner, are now providing advice to

Lukoil and are counsel of record in two active litigations between PI and Lukoil before the New York Supreme Court for New York County.

### **FACTUAL ALLEGATIONS**

#### **A. Silverpeak Retains Baker McKenzie's Peruvian Office as Outside Counsel.**

15. In or around early 2016, Silverpeak identified a potential business opportunity distributing fuel in Peru. Silverpeak began exploring the concept of a joint venture for this business and considered different joint venture partners.

16. As it considered this potential joint venture, Silverpeak identified the need for competent outside counsel to advise on the transaction, including with respect to Peruvian legal issues. Therefore, on March 31, 2016, Silverpeak retained Baker McKenzie's Peruvian office, Estudio Ehecopar, as outside counsel. Baker McKenzie agreed to serve as "legal advisors in connection with the establishment of a subsidiary in Peru, as well as regulatory, contractual and transactional issues in connection with potential sale of diesel transactions in Peru." A true and correct copy of the engagement letter between Silverpeak and Estudio Ehecopar (the "Engagement Letter") is attached to this Complaint as **Exhibit A**.

17. Silverpeak chose Baker McKenzie as its outside counsel based on its strong reputation as an international law firm in the United States and abroad.

#### ***i. Baker McKenzie Holds Itself Out as One Firm.***

18. At the time that Silverpeak retained Baker McKenzie, Baker McKenzie held itself out to Silverpeak as one singular, unified firm.

19. Baker McKenzie continues to hold itself out as one firm today. Baker McKenzie's website proclaims that it has "74 Offices" and "45 Locations."<sup>1</sup>

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<sup>1</sup> BAKER MCKENZIE, <https://www.bakermckenzie.com/en/> (last visited Feb. 13, 2025).

20. In fact, The Baker McKenzie Code of Business Conduct, which is publicly available on Baker McKenzie's website, states: "We are one firm. What one of us does, all of us do. We must act with integrity and honor in all of our dealings, everywhere, every day. Because what we do reflects upon Baker McKenzie."<sup>2</sup>

21. Navigating Baker McKenzie's website in search of information on their presence in Peru takes one to a page proclaiming that "[o]ur Lima office handles significant and complex transactions in Peru" and that "[w]e are recognized by legal publications as one of the most prestigious and leading law firms in Peru."<sup>3</sup>

22. And Baker McKenzie proclaims that "[w]ith offices in Argentina, Brazil\*, Chile, Colombia, Mexico, *Peru* and Venezuela, Baker McKenzie advises global conglomerates and multinationals on navigating legal and business challenges in the region."<sup>4</sup>

23. Nowhere on any of these web pages does Baker McKenzie even display the name Estudio Echecopar. Rather, the Estudio Echecopar name appears on Baker McKenzie's website only once one navigates to an individual lawyer's profile, on a line between their position and location, Lima, but under the same Baker McKenzie banner as any other Baker McKenzie lawyer in the US or abroad.<sup>5</sup>

24. Estudio Echecopar lawyers use @bakermckenzie.com email addresses.

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<sup>2</sup> The Baker McKenzie Code of Business Conduct, BAKER MCKENZIE, [codeofconduct.pdf](#) (last visited Feb. 13, 2025).

<sup>3</sup> *Peru*, BAKER MCKENZIE, <https://www.bakermckenzie.com/en/locations/latin-america/peru> (last visited Feb. 13, 2025).

<sup>4</sup> Sasha Mirpuri, Baker McKenzie Named South American Practice of the Year for Fifth Consecutive Year, BAKER MCKENZIE (Nov. 20, 2023), <https://www.bakermckenzie.com/en/newsroom/2023/11/south-american-practice-of-the-year-for-fifth-consecutive-year> (emphasis added).

<sup>5</sup> See, e.g., Rolando Ramirez Gaston, BAKER MCKENZIE, <https://www.bakermckenzie.com/en/people/r/ramirezgaston-horny-rolando> (last visited Feb. 13, 2025).

*ii. The Terms of Baker McKenzie's Representation.*

25. The Engagement Letter is on letterhead that lists all of Baker McKenzie's offices in the United States and internationally. Notably, the Engagement Letter defines the "Firm" as Baker & McKenzie International.

26. The Engagement Letter states:

We are pleased that you have decided to retain Estudio Echecopar, member firm of Baker & McKenzie International (the "Firm"), to represent Silverpeak Strategic Partners LP (the "Client") as legal advisors in connection with the establishment of a subsidiary in Peru, as well as regulatory, contractual and transactional issues in connection with potential sale of diesel transactions in Peru (the "Transaction").

Exhibit A at 1.

27. The Engagement Letter further provides as the "Scope of Engagement" that "[t]he Firm [Baker & McKenzie International] will provide professional legal services as Peruvian counsel to the Client in connection with the Transaction," which was defined as the "establishment of a subsidiary in Peru, as well as regulatory, contractual, and transactional issues in connection with potential sale of diesel transactions in Peru."

28. The Engagement Letter also attached "Standard Terms of Engagement for Legal Services" (the "Standard Terms"). A true and correct copy of the Standard Terms is attached to this Complaint as **Exhibit B**.

29. The Standard Terms provide that they are the "Governing Terms" for Baker McKenzie's representation.

30. The Standard Terms also contain a term explaining their "Application and Interpretation," which explains that, as used therein, "office" means any office of the Firm.

31. The Standard Terms include a term regarding conflicts, which provides, in relevant part:

**We will always honor our duty of confidentiality to you and protect your information.** Without detracting from our duty of confidentiality to you, this letter confirms our mutual agreement that, so long as we act in accordance with ethical requirements, **we and other Firm offices may without your consent act for other persons or entities whose interests are adverse to you or your affiliates in matters not substantially related to our engagement by you.** The adversity may be in litigation, legislative or regulatory matters, or in transactions or otherwise, all regardless of type, importance or severity of the matter.

Exhibit B at 1 (emphasis added).

32. That is, Baker McKenzie's Standard Terms provide that "other Firm offices," which include those in the United States, may "act for other persons or entities whose interests are adverse to" Silverpeak, or "[it's] affiliates," which includes PI, but only (a) "so long as [they] act in accordance with ethical requirements" and (b) do so "in matters not substantially related to" the firm's engagement by Silverpeak. *Id.*

**B. Baker McKenzie Advises Silverpeak and, after its Formation, PI, in Connection with a Joint Venture Transaction with Lukoil.**

33. After retaining Baker McKenzie, Silverpeak identified Lukoil as a potential joint venture candidate.

***i. Baker McKenzie Advises Silverpeak on the Terms of the Transaction.***

34. With Baker McKenzie as its counsel, Silverpeak began negotiations with Lukoil in 2017.

35. Baker McKenzie advised Silverpeak on issues including, but not limited to, the structure of the joint venture, including establishing a holding company structure and the working capital financing structure, and tax matters related to establishing the joint venture.

36. Ultimately, Silverpeak and Lukoil agreed that their joint venture would be governed by the JOFOA. A true and correct copy of the JOFOA is attached to this Complaint as **Exhibit C.**

37. The JOFOA was negotiated by Silverpeak, with advice from Baker McKenzie, and Lukoil, with advice from its own outside counsel.

38. Throughout the negotiations of the JOFOA, Silverpeak shared confidential information with Baker McKenzie. This information included Silverpeak's understanding of the terms of the JOFOA. Wayne Kubicek, Silverpeak's then-General Counsel, and Michael Franzese, Silverpeak's Managing Director in charge of tax and structuring, sent preliminary internal drafts of the agreement to Baker McKenzie lawyers in Peru for review and comment. Baker McKenzie lawyers provided input on those drafts. The communications between Mr. Kubicek and Mr. Franzese, on the one hand, and Baker McKenzie lawyers in Peru, on the other hand, were attorney-client communications and subject to privilege belonging to Silverpeak.

39. Baker McKenzie was also included on emails exchanging drafts of the JOFOA between Lukoil and Silverpeak.

*ii. Silverpeak Forms PI Based on Baker McKenzie's Advice.*

40. Baker McKenzie also advised Silverpeak on how it should structure its interest in the joint venture.

41. Based in part on Baker McKenzie's advice, Silverpeak decided to form a special purpose vehicle, PI, to hold Silverpeak's partners' interest in the joint venture on an indirect basis. This is a typical way to structure a transaction like this in the private equity industry.

42. PI was formed on December 20, 2017, the day before the transaction closed. A true and correct copy of PI's Certificate of Formation is attached to this Complaint as **Exhibit D**.

43. PI does not have any employees; it is managed by Silverpeak.

44. After PI's formation, PI became the contracting party to the JOFOA which had previously been under negotiation at Silverpeak's direction and management. Therefore, as soon as it was formed, PI received Baker McKenzie's advice with respect to its right and obligations



under the JOFOA—and Baker McKenzie formed an attorney-client relationship with PI. With that background, the day after it was formed, PI signed the JOFOA.

*iii. Baker McKenzie Advises Silverpeak and PI on the Structure of the Transaction.*

45. Baker McKenzie also advised on the overall structure of the joint venture transaction, which involved several other entities.

46. Notably, as part of the transaction, and as agreed to in the JOFOA, after the JOFOA was signed, PI formed Phoeninca Holdings, which would serve as the special purpose vehicle through which Silverpeak and Lukoil would hold their ownership interests in Phoeninca, the company that operates the joint venture in Peru.

47. Similarly, after signing, the working capital financing was implemented between Lukoil and Phoeninca with Baker McKenzie providing Silverpeak advice necessary to vet that permitted interested party transaction.

*iv. Baker McKenzie Advises Silverpeak on the Terms of the Ancillary Documents to the Transaction.*

48. Baker McKenzie also provided advice to Silverpeak on the terms of the Fuel Supply Agreement.

49. The Fuel Supply Agreement was negotiated by Silverpeak employees but ultimately executed by Lukoil and Phoeninca on December 21, 2017.

50. The Fuel Supply Agreement was incorporated into the JOFOA and is a fundamental underpinning of the joint venture. Exhibit C at § 2(c)(iii)(A).

**C. Subsequent Interactions Between Silverpeak and Baker McKenzie.**

51. In the fourth quarter of 2018, both Silverpeak and Estudio Echeopar were threatened with litigation in connection with the transaction, as defined in the Engagement Letter. In response to this threat, Estudio Echeopar brought in Ed Zulkey of the Baker

McKenzie Chicago office. Mr. Zulkey interacted with Silverpeak's current General Counsel, Jonathan L. Socolow, by phone calls and emails, the contents of which remain subject to the attorney-client privilege

**D. Breakdown of the Joint Venture.**

52. The joint venture eventually soured. In late 2019, Lukoil approached PI, through its managers at Silverpeak, about a potential expansion of the joint venture to include the distribution of lubricants. For several months, the parties negotiated a potential lubricants supply deal, but they were unable to reach an agreement, and PI informed Lukoil in March of 2020 that it would not agree to move forward with such expansion. Despite PI's clear refusal to permit Phoeninca to distribute lubricants, Lukoil subsequently went directly to the Peruvian management of Phoeninca and caused them to enter into a supply agreement for lubricants (the "Lubricants Supply Agreement").

53. The Covid-19 pandemic, which began in February 2020, created significant operating challenges for the joint venture. Before the end of 2020, Silverpeak and Lukoil negotiated terms for Silverpeak and PI to exit the joint venture through a sale of PI's interest to Lukoil (the "Proposed Exit Transaction"). The Proposed Exit Transaction was negotiated throughout the remainder of 2020, 2021, and into 2022.

54. Russia's invasion of Ukraine in February 2022 complicated Lukoil's ability to operate around the world resulting in Lukoil's unilateral decision to cease supplying Phoeninca with fuel pursuant to the Fuel Supply Agreement as required under the JOFOA.

55. In the fall of 2023, unable to honor the requirements of the JOFOA and unwilling to honor the Proposed Exit Transaction, Lukoil proposed a transaction to sell Phoeninca to its management (the "Management Buyout" or "MBO"). Although unhappy with the terms of the MBO, which were worse for Silverpeak and PI than the Proposed Exit Transaction, Silverpeak

did agree to the MBO as a settlement of the conflicts between itself and Lukoil. In the Spring of 2024, Lukoil rejected the MBO that Lukoil itself had originally proposed.

56. The dispute between Silverpeak and Lukoil concerning management and funding of the joint venture, which would have been resolved by the MBO had it not been rejected, continued after the MBO was rejected.

**E. Baker McKenzie's Representation of Lukoil.**

57. On May 10, 2024, despite its former representation of Silverpeak and PI concerning the JOFOA, Baker McKenzie sent a letter on behalf of Lukoil asserting claims under the very same JOFOA on which it had advised Silverpeak and PI. A true and correct copy of the May 10, 2024 demand letter is attached to this Complaint as **Exhibit E**. Baker McKenzie informed counsel for PI that it represented Lukoil, but provided no details on when the engagement began and to what extent it had advised Lukoil concerning the Lubricant Supply Agreement and the Proposed Exit Transaction.

***i. Litigation Between PI and Lukoil.***

**a. PI Initiates an Action for Breach of Contract against Lukoil.**

58. On June 20, 2024, PI initiated a lawsuit against Lukoil: *Phoeninca Investments LLC v. Lukoil Pan Americas LLC*, Case No. 653130/2024 (the "PI Action"). PI filed a summons with notice which informed Lukoil that PI had claims against it for breach of Section 11 of the JOFOA based on Lukoil's unauthorized use of the parties' joint venture for its lubricants business. A true and correct copy of the Summons with Notice is attached to this Complaint as **Exhibit F**.

59. On August 8, 2024, L Andrew S. Riccio, a partner in Baker McKenzie's New York office, filed a notice of appearance in the PI Action, demanded that PI (Baker McKenzie's former client on the very same contract at issue) serve a copy of its complaint on Lukoil, and

agreed that Baker McKenzie would accept service of the complaint. A true and correct copy of the Notice of Appearance and Demand is attached to this Complaint as **Exhibit G**.

60. PI filed its complaint against Lukoil on August 28, 2024, alleging claims for breach of Section 11 of the JOFOA as well as for breach of Section 2 of the JOFOA based on Lukoil's abrupt and unilateral decision to cease supplying Phoeninca with fuels. A true and correct copy of the Complaint in the PI Action is attached to this Complaint as **Exhibit H**.

61. The PI Action hinges on PI and Lukoil's respective rights and obligations under the JOFOA. Litigating the PI Action requires detailed analysis of the JOFOA, as the parties argue for diametrically opposed interpretations of the contract.

62. On September 17, 2024, Riccio filed a motion to dismiss the PI Action on behalf of Lukoil. A true and correct copy of the Motion to Dismiss is attached to this Complaint as **Exhibit I**.

63. While Silverpeak is not a party to the PI Action, Silverpeak and its partners have economic and reputational interests in the outcome of the case, and Silverpeak continues to manage PI, including in litigation. In its motion to dismiss, Baker McKenzie, on Lukoil's behalf, acknowledges Silverpeak's role in the case through numerous references to Silverpeak, including by alleging that "PI and its principals at Silverpeak drafted and reviewed the terms of the [then-proposed] Lubricants Supply Agreement." Exhibit I at 22.

b. On Behalf of Lukoil, Baker McKenzie Files a Separate Breach of Contract Action against its former client, PI.

64. Rather than demanding PI's Complaint and responding to it with counterclaims, on July 1, 2024, Lukoil, represented by Baker McKenzie, elected to file a second action: *Lukoil Pan Americas, LLC v. Phoeninca Investments LLC*, Case No. 653336/2024 (the "Lukoil Action").

65. In the Lukoil Action, Baker McKenzie alleges, on Lukoil's behalf, that PI breached the JOFOA—the very contract that Baker McKenzie advised PI and Silverpeak on the formation of. Specifically, Baker McKenzie and Lukoil allege that PI breached Section 2 of the JOFOA by failing to pay 50% of the Company's Cash Shortfalls, a term defined in the JOFOA, and Section 7 of the JOFOA by allegedly excluding Lukoil from discussions regarding a potential sale of Phoeninca Holdings. A true and correct copy of the Summons and Complaint in the Lukoil Action is attached to this Complaint as **Exhibit J**.

66. Nowhere in Lukoil's complaint did Baker McKenzie mention that it participated in the negotiation of the very contract it was now claiming was breached.

67. The Lukoil Action hinges on PI and Lukoil's respective rights and obligations under the JOFOA. Litigating the Lukoil Action requires detailed analysis of the JOFOA, as the parties argue for diametrically opposed interpretations of the contract.

68. While Silverpeak is not named as a defendant in the Lukoil Action, Baker McKenzie has made numerous references to Silverpeak in the complaint in that action. That complaint specifically alleges that "Phoeninca Investments is wholly owned by certain partners of Silverpeak. On information and belief, at all times material hereto, Phoeninca Investments was managed by certain partners of Silverpeak." Exhibit J, ¶ 14. And Lukoil alleges that "the JOFOA established that Phoeninca Investments, *on behalf of Silverpeak*, would form Phoeninca Holdings, a Delaware limited liability company, and then through a series of transactions would transfer all the equity interests of Phoeninca Perú into Phoeninca Holdings." *Id.*, ¶ 21 (emphasis added). Baker McKenzie's filings on behalf of Lukoil indicate that it is well aware of the fact that PI functions under the direction of its manager, Silverpeak. *Id.*, ¶ 14 ("On information and belief, at all times material hereto, Phoeninca Investments was managed by certain partners of

Silverpeak.”). The very conduct that Lukoil claims is a violation of Section 7 of the JOFOA in its complaint, “negotiat[ing] with a third party—without LPA’s knowledge or consent and in breach of the JOFOA—to sell Phoeninca Holdings” was allegedly done by PI and its principals, Silverpeak. *Id.*, ¶ 7.

69. And, in an apparent attempt to head off PI’s anticipated claims regarding Lukoil’s misuse of the joint venture for its lubricants business, Baker McKenzie, on behalf of Lukoil, alleged that it was Silverpeak who negotiated the failed lubricants deal with Lukoil (*id.*, ¶ 35) and that it was “Silverpeak (as Phoeninca Investments’ representative) [that] informed LPA that it had decided not to participate in the lubricants transaction” (*id.*, ¶ 36).

70. Baker McKenzie is advancing spurious positions on Lukoil’s behalf in the ongoing dispute between PI and Lukoil, including:

71. First, that Silverpeak, as a private equity investor in the joint venture, was obligated under the JOFOA to contribute additional funds to the operating entity upon the request of the said operating entity. *See id.*, ¶¶ 45-46. This wrong-headed view of how private equity investments work generally, and how the JOFOA works in particular, demonstrates a shocking lack of sophistication from a purportedly sophisticated international law firm.

72. Second, that Lukoil, a global vertically integrated oil and gas company, could unilaterally terminate the Fuel Supply Agreement, which was at the core of its obligations under the JOFOA. *See Exhibit I at 17.* Cutting off deliveries of diesel fuel to the joint venture’s operating entity in Peru doomed the joint venture.

73. As a result of these and other positions, Baker McKenzie is not only adverse to Silverpeak and PI, it is actively crafting and advancing positions that are the cause of significant economic harm to Silverpeak and PI.

#### F. Plaintiffs Tell Baker McKenzie About the Conflict.

74. Plaintiffs informed Baker McKenzie that their representation of Lukoil was a conflict of interest, given their former representation of Plaintiffs in a substantially related matter. Plaintiffs' counsel reached out to Baker McKenzie via letter, email, and phone call to raise the issue. Rather than taking the opportunity to step aside—or even to seek waiver of the conflict from Plaintiffs—Baker McKenzie implausibly denied the existence of a conflict. In a letter to counsel for Plaintiffs dated November 18, 2024, Baker McKenzie insisted that “Estudio Ehecopar is a separate and distinct entity from Baker & McKenzie LLP, an Illinois limited liability partnership that represents LPA in the lawsuits.” A true and correct copy of the November 18, 2024 letter is attached to this Complaint as **Exhibit K**. Baker McKenzie also suggested that its Standard Terms included an advanced waiver permitting it to act adversely to a former client on a substantially related matter:

Silverpeak agreed to be bound by the Standard Terms of Engagement for Legal Services, in which Silverpeak agreed that only Silverpeak was Estudio Ehecopar's client, not its affiliates. As a result, Silverpeak agreed that the firm could represent other clients with interests adverse to Silverpeak's affiliates without requiring additional consent.

*Id.* at 1. This position ignores the reality that PI is a special purpose vehicle that was formed specifically for the joint venture to hold Silverpeak's interest under the JOFOA, the very transaction Baker McKenzie had worked on for Silverpeak. Further, this position is contrary to the plain language of the Standard Terms, which provide that “other Firm offices,” including the New York office, may “act for other persons or entities whose interests are adverse to” Silverpeak, or “[it's] affiliates,” including PI, but only (a) “so long as [they] act in accordance with ethical requirements” and (b) do so “in matters not substantially related to” the firm's

engagement by Silverpeak. Exhibit B at 1. The Standard Terms does contain a provision regarding “Conflicts With Affiliates” which states that:

For purposes of our engagement, our client is only the entity designated in our Assignment Letter, and not its affiliates .... Accordingly, for conflict of interest purposes, we and other firm offices may represent another client with interests adverse to your affiliates without obtaining your or their consent.

*Id.* However, this provision does not permit Baker McKenzie to act adverse to Silverpeak’s interests in matters substantially related to its representation of Silverpeak—particularly not in a matter where the affiliate was formed for the very transaction on which Baker McKenzie had advised and was the recipient of that advice—which is what Baker McKenzie has done here.

**FIRST CAUSE OF ACTION**  
(Breach of Fiduciary Duty)

75. Plaintiffs restate and incorporate by reference each and every statement contained herein above as though fully set forth and brought in this cause of action.

76. Having acted as Plaintiffs’ attorneys, including for the purpose of providing advice on the transaction and drafting the definitive deal documents between Silverpeak, PI, and their related entities, on the one hand, and Lukoil, on the other hand, including the JOFOA, Defendants owed Plaintiffs a fiduciary duty of loyalty.

77. Defendants breached this fiduciary duty by, among other things, providing advice to Lukoil regarding the meaning and interpretation of the JOFOA and Fuel Supply Agreement, and by representing Lukoil in two litigations where it is adverse to PI on the very same issues on which it previously provided Silverpeak and PI advice.

78. Plaintiffs have suffered damages as a result of these breaches of fiduciary duty in an amount to be determined at trial, including legal costs incurred seeking disqualification of Baker McKenzie in the PI and Lukoil actions, legal costs incurred litigating Baker McKenzie’s



breach of fiduciary duties, and the damages caused to Silverpeak's interest in the joint venture flowing from Lukoil's conduct in which Baker McKenzie has participated in and advised upon since the date of Baker McKenzie retention by Lukoil in violation of its fiduciary duties.

Plaintiffs are also entitled to disgorgement and forfeiture of the attorney's fees that Lukoil paid to Baker McKenzie.

## SECOND CAUSE OF ACTION

(Breach of Contract)

79. Plaintiffs restate and incorporate by reference each and every statement contained herein above as though fully set forth and brought in this cause of action.

80. The Engagement Letter, and Standard Terms thereto, form a valid and enforceable contract between Silverpeak and Baker McKenzie.

81. The Engagement Letter defines the "Firm" as Baker & McKenzie International.

82. The Engagement Letter states that "[t]he Firm will provide professional legal services as Peruvian counsel to the Client [Silverpeak] in connection with the Transaction" which was defined as "the establishment of a subsidiary in Peru, as well as regulatory, contractual and transactional issues in connection with potential sale of diesel transactions in Peru." Exhibit A at 1.

83. The Engagement letter attached Standard Terms which governed the engagement.

84. By its actions, Baker McKenzie breached the Standard Terms.

85. The Standard Terms provide:

**We will always honor our duty of confidentiality to you and protect your information.** Without detracting from our duty of confidentiality to you, this letter confirms our mutual agreement that, so long as we act in accordance with ethical requirements, **we and other Firm offices may without your consent act for other persons or entities whose interests are adverse to you or your affiliates in matters not substantially related to our**

**engagement by you.** The adversity may be in litigation, legislative or regulatory matters, or in transactions or otherwise, all regardless of type, importance or severity of the matter.

Exhibit B at 1 (emphasis added).

86. That is, Baker McKenzie’s Standard Terms provide that “other Firm offices,” which include those in the United States, may “act for other persons or entities whose interests are adverse to” Silverpeak, or “[it’s] affiliates,” which includes PI, but only (a) “so long as [they] act in accordance with ethical requirements” and (b) do so “in matters not substantially related to” the firm’s engagement by Silverpeak. *Id* at 1.

87. In breach of this term, Baker McKenzie, through L Andrew S. Riccio, a partner in the New York office of Baker & McKenzie LLP, has and is continuing to represent Lukoil in an ongoing dispute with PI, a Silverpeak affiliate—including by appearing on behalf of Lukoil in two active litigations in New York state court—that concern the very transaction that Baker McKenzie advised Silverpeak on.

88. As a direct and proximate result of Baker McKenzie’s actions, Silverpeak and PI have suffered damages in an amount to be determined at trial, including legal costs incurred seeking disqualification of Baker McKenzie in the PI and Lukoil actions, legal costs incurred litigating Baker McKenzie’s breach of the Engagement Letter, and the damages caused to Silverpeak’s interest in the joint venture flowing from Lukoil’s conduct in which Baker McKenzie has participated in and advised upon since the date of Baker McKenzie retention by Lukoil in violation of its obligations under the Engagement Letter.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs Silverpeak and PI respectfully request that the Court award Plaintiffs:

- i. All damages incurred and accruing in an amount to be determined at trial;

- ii. Disgorgement and forfeiture of any and all attorney's fee earned by Baker McKenzie through its representation of Lukoil adverse to Plaintiffs;
- iii. Injunctive relief enjoining Baker McKenzie from further representing Lukoil in matters related to Baker McKenzie's representation of Plaintiffs;
- iv. Plaintiffs' attorney's fees, costs, and disbursements in prosecuting this action to the extent permitted by law;
- v. Pre-judgment and post-judgment interest; and
- vi. Such further relief as this Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs Silverpeak and PI hereby demand a trial by jury on all issues so triable.

Dated: New York, New York  
February 13, 2025

CLARK SMITH VILLAZOR LLP

/s/ Patrick J. Smith

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