

MASSACHUSETTS:

IN THE SUPERIOR COURT FOR SUFFOLK COUNTY

Jeffrey Wanic, et al.,)
)
 in their capacities as Independent Trustees)
 of GL Beyond Income Fund, a Delaware)
 statutory trust,)
)
 Plaintiffs,)
)
 v.)
)
 Daniel Thibeault, et al.,)
)
 Defendants.)

Case No. 14-4059

RECEIVED
 2014 OCT 11 AM 10:52

FIRST AMENDED COMPLAINT

Plaintiffs Jeffrey Wanic, Stephen M. Kezirian, and Matthew D. Shevlin, in their capacities as the independent trustees (collectively, "Plaintiffs" or the "Independent Trustees") of the GL Beyond Income Fund (the "Fund"), by and through their undersigned counsel, for their Complaint against Defendants Daniel Thibeault ("Thibeault"), Graduate Leverage, LLC ("Graduate Leverage"), GL Capital Partners, LLC ("Capital Partners"), and Taft Financial Services, LLC ("Taft"), allege and aver as follows:

NATURE OF THE ACTION

1. This is an action for fraud, aiding and abetting fraud, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, breach of contract, conversion, aiding and abetting conversion, civil conspiracy, recklessness and gross negligence, negligence, unjust enrichment, money had and received, the imposition of a constructive trust, an accounting, and for unfair and deceptive trade practices in violation of Mass. Gen. Laws ch. 93A, § 1, *et seq.*, as a result of

Defendants' defalcation and conversion to their own benefit of a significant portion of the financial assets of the Fund through a fraudulent loan scheme that serves as the basis for a criminal complaint that has been filed in the United States District Court for the District of Massachusetts against Thibeault and a civil complaint for securities fraud that has been filed against Thibeault, Graduate Leverage, and Taft by the United States Securities and Exchange Commission. Plaintiffs also seek preliminary injunctive relief in the form of an order directing that all of the Fund's property and all hard copy and electronic loan servicing files and accounts maintained or controlled by Graduate Leverage be immediately turned over by Defendants.

THE PARTIES

2. Plaintiff Jeffrey Wanic is an independent trustee of the GL Beyond Income Fund, a closed-end interval fund that until recently was managed by Defendant Thibeault and his company, Capital Partners. The Fund was established as a Delaware statutory trust on October 11, 2011. Wanic brings his claims solely in his capacity as an independent trustee of the Fund.

3. Plaintiff Stephen M. Kezirian is also an independent trustee of the Fund. Kezirian brings his claims solely in his capacity as an independent trustee of the Fund.

4. Plaintiff Matthew D. Shevlin is also an independent trustee of the Fund. Shevlin brings his claims solely in his capacity as an independent trustee of the Fund.

5. Defendant Daniel Thibeault is a resident of the Commonwealth of Massachusetts residing at 72 Carter Drive, Framingham, Massachusetts 01701. Upon information and belief, Thibeault is the founder and holds a direct or indirect majority ownership interest in Capital Partners, Graduate Leverage, and Taft. From February 22, 2013, until December 17, 2014, Thibeault also served as an interested trustee, chairman, and president of the Fund. Thibeault

served as co-portfolio manager of the Fund from March 23, 2012, to December 12, 2012, and then again from February 22, 2013, to December 17, 2014.

6. Defendant Graduate Leverage, LLC is a Massachusetts limited liability company that was founded by Thibeault in 2003 and, upon information and belief, is majority-owned by Thibeault. Upon information and belief, Graduate Leverage holds a majority ownership interest in and is the managing member of Capital Partners. From January 26, 2012, until it was terminated by the Independent Trustees on February 6, 2015, Graduate Leverage served as the servicer for the loan portfolio held by the Fund.

7. Defendant GL Capital Partners, LLC is a Massachusetts limited liability company that, upon information and belief, is majority owned and controlled by Graduate Leverage. From January 17, 2012, until it was terminated by the Independent Trustees on December 17, 2014, Capital Partners acted as the sole investment manager of the Fund pursuant to a Management Agreement between Capital Partners and the Fund dated January 17, 2012.

8. Defendant Taft Financial Services, LLC is, upon information and belief, a special purpose limited liability company formed under the laws of the state of South Dakota in December 2011 whose principal place of business is in Massachusetts. Upon information and belief, Thibeault controls Taft and directed that Taft's origination and incorporation documents be prepared by Graduate Leverage's staff.

JURISDICTION

9. This Court has jurisdiction over the subject matter of this action pursuant to Mass. Gen. Laws ch. 212, § 3, as this is a civil action for money damages in excess of \$25,000.

10. This Court may properly exercise personal jurisdiction over Thibeault, Graduate Leverage, and Capital Partners pursuant to Mass. Gen. Laws ch. 223A, § 2, as each of the

foregoing defendants is domiciled in Massachusetts and all of the foregoing corporate defendants are organized under the laws of Massachusetts and maintain their principal place of business in Massachusetts. This Court may properly exercise personal jurisdiction over Taft pursuant to Mass. Gen. Laws ch. 223A, § 3(a) and (c)-(d), as each of Plaintiffs' claims against Taft arise from Taft's transacting business in Massachusetts, causing tortious injury by an act or omission in Massachusetts and/or causing tortious injury in Massachusetts by an act or omission outside of Massachusetts while regularly doing business, engaging in a persistent course of conduct, and deriving substantial revenue from services rendered in Massachusetts.

FACTUAL ALLEGATIONS

11. Daniel Thibeault, a 2004 graduate of Harvard Business School's MBA program, founded Graduate Leverage, LLC in 2003 while an MBA student.

12. Between 2003 and the present, Thibeault has gone on to found a variety of related businesses that provide financial services in the Boston, Massachusetts area, including a fee-based financial advisory service, an insurance brokerage, and an asset management business.

13. Among the other businesses that Thibeault has founded is GL Capital Partners, LLC.

14. Graduate Leverage was originally formed to provide financial advisory support to students and recent graduates of professional and post-graduate educational programs, including doctors, lawyers, and pharmacists. In more recent years, through its affiliates, including Capital Partners, it began providing asset management services and loan portfolio servicing as well.

15. In October 2011, Thibeault sponsored the formation of the GL Beyond Income Fund as a Delaware statutory trust.

16. In early 2012, the Fund opened for business as a closed-end interval fund open only to clients of GL Services, LLC, a financial advisory service and affiliate of Graduate Leverage also operated by Thibeault. In 2014, the Fund was opened to investment by other investors.

17. Since its inception, the Fund's investment strategy has been to produce income for its investors by investing primarily in individual promissory notes signed by post-graduate and professional students obtaining, or borrowers that have recently obtained, advanced degrees in areas such as medicine, dentistry, law, veterinary medicine, and business in exchange for loans. The Fund has never invested in securities backed by pools of student loans, but only in individual loans themselves. The Fund acquires promissory notes in both the secondary market and through direct originations with individual borrowers.

18. In order to provide for management of the Fund, on January 17, 2012, the Fund, through its then-president, Michael Tassone, executed a Management Agreement with Capital Partners appointing Capital Partners the sole investment manager of the Fund. (A true and correct copy of the Management Agreement is attached hereto as Exhibit A.)

19. Among other provisions, Section 2 of the Management Agreement provides that Capital Partners shall determine the securities to be purchased by the Fund, "subject always to the Fund's investment objective, policies and restrictions, as each of the same shall be from time to time in effect, and subject further to such policies and instructions as the Board may from time to time establish."

20. Section 15 of the Management Agreement provides as follows:

In compliance with the requirements of Rule 31a-3 under the [Investment Company Act of 1940 ("Act")], ***you agree that all record[s] which you maintain for the [Fund] are the property of the [Fund] and you agree to surrender promptly to the [Fund] such records upon the [Fund's] request.*** You further

agree to preserve for the periods prescribed by Rule 31a-2 under the Act all records which you maintain for the [Fund] that are required to be maintained by Rule 31a-1 under the Act. (emphasis added)

21. In exchange for the management services provided thereunder, Exhibit A to the Management Agreement specifies that Capital Partners is to be paid an annual rate of 2.25 percent of the Fund's average daily net assets on a monthly basis.

22. As contemplated in the Management Agreement, Capital Partners acted as the Fund's investment manager and advisor from the Fund's opening in January 2012 until Capital Partners was terminated by the Independent Trustees of the Fund on December 17, 2014. In exchange for its management and advisory services, Capital Partners earned management fees from the Fund totaling \$58,400 in the partial fiscal year ending January 31, 2013, and \$463,184 in the fiscal year ended January 31, 2014, as well as amounts to be determined after January 31, 2014. Capital Partners deferred all of its fiscal year 2013 fee and \$205,497 of its fiscal year 2014 fee, subject to recoupment under various terms, pursuant to expense limitation agreements between Capital Partners and the Fund.

23. In order to provide for servicing of the student loans held in the Fund's portfolio, on January 26, 2012, the Fund, through its then-president, Michael Tassone, executed a Loan Servicing Agreement ("Servicing Agreement") with Graduate Leverage. Thibeault executed the Servicing Agreement on behalf of Graduate Leverage. (A true and correct copy of the Servicing Agreement is attached hereto as Exhibit B.)

24. The Servicing Agreement makes Graduate Leverage responsible for the custody and maintenance of all loan-related documents and records, including original promissory notes, loan applications, and other relevant documentation.

25. The Servicing Agreement provides, in relevant part, that Graduate Leverage shall:

- “maintain a complete and separate file for the Program Loans of each Borrower, which file shall include the Loan Documentation and all other documentation and correspondence related to the Program Loans (such documentation and correspondence may be in electronic format) . . . for so long as a Program Loan is outstanding and for five years thereafter.” (Section 3.2(i).)
- “prepare and maintain accounting records with respect to the Program Loans.” (Section 3.2(ii).)
- “retain summary records of contacts, follow-ups and collection efforts, and records of written correspondence relating to the Program Loans of each Borrower.” (Section 3.2(iii).)
- “at all times identify [the Fund] as the owner of the Program Loan.” (Section 3.2(vii).)
- “provide documents and information from Program Loan files as requested by [the Fund] or [the Fund’s] agent. [Graduate Leverage] agrees to work towards providing [the Fund] limited read-only access to its Program Loan files maintained on [Graduate Leverage’s] Servicing system” (Section 3.6.)
- “maintain an original promissory note for each Program Loan in its physical possession as bailee for [the Fund] . . . until the Program Loan is paid in full and for 6 years thereafter, unless [the Fund] requested otherwise.” (Section 3.9.)
- “hold all Loan Documentation, including the original promissory note . . . and related documents serviced hereunder as bailee for the benefit of [the Fund].” (Section 4.1.)
- for cause, make immediately available to the Fund “all records and reports” relating to the servicing of the Fund’s loans for review, audit, and copying by the Fund and its designated representatives. (Section 10.1.)

26. During all relevant times, all activities of Capital Partners and Graduate Leverage were run out of the companies’ shared office in Waltham, Massachusetts and out of a separate office in the Philippines.

27. During all relevant times, Thibeault controlled Capital Partners and Graduate Leverage and directed their day-to-day activities out of the Waltham, Massachusetts office.

28. Upon information and belief, Graduate Leverage was financially successful in the first several years of its existence.

29. Upon information and belief, starting in approximately 2009, Graduate Leverage—which has over 20 employees in the Waltham, Massachusetts office and over 90 employees in the Philippines—was no longer profitable and began losing money.

30. Upon information and belief, starting in early 2013, in order to continue funding his floundering financial advisory business, Thibeault effected a scheme of creating fictitious loans issued by the Fund that, rather than being paid to bona fide borrowers, were instead transferred by a special purpose entity, Taft, that Thibeault created for purposes of carrying out his fraudulent scheme, into bank accounts controlled by Graduate Leverage. To cover up his actions, Thibeault then prepared forged promissory notes in the names of real individuals who had never requested nor been provided a loan by the Fund. Thibeault made periodic interest payments on some of the fraudulent loans to give the appearance that the borrowers were current on the loans. Upon information and belief, these “interest payments” were made from a portion of the very monies that Thibeault had diverted from the Fund. Eventually, Thibeault also represented that some of the fraudulent loans were “in deferment” to justify the lack of “interest payments” on them.

31. Starting in 2013, Thibeault and his co-portfolio manager informally divided management of the Fund’s assets, with Thibeault responsible for managing loans that recently comprised approximately thirty-five percent of the Fund’s assets.

32. Each loan in the Fund was assigned a unique number and letter code that identified the borrower and loan type. Upon information and belief, Thibeault was responsible for loans having the program code “TA.”

33. Typically, for loans originated by the Fund, the Fund directed its custodian, Union Bank, in California, to wire the money to a transactional bank that formally issued the loan to the borrower. Union Bank then received a copy of the promissory note signed by the borrower from the transactional bank and transferred the promissory note to Graduate Leverage as the servicer for the Fund.

34. In the case of loans with the program code “TA,” however, Thibeault directed Union Bank to wire the loan proceeds to Taft, rather than another transactional bank. From Taft, the loan proceeds were then wired not to individual borrowers, but instead to a Graduate Leverage-controlled bank account.

35. Despite the fact that Union Bank typically received promissory notes from transactional banks within approximately a week of the corresponding loan closing, for the “TA” loans, Graduate Leverage failed to provide Union Bank with the promissory notes purportedly issued in 2013 until January 2014—several months after the loans had purportedly been issued. Upon information and belief, Union Bank has also never received promissory notes for “TA”-coded loans held by the Fund that were purportedly issued after January 2014.

36. Each of the “TA”-coded loans was also significantly greater in amount than the typical loan originated by the Fund, and the listed principal for most “TA” loans is between \$300,000 and \$500,000. Further, the identities of the purported borrowers for the “TA” loans are largely friends and known associates of Thibeault.

37. Additionally, upon information and belief, many of the loan documents for “TA” loans actually provided by Capital Partners and Graduate Leverage contain false information regarding the purported “borrowers,” including incorrect birth dates. Incorrect birth date information would make it virtually impossible for Capital Partners, Graduate Leverage, and

Thibeault to obtain any, much less accurate, commercial credit scores for purposes of properly underwriting the loans to these purported borrowers.

38. Even though Graduate Leverage's loan servicing staff includes individuals dedicated to counseling delinquent borrowers, Thibeault instructed his staff that he would handle the "TA" loans personally.

39. In or about July 2014, despite Thibeault's instructions to the contrary, Graduate Leverage's staff inadvertently sent a loan statement to a former college roommate of Thibeault that was listed as having a loan with a principal balance of approximately \$342,000. The promissory note for the loan at issue purported to have been electronically signed by the former college roommate and listed the "program lender" as "Taft Financial Services, LLC, South Dakota."

40. Upon information and belief, when the former college roommate's accountant contacted Graduate Leverage about the loan statement, Thibeault told the accountant that his former college roommate should "not worry about" the purported loan.

41. Upon information and belief, on December 11, 2014, FBI agents interviewed the former college roommate, who stated that he had never conducted business with, obtained a loan from, or borrowed money from Thibeault and that he had never even heard of Taft or the Fund.

42. Upon information and belief, most, if not all, of the "TA"-coded loans were fraudulently procured from the Fund by Thibeault through the use of forged promissory notes.

43. Upon information and belief, Thibeault then caused the loan proceeds for each of the "TA"-coded loans to be diverted, through Taft, into the bank accounts of Graduate Leverage. The total stated principal value of these loans (and thus the amount presumably diverted by

Thibeault) is approximately \$15-16 million, or approximately one-third of the Fund's total stated value.

44. Thibeault misrepresented each of the "TA"-coded loans as bona fide loans to Plaintiffs in numerous Fund documents and reports, including materials prepared and distributed to the Independent Trustees for their periodic meetings, quarterly reports, and semiannual reports, as well as on the Fund's 2014 annual report filed with the Securities and Exchange Commission, which Thibeault signed as the Fund's president. (A copy of the Fund's January 31, 2014 Annual Report is attached hereto as Exhibit C.)

45. On December 11, 2014, the United States Attorney for the District of Massachusetts filed a criminal complaint against Thibeault in the United States District Court for the District of Massachusetts alleging one count of securities fraud in violation of 15 U.S.C. §§ 78(b) and 78ff. The criminal case is captioned as *United States of America v. Daniel Thibeault*, Case No. 1:14-mj-06121-MPK.

46. In support of the criminal complaint, FBI Special Agent Jennifer Hale Keenan swore out an affidavit outlining many of the facts set forth above. A copy of Agent Keenan's Affidavit is attached hereto as Exhibit D.

47. Additionally, on January 9, 2015, the United States Securities and Exchange Commission ("SEC") filed a civil complaint in the United States District Court for the District of Massachusetts against Thibeault, Graduate Leverage, Capital Partners, and Taft, alleging multiple counts of securities fraud in violation of Section 10(b) of the Securities Exchange Act of 1934, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act of 1933, and fraud in violation of Sections 206(1) and 206(2) of the Investment Advisors Act of 1940. The civil case

brought by the SEC is captioned as *Securities and Exchange Commission v. Daniel Thibeault, et al.*, Case No. 1:15-cv-10050-NMG.

48. On January 21, 2015, the Honorable Nathaniel M. Gorton entered a preliminary injunction against the Defendants in the civil case brought by the SEC and ordered their assets and bank accounts frozen. (True and correct copies of the federal court's Memorandum Opinion and Asset Freeze Order are attached hereto as Exhibit E.)

49. As part of its servicing of the Fund's loan portfolio, on the first business day of every month, Graduate Leverage would arrange for a Florida bank where it maintained accounts to receive ACH transfers from borrowers' bank accounts into a servicing account controlled by Graduate Leverage. Within several days thereafter, Graduate Leverage would then arrange for the funds to be swept out of its account into the Fund's custodial account at Union Bank.

50. Graduate Leverage's obligation to arrange for such monthly ACH transfers and the sweep into the Fund's Union Bank account is set forth in Section 3.8 of the Servicing Agreement, which provides as follows:

3.8 Identified Funds Deposit and Transfer. Not later than the first Business Day that any payment received from a third party becomes Identified Funds, [Graduate Leverage] will deposit the payment into the Servicing Account. [Graduate Leverage] will post the payment and initiate EFT transfer of Identified Funds to the [Fund's Union Bank] Collection Account within two (2) Business Days after deposit to the Servicing Account. [Graduate Leverage] agrees to treat all payment, collections, and other monies received in respect of the Program Loans as trust funds of [the Fund] so long as such funds remain in the Servicing Account.

51. Following the Fund's filing of its original complaint in this case, but before the federal court's asset freeze order took effect on January 21, 2015, Graduate Leverage failed to sweep any ACH transfer proceeds received at the beginning of January 2015 from its bank accounts into the Fund's custodial account at Union Bank.

52. The terms of the federal court's asset freeze order entered on January 21, 2015, also prohibit Graduate Leverage from completing any further transfers from its bank accounts into the Fund's custodial account, as the order requires Graduate Leverage's bank to, *inter alia*:

. . . . hold and retain within their control and prohibit the withdrawal, removal, sale, payment . . . transfer, dissipation, assignment, pledge, alienation, encumbrance, diminution in value, or other disposal of any such funds or other assets; and that such funds and assets are hereby frozen.

53. Thus, as in January 2015, no principal and interest payments made by borrowers of the Fund's loans were transferred by Graduate Leverage to the Fund in early February 2015. Indeed, for so long as the federal court's asset freeze order remains in effect, it will be impossible for Graduate Leverage to transfer any principal and interest payments made by the Fund's borrowers to the Fund as required by Section 3.8 of the Servicing Agreement.

54. As a result of Graduate Leverage's failures to transfer the January and February 2015 principal and interest payments to the Fund in violation of Section 3.8 of the Servicing Agreement, Graduate Leverage's inability to make any future transfers of monies properly belonging to the Fund for so long as the federal court's asset freeze order remains in effect, and Graduate Leverage's failure to supply the Fund's accountants with any daily asset servicing reports since January 21, 2015, on February 6, 2015, the Fund, through its counsel, notified counsel for Graduate Leverage and Thibeault that the Fund was immediately terminating the Servicing Agreement for cause. (*See* February 6, 2015 Letter from Thompson Hine LLP to Ian Roffman, Esq., a true and correct copy of which is attached hereto as Exhibit F.)

55. In its February 6, 2015 termination letter, the Fund also demanded the immediate return of all of its property held by Graduate Leverage, including all documents, files, and electronic records relating to the servicing of the loans in the Fund's portfolio.

56. In order to install a substitute servicer and regain control over the direction of principal and interest payments made by borrowers, it is critical that the Fund obtain control over files in an electronic loan servicing account available on an internet-based platform hosted by Nortridge Software, LLC (“Nortridge”). This electronic loan servicing account remains under the control of Graduate Leverage and Thibeault. The files found in the account contain much of the data necessary to migrate the loan servicing duties to a substitute servicer, including individual loan payment accounting data, payment history files, histories of communications with borrowers, and ACH instructions files. Without access to Graduate Leverage’s Nortridge loan servicing account, as well as other electronic files maintained on Graduate Leverage’s computer servers, the Fund is unable to receive or process incoming principal and interest payments or deal with defaulting debtors to the continuing harm of its investors.

COUNT I
(Fraud –Thibeault, Capital Partners, and Graduate Leverage)

57. Plaintiffs incorporate by reference paragraphs 1 through 56, above, as if fully set forth herein.

58. Thibeault, Capital Partners, and Graduate Leverage made false representations of material fact with knowledge of their falsity when they misrepresented to the Independent Trustees and potential investors in the Fund that the “TA”-coded loans were bona fide loans held by the Fund as legitimate investments. Such misrepresentations were contained in multiple internal Fund documents and reports prepared by Thibeault, Capital Partners, and Graduate Leverage, as well as in the Fund’s 2014 annual report filed with the United States Securities and Exchange Commission and signed by Thibeault.

59. Thibeault, Capital Partners, and Graduate Leverage made such false representations for the purpose of inducing the Independent Trustees and the Fund to act thereon

by representing such loans to be legitimate investments of the Fund when offering securities in the Fund to potential investors and by continuing to engage Thibeault as the Fund's president and co-portfolio manager, Capital Partners as the Fund's investment manager, and Graduate Leverage as the Fund's loan servicer to their financial benefit and the Fund's financial detriment.

60. In making the misrepresentations and in engaging in the fraudulent loan scheme, Thibeault, Capital Partners, and Graduate Leverage acted with scienter, fraud, and malice, and in reckless disregard of the rights of the Fund and of its investors.

61. Had the Independent Trustees known of the material facts that Thibeault, Capital Partners, and Graduate Leverage wrongfully concealed and misrepresented, and the falsity of their representations, the Independent Trustees would not have continued to use and rely upon Thibeault and Capital Partners in the management of the Fund, or Graduate Leverage as the loan servicer for the Fund.

62. As a direct, foreseeable, and proximate result of the misrepresentations of Thibeault, Capital Partners, and Graduate Leverage, the Fund has been damaged in the amount of at least \$15-16 million, together with interest accruing thereupon and attorney's fees.

COUNT II
(Aiding and Abetting Fraud –Taft)

63. Plaintiffs incorporate by reference paragraphs 1 through 62, above, as if fully set forth herein.

64. As alleged above, Defendants Thibeault, Capital Partners, and Graduate Leverage engaged in a fraudulent scheme by which they misrepresented that they were managing legitimate loans. Instead, these Defendants carried out a criminal scheme by which proceeds of fictitious loans were wired from Taft not to the supposed borrowers, but rather to a Graduate

Leverage-controlled bank account in order to enrich Graduate Leverage and, upon information and belief, Thibeault personally.

65. By reason of the foregoing, Taft—at Thibeault’s direction—aided and abetted the fraudulent activities of Defendants Thibeault, Capital Partners, and Graduate Leverage.

66. Taft’s aiding and abetting was a proximate cause of the damages incurred by the Fund. By aiding and abetting the fraudulent loan scheme, Taft made itself jointly and severally liable with Thibeault, Capital Partners, and Graduate Leverage for the damages caused by the fraud.

67. As a direct, foreseeable, and proximate result of Taft’s aiding and abetting of the fraudulent loan scheme and Defendants’ Thibeault, Capital Partners, and Graduate Leverage’s fraudulent actions, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereupon and attorneys’ fees.

COUNT III

(Breach of Fiduciary Duty – Thibeault, Capital Partners, Graduate Leverage, and Taft)

68. Plaintiffs incorporate by reference paragraphs 1 through 67, above, as if fully set forth herein.

69. By virtue of Thibeault’s role as a trustee and president of the Fund and as co-portfolio manager for the Fund, Thibeault owed the Fund a fiduciary duty.

70. By virtue of Capital Partners’ role as manager of the Fund, Capital Partners owed the Fund a fiduciary duty.

71. By virtue of Graduate Leverage’s role as loan servicer and its possession of the Fund’s assets, including the Fund’s promissory notes, Graduate Leverage owed the Fund a fiduciary duty.

72. By virtue of Taft's possession of Fund assets, Taft owed the Fund a fiduciary duty.

73. As part of their fiduciary duties, Thibeault, Capital Partners, Graduate Leverage, and Taft owed the Fund and the Independent Trustees a duty of utmost good faith, full and fair disclosure of all material facts, and to act in the Fund's best interests at all times, including by using the assets entrusted to them only for authorized purposes. They also owed the Fund and the Independent Trustees an affirmative obligation not to misrepresent or mislead.

74. Thibeault, Capital Partners, Graduate Leverage, and Taft built their relationship of trust and confidence with the Fund and the Independent Trustee through a combination of false promises, misrepresentations, and omissions that led the Independent Trustees to entrust the Fund's assets to these Defendants.

75. Thibeault, Capital Partners, Graduate Leverage, and Taft breached their fiduciary duties of care, loyalty, reasonable inquiry, oversight, good faith, and supervision by engaging in the criminal loan scheme to steal from the Fund and misleading the Independent Trustees about the nature of the "TA"-coded loans. These Defendants also used assets of the Fund for unauthorized purposes and misappropriated them for their benefit.

76. Thibeault and Capital Partners put their own interests above those of the Fund as a result of the fees they would earn from the Fund continuing to use Capital Partners to manage the Fund.

77. By reason of the foregoing, Thibeault, Capital Partners, Graduate Leverage, and Taft are jointly and severally liable to the Fund.

78. As a direct, foreseeable and proximate result of the breaches of fiduciary duties by Thibeault, Capital Partners, Graduate Leverage, and Taft, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereupon and attorneys' fees.

COUNT IV
(Breach of Contract – Capital Partners)

79. Plaintiffs incorporate by reference paragraphs 1 through 78, above, as if fully set forth herein.

80. By virtue of its execution of the Management Agreement with the Fund, Capital Partners had contractual duties to, *inter alia*:

- a. select proper portfolio managers to whom to delegate the Fund's investment authority;
- b. perform adequate due diligence on the portfolio managers to whom the Fund's assets were entrusted;
- c. supervise and direct the investment of the Fund's assets in legitimate enterprises with a potential to generate income;
- d. monitor the performance of the Fund's investments; and
- e. abide by a written code of ethics.

81. Each of the foregoing obligations was material to the Management Agreement and to the Fund's decision to hire Capital Partners as its investment manager.

82. The terms of the Management Agreement are reasonable, valid, enforceable, and supported by more than adequate consideration.

83. The Fund, through the Independent Trustees, fully performed its contractual obligations to Capital Partners.

84. Capital Partners breached the Management Agreement by failing to perform the aforementioned duties and other duties owed under the Management Agreement by engaging and materially participating in the fraudulent loan scheme.

85. As a proximate result of Capital Partner's breaches, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereupon and attorneys' fees.

COUNT V
(Breach of Contract – Graduate Leverage)

86. Plaintiffs incorporate by reference paragraphs 1 through 85, above, as if fully set forth herein.

87. By virtue of its execution of the Servicing Agreement and as bailee for the fund, Graduate Leverage had contractual duties to, *inter alia*, provide all documents and information related to the loan servicing requested by the Fund and make available and/or turn over all loan documentation, servicing records, and reports upon demand by the Fund.

88. The foregoing obligations were material to the Services Agreement and to the Fund's decision to hire Graduate Leverage as its loan servicer and bailee.

89. The terms of the Servicing Agreement are reasonable, valid, enforceable, and supported by more than adequate consideration.

90. The Fund, through the Independent Trustees, fully performed its contractual obligations to Graduate Leverage.

91. Graduate Leverage breached the Servicing Agreement by, *inter alia*, failing to return the Fund's property in the form of loan documents and servicing files and records upon the Fund's demand that Graduate Leverage do so.

92. As a proximate result of Graduate Leverage's breaches and failures to return the Fund's property, the Fund has been and continues to be irreparably harmed and is entitled to preliminary and permanent injunctive relief. Resulting damages, to the extent they may be partially calculated, will be proven at trial.

COUNT VI
(Conversion – Thibeault and Graduate Leverage)

93. Plaintiffs incorporate by reference paragraphs 1 through 92, above, as if fully set forth herein.

94. The assets of the Fund and the files, documents, and electronic records associated with the servicing of the Fund's loans are the Fund's property.

95. Thibeault and Graduate Leverage intentionally and wrongfully exercised ownership, dominion, and control over the Fund's property by transferring the Fund's monies to Graduate Leverage through the fraudulent loan scheme for the benefit of Graduate Leverage and Thibeault. Thibeault and Graduate Leverage also intentionally and wrongfully exercised ownership, dominion, and control over the Fund's property by failing and refusing to return the loan servicing files, documents, and electronic records—including control over the files found in the loan servicing account hosted by Nortridge—to the Fund following the Fund's termination of the Servicing Agreement.

96. Neither Thibeault nor Graduate Leverage had any right of possession to the funds transferred to Graduate Leverage through the fraudulent loan scheme. Neither Thibeault nor Graduate Leverage had any right to possession of the loan servicing files, documents and electronic records following the Fund's termination of the Servicing Agreement on February 6, 2015.

97. The Independent Trustees did not consent to the misappropriation and conversion of the Fund's assets through the fraudulent loan scheme or to the continued retention of the Fund's loan servicing files, documents, and records after February 6, 2015..

98. As an actual and proximate result of Thibeault and Graduate Leverage's misappropriation of the Fund's loan servicing files, documents, and electronic records, the Fund has been and continues to be irreparably harmed and is entitled to preliminary and permanent injunctive relief. As an actual and proximate result of Thibeault and Graduate Leverage's misappropriation of the Fund's assets, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereon and attorney's fees.

99. Because Thibeault and Graduate Leverage knowingly, fraudulently, and maliciously converted the Fund's property to their own benefit, the Fund is entitled to punitive damages.

COUNT VII

(Aiding and Abetting Conversion – Capital Partners and Taft)

100. Plaintiffs incorporate by reference paragraphs 1 through 99, above, as if fully set forth herein.

101. Capital Partners and Taft knowingly aided, abetted, and provided substantial assistance to Thibeault and Graduate Leverage in their misappropriation and conversion of the Fund's assets by, among other things, engaging in the following acts:

- a. Overseeing and orchestrating the flow of fictitious loan proceeds from the Fund through Taft to a Graduate Leverage-controlled bank account;
- b. Authorizing numerous wire transfers used to move fictitious loan proceeds through Taft to a Graduate Leverage-controlled bank account;

c. Failing to request or maintain authentic promissory notes for the fictitious loans and maintaining forged promissory notes for the fictitious loans;

d. Assisting Thibeault and Graduate Leverage despite their knowledge that the Independent Trustees had not consented to Thibeault's and Graduate Leverage's wrongful exercise of dominion and control over the assets.

102. But for the assistance of Capital Partners and Taft, the fraudulent loan scheme would have collapsed.

103. As an actual and proximate result of the foregoing acts, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereon and attorneys' fees.

104. Because Capital Partners and Taft knowingly, fraudulently, and maliciously aided and abetted Thibeault and Graduate Leverage in converting the Fund's assets to their own benefit, the Fund is entitled to punitive damages.

COUNT VIII

(Civil Conspiracy – Capital Partners, Graduate Leverage, and Taft)

105. Plaintiffs incorporate by reference paragraphs 1 through 104, above, as if fully set forth herein.

106. Capital Partners, Graduate Leverage, and Taft combined, agreed, and conspired with each other and with others to commit tortious acts upon the Fund as set forth in Counts I, II, III, VI, and VII, which are incorporated herein by reference.

107. It was an object and purpose of the conspiracy to conceal material information from the Independent Trustees and the Fund and to perpetuate the fraudulent loan scheme.

108. In furtherance of the conspiracy, Capital Partners, Graduate Leverage, and Taft engaged in overt actions and conduct as alleged in paragraphs 30, 34-38, and 42-44.

109. Upon information and belief, Capital Partners, Graduate Leverage, and Taft agreed and conspired as early as late 2011 (when Thibeault sponsored formation of the Fund) to accomplish the fraudulent loan scheme. Over a course of at least two years, Capital Partners, Graduate Leverage, and Taft worked in concert and cooperated with each other to carry out the fraudulent loan scheme.

110. The Fund has suffered damages as a direct and proximate result of the combination, agreement, and conspiracy of Capital Partners, Graduate Leverage, and Taft, and they are each jointly and severally liable therefor.

111. As a direct, foreseeable, and proximate result of the conspiracy, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing and attorneys' fees.

COUNT IX
(Recklessness and Gross Negligence – Thibeault, Capital Partners, and Graduate Leverage)

112. Plaintiffs incorporate by reference paragraphs 1 through 111, above, as if fully set forth herein.

113. Thibeault, Capital Partners, and Graduate Leverage all owed the Fund a duty to manage and monitor the investments of the Fund with reasonable care. They breached this duty by, *inter alia*, failing to:

(a) take all reasonable steps to ensure that the investments of the Fund were made and maintained in a prudent and professional manner;

(b) perform proper due diligence;

(c) manage the Fund and preserve the value of Fund; and,

(d) exercise the degree of prudence, caution, and good business practices that would be expected of any reasonable professional.

114. Thibeault, Capital Partners, and Graduate Leverage also engaged in intentional tortious conduct directed against Plaintiffs over a course of at least two years as pled above. Thibeault, as the owner of Graduate Leverage, intentionally perpetuated the Loan Scheme. Thibeault had full and complete control over the management and operation of Graduate Leverage. By reason of this absolute and total legal control over Graduate Leverage, Thibeault had close control over all the Defendants. Consequently, Capital Partners had actual knowledge of the Loan Scheme.

115. Likewise, Capital Partners and Graduate Leverage had actual knowledge that under the Loan Scheme, Thibeault was transferring funds belonging to the Fund to a Graduate Leverage-controlled bank account and thereby stealing said monies from the Fund and breaching the fiduciary duties owed to them.

116. Thibeault, Capital Partners, and Graduate Leverage breached their duties owed to the Fund through their reckless and grossly negligent conduct.

117. As a direct, foreseeable and proximate result of Thibeault, Capital Partners, and Graduate Leverage's recklessness and gross negligence, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereupon and attorneys' fees.

COUNT X

(Negligence – Thibeault, Capital Partners, and Graduate Leverage)

118. Plaintiffs repeat and re-allege paragraphs 112 through 117, above, as if fully set forth herein.

119. To the extent that the misconduct and breach of duties pled against Thibeault, Capital Partners, and Graduate Leverage do not constitute a reckless and/or grossly negligent

breach of duties owed to the Fund as pleaded in Count VIII, they constitute a negligent breach of the duties owed.

120. As a direct, foreseeable, and proximate result of the ordinary negligence of Thibeault, Capital Partners, and Graduate Leverage, the Fund has been damaged in the sum of at least \$15-16 million, together with interest accruing thereupon and attorneys' fees.

COUNT XI
**(Unjust Enrichment and Request for Imposition of a Constructive Trust
– Thibeault, Capital Partners, and Graduate Leverage)**

121. Plaintiffs incorporate by reference paragraphs 1 through 120, above, as if fully set forth herein.

122. Thibeault, Capital Partners, and Graduate Leverage made express and/or implied promises to the Independent Trustees to manage the Fund with reasonable care and competence, due diligence, and the utmost good faith and fair dealing toward the Plaintiffs.

123. Thibeault, Capital Partners, and Graduate Leverage were compensated by Plaintiffs with management fees that were calculated based on the net asset value of the Fund.

124. Graduate Leverage also retained the funds transferred to its bank account as a result of the fraudulent loan scheme.

125. Thibeault, Capital Partners, and Graduate Leverage were unjustly enriched by the retention of commissions, benefits, and management fees that were predicated on fictitious loans and appreciated that they had unjustly received a benefit to which they were not entitled.

126. Accordingly, the Fund has an immediate and superior right to the possession of Thibeault, Capital Partners, and Graduate Leverage's assets and bank accounts in the amount by which Thibeault, Capital Partners, and Graduate Leverage have been unjustly enriched.

127. Thibeault, Capital Partners, and Graduate Leverage's retention of the funds at issue is inequitable and violates fundamental principles of justice, equity, and good conscience.

128. By receiving, retaining, and not returning monies belonging to the Fund, Defendants Thibeault, Capital Partners, and Graduate Leverage have been unjustly enriched at the Fund's expense.

129. To prevent unjust enrichment, the Court should impose a constructive trust upon each of Thibeault's, Capital Partners', and Graduate Leverage's assets in an amount equal to any pecuniary benefits they have received, whether directly or indirectly, by virtue of the fraudulent loan scheme and their fraud and breaches of their fiduciary duties to the Fund.

COUNT XII

(Money Had and Received – Thibeault, Capital Partners, and Graduate Leverage)

130. Plaintiffs incorporate by reference paragraphs 1 through 129, above, as if fully set forth herein.

131. Thibeault, Capital Partners, and Graduate Leverage all have received and benefited from money that rightfully belongs to the Fund consisting of fees and converted Fund assets transferred as part of the fraudulent loan scheme.

132. Equity and good conscience require full restitution of the moneys received, directly or indirectly, from the Fund by the Defendants, as well as any assets derived from that money.

COUNT XIII

(Accounting – Thibeault, Capital Partners, Graduate Leverage, and Taft)

133. Plaintiffs repeat and re-allege paragraphs 1-132, above, as if fully set forth herein.

134. Thibeault, Capital Partners, Graduate Leverage, and Taft had a duty to document and keep records of: (i) the investments and transactions made on behalf of the Fund and/or (ii)

the management and professional fees, commissions, and other compensation Defendants collected in connection with the Fund.

135. As set forth above, Thibeault, Capital Partners, Graduate Leverage, and Taft were unjustly enriched by their misconduct in breach of their fiduciary duties, thus entitling Plaintiffs to the imposition of a constructive trust that cannot be implemented without a thorough and comprehensive accounting.

136. The exact amount of money due from Defendants to the Fund is unknown to the Independent Trustees and cannot be ascertained without an accounting of: (i) the actual investments and transactions made on the Fund's behalf; (ii) the actual calculations used to determine all management and other such fees and compensation; and (iii) the amounts taken by Defendants as fraudulent loan proceeds, management fees, commissions, and other compensation in connection with the Fund.

COUNT XIV

**(Unfair and Deceptive Trade Practices in Violation of Mass. Gen. Laws ch. 93A, § 1, *et seq.*
- Thibeault, Capital Partners, Graduate Leverage, and Taft)**

137. Plaintiffs repeat and re-allege paragraphs 1 through 136, above, as if fully set forth herein.

138. At all times material herein, both the Fund and Thibeault, Capital Partners, Graduate Leverage, and Taft were engaged in a trade or business in Massachusetts.

139. Defendants' fraud and misappropriation of monies entrusted to them by the Fund and Capital Partners' intentional breach of contract with the purpose of obtaining greater financial gain than that to which they would have otherwise been entitled constitute unfair and deceptive trade practices within the meaning of Mass. Gen. Laws ch. 93A, § 1, *et seq.*

140. By reason of Defendants' breaches and misconduct as alleged in Counts I through VI above, Defendants committed numerous unfair or deceptive acts or practices made illegal pursuant to the provisions of Mass. Gen. Laws ch. 93A, §§ 2 and 11.

141. The Defendants' unfair or deceptive acts or practices were committed in the furtherance of their business and have resulted in their stealing the sum of at least \$15-16 million from the Fund.

142. The Defendants' unfair and deceptive acts and practices occurred primarily and substantially in Massachusetts.

143. The actions of the Defendants were in knowing and willful violation of Mass. Gen. Laws. ch. 93A, §§ 2, 11

144. As a direct and proximate result of the Defendants' unfair or deceptive acts or practices, the Fund was damaged in the sum of at least \$15-16 million.

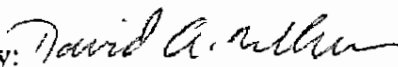
145. The Fund, through its Independent Trustees, is entitled to not less than twice its actual damages, and not more than three times its actual damages, as well as its reasonable attorneys' fees, costs, and such other relief as is provided pursuant to Mass. Gen. Laws. ch. 93A.

WHEREFORE, Plaintiffs, the Independent Trustees of the GL Beyond Income Fund, pray that the Court enter judgment in their favor and jointly and severally against Defendants Thibeault, GL Capital Partners, LLC, Graduate Leverage, LLC, and Taft Financial Services, LLC:

A. Preliminarily and permanently enjoining Defendants to turn over all of the Fund's property, including loan documents and records relating to loan servicing—including the Nortridge electronic loan servicing accounts files—to the Fund;

- B. Awarding the Fund compensatory damages in an amount to be proven at trial but in no event less than \$15 million;
- C. Awarding the Fund punitive damages in an amount to be proven at trial;
- D. Awarding the Fund statutory damages not less than twice, and not more than three times, its actual damages pursuant to Mass. Gen. Laws ch. 93A;
- E. Awarding the Fund pre- and post-judgment interest and costs;
- F. Awarding the Fund its reasonable attorneys' fees and costs;
- G. Imposing a constructive trust on Defendants' assets;
- H. Ordering an accounting of: (i) the actual investments and transactions made on the Fund's behalf; (ii) the actual calculations used to determine all management, performance, and other such fees and compensation; and (iii) the amounts taken by Defendants as fraudulent loan proceeds, management and performance fees, commissions, and other compensation in connection with the Fund;
- I. Freezing Defendants' assets; and
- J. Granting such other and further relief as may be necessary and appropriate.

THOMPSON HINE LLP

By: 
David A. Wilson
BBO# 552388
1919 M Street, N.W. Suite 700
Washington, D.C. 20036
Phone: (202) 331-8800
Fax: (202) 202-331-8330
David.Wilson@ThompsonHine.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

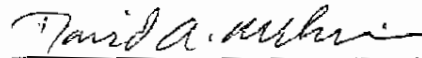
I hereby certify that on February 9, 2015, a true and correct copy of the foregoing was served via first-class mail, postage prepaid, on the following:

Taft Financial Services, LLC
319 S. Coteau Street
Pierre, South Dakota 57501

GL Capital Partners, LLC
400 Fifth Avenue, Suite 600
Waltham, MA 02451

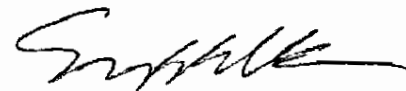
Graduate Leverage, LLC
400 Fifth Avenue, Suite 600
Waltham, MA 02451

Daniel Thibeault
72 Carter Drive
Framingham, MA 01701



David A. Wilson
BBO# 552388
THOMPSON HINE LLP
1919 M Street, N.W. Suite 700
Washington, D.C. 20036
Phone: (202) 331-8800
Fax: (202) 202-331-8330
David.Wilson@ThompsonHine.com

Counsel for Plaintiffs



2014.
4059.
BLS.