

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

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ALEXANDER NIKOLAS GIERCZYK,

Plaintiff,

Index No.

v.

**SUMMONS**

OLYMPUS PEAK TRADE CLAIMS  
OPPORTUNITIES FUND I NON-ECI  
MASTER LP,

Venue is based on CPLR § 501

Defendant.  
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TO: Olympus Peak Trade Claims Opportunities Fund I Non-ECI Master LP  
177 West Putnam Avenue, Suite 2622-S1  
Greenwich, CT 06831

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. This is an action for breach of contract.

Dated: New York, New York  
November 20, 2024

**ASHURAEY LAW PLLC**

*/s/ Sam Ashuraey*

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

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ALEXANDER NIKOLAS GIERCZYK,

Plaintiff,

Index No.

v.

**COMPLAINT**

OLYMPUS PEAK TRADE CLAIMS  
OPPORTUNITIES FUND I NON-ECI MASTER  
LP,

Defendant.  
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Plaintiff Alexander Nikolas Gierczyk (“Plaintiff” or “Mr. Gierczyk”) by his undersigned counsel files this Complaint against Defendant Olympus Peak Trade Claims Opportunities Fund I Non-ECI Master LP (“Defendant” or “Olympus Peak”) and alleges as to himself and his own acts and on information and belief as to all others as follows:

**NATURE OF THE ACTION**

1. This action arises out of a purchase agreement between Mr. Gierczyk and Olympus Peak.
2. Mr. Gierczyk was a customer of cryptocurrency exchange FTX. When FTX filed for bankruptcy, Mr. Gierczyk became one of millions of involuntary creditors holding a claim against a defunct company. After a year without access to his account, he assigned his claim to hedge fund Olympus Peak to recover at least some of the value of his funds.

3. Mr. Gierczyk agreed to sell his claim at a substantial discount of 42 %. However, he only agreed to do so because the purchase agreement contained a clause that expressly required Olympus Peak to make additional payments to Mr. Gierczyk if and when his claim received payments above par. It was an eventuality he foresaw and negotiated for. Specifically, the Purchase Agreement provides that, if Mr. Gierczyk's claim receives "distributions and other payments [...] in an amount that is greater than the Claim Amount" then Olympus Peak would be obligated to purchase that amount from Mr. Gierczyk at the same discounted rate of 42%. Ex. A at Section 3(c).

4. When Mr. Gierczyk learned that his claim would likely receive recoveries above the Claim Amount, he contacted Olympus Peak. However, Olympus Peak repeatedly made clear that they would not be fulfilling their end of the bargain.

5. FTX's plan of reorganization has been confirmed, and distributions under the plan are expected to begin before the end of the year. FTX's disclosure statement for its plan of reorganization states that claims like Mr. Gierczyk's are estimated to receive *at least* 129%, and as much as 143% or more, and current trading prices reflect this estimate.

6. Just as there is no practical doubt that Mr. Gierczyk's claim will receive distributions in excess of the Claim Amount, Olympus Peak's intention to keep all those distributions to itself and breach its obligations under the agreement is certain. Therefore, Mr. Gierczyk is left with no choice but to commence this action.

### **THE PARTIES**

7. Plaintiff Alexander Nikolas Gierczyk is an individual residing in Los Osos, California and a citizen of the state of California.

8. Defendant Olympus Peak Trade Claims Opportunities Fund I Non-ECI Master LP is a limited partnership organized under the laws of Delaware. Its principal place of business is 177 West Putnam Avenue, Suite 2622-S1, Greenwich, CT 06831.

### **JURISDICTION AND VENUE**

9. Jurisdiction and Venue are proper in New York County because the parties “irrevocably agree[d] that any action to enforce, interpret, or construe any provision of [the Purchase Agreement (as defined below)] will be brought and determined only in a state or federal court located in the city and county of New York”, and further agreed that “all matters arising out of or relating to it will be governed by and construed in accordance with the laws of the State of New York.”<sup>1</sup>

### **FACTS**

10. In November 2022, cryptocurrency exchange FTX Trading Ltd. (“FTX”) and certain of its debtor affiliates (collectively with FTX, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors’ bankruptcy cases are jointly administered under *In re FTX Trading LTD, et al.*, Case No. 22-11068 (JTD)<sup>2</sup>.

11. On November 13, 2023, Mr. Gierczyk and Ambrose Victor Regan, as Sellers, entered into an Assignment of Claim (the “Purchase Agreement”) with Olympus Peak, as Buyer.

12. A true and correct copy of the Purchase Agreement is attached hereto as Exhibit A.

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<sup>1</sup> Ex. A at Section 12.

<sup>2</sup> Documents cited in this Complaint that were filed in the jointly administered bankruptcy cases are referred to by their docket numbers as “Bankr. ECF No.”

13. The Purchase Agreement provides for the sale of a customer claim against FTX bearing Customer Code 01086571 (the “Claim”) to Defendant based on a “Claim Amount” of \$1,587,772.06. Ex. A at 1.

14. The Purchase Agreement provides that Defendant will purchase the Claim Amount at a “Purchase Rate” of 42%, yielding a “Purchase Price” of \$666,864.27. *Id.* at Annex A.

15. The Purchase Agreement contains the following provision at Section 3(c) (the “Excess Claim Provision”):

*If the Claim* is ultimately allowed as a non-contingent, liquidated, undisputed, and unsubordinated claim by a final, non-appealable, order of the Bankruptcy Court (a “Final Order”) that *is entitled to receive*, with respect to manner, timing and pro-rata amounts, such *distributions and other payments* that are identical to the distributions and other payments that customer account claims of the type of Sellers’ Claim are entitled to receive against the Debtor *in an amount that is greater than the Claim Amount* (such additional amount is the “Excess Claim Amount”), *Buyer will purchase such Excess Claim Amount by paying*, within ten (10) business days of: (a) Buyer’s receipt of such Final Order; or (b) Buyer’s receipt of Distributions on the Excess Claim Amount, *an amount equal to the Excess Claim Amount multiplied by the Purchase Rate*. By accepting payment for the Excess Claim Amount, Sellers will thereby reaffirm, as of the date of such payment, all representations, warranties and covenants in this Assignment (emphasis added).

16. On May 7, 2024, FTX filed a draft disclosure statement [Bankr. ECF No. 14301] with respect to its proposed plan of reorganization, which included an estimated percent recovery of 127-142% for “Class 5A Dotcom Customer Entitlement Claims.”

17. On May 22, 2024, Mr. Gierczyk sent Matt Englehardt, an Olympus Peak employee, an email that included the Excess Claim Provision. Mr. Gierczyk informed Mr. Englehardt that “FTX is considering paying out claimants 120-140%” and that, under the Excess Claim Provision, Plaintiff is “going to be eligible for an additional payout when FTX pays out our claim” and offering Defendant the “first shot at an offer to simplify everything on [its] end.” On May 24, 2024, Mr. Englehardt responded to Plaintiff’s email unequivocally stating that Olympus Peak will not be paying Mr. Gierczyk for distributions made in excess of the Claim Amount and concluding:

“In short, we disagree with your position that you have a retained any economic interest in the claim.”

18. A true and correct copy of the foregoing email exchange is attached hereto as Exhibit B.

19. On June 26, 2024, the Bankruptcy Court entered the *Order (I) Approving the Adequacy of the Disclosure Statement; (II) Approving Solicitation Packages; (III) Approving the Forms of Ballots; (IV) Establishing Voting, Solicitation and Tabulation Procedures; and (V) Establishing Notice and Objection Procedures for the Confirmation of the Plan* [Bankr. ECF No. 19068].

20. On June 27, 2024, the Debtors filed the solicitation version of the *Disclosure Statement for Debtors’ Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and Its Affiliated Debtors and Debtors-in-Possession* [Bankr. ECF No. 19143] (the “Disclosure Statement”), a copy of which is attached hereto as Exhibit C.

21. On September 30, 2024, the Debtors filed the *Second Amended Joint Chapter 11 Plan of Reorganization of FTX Trading Ltd. and its Debtor Affiliates* [Bankr. ECF No. 26029] (the “Plan”), a copy of which is attached hereto as Exhibit D.

22. On October 8, 2024, the Bankruptcy Court entered an order confirming the Plan [Bankr. ECF No. 26404] (the “Confirmation Order”), a copy of which is attached hereto as Exhibit E and which incorporates the Plan by reference (Exhibit A to the Confirmation Order).

23. The Claim has been classified as a Class 5A claim pursuant to the ballot for voting the Claim.

24. The Claim falls under the definition of “Class 5A Dotcom Customer Entitlement Claims” under the Plan and there is no objection or other pending dispute as to such classification.

25. The Disclosure Statement projects that Class 5A claims will recover 129%-143%.  
Ex. C at 1.G.

26. The Claim is allowed pursuant to the Confirmation Order, or will be deemed allowed pursuant to the Confirmation Order absent an objection to the Claim before the applicable deadlines set forth in the Confirmation Order or a successful appeal of the allowance of claims under the Confirmation Order.

27. The Claim is not scheduled or otherwise identified by the Debtors as contingent, disputed, unliquidated or subordinated.

28. There are no objections currently pending against the Claim.

29. As of November 19, 2024, claims listing websites X-Claim and Claims Market quote the current market pricing of claims against FTX at 130% ,<sup>3</sup> and 125-130%,<sup>4</sup> respectively.

30. On October 10, 2024, Plaintiff filed a complaint based on the same facts alleged in this Complaint in the United States District Court for the Southern District of New York (Case No.1:24-cv-07708-AT), with subject matter jurisdiction predicated on a complete diversity of citizenship between the parties. However, based on information received from Plaintiff’s counsel, the District Court did not have subject matter jurisdiction over the case because of a lack of diversity between the Plaintiff and certain of the Defendant’s limited partners, and the case was dismissed, without prejudice, on November 13, 2024.

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<sup>3</sup> *Current Market Pricing*, Xclaim (homepage) (Nov. 19, 2024), [www.x-claim.com](http://www.x-claim.com)

<sup>4</sup> *FTX Claims Pricing*, Claims Market by Cherokee Acquisition (homepage) (Nov. 19, 2024), [www.claims-market.com](http://www.claims-market.com)

**FIRST CAUSE OF ACTION**

**(Declaratory Judgment Pursuant to CPLR § 3001)**

31. The Plaintiff realleges and incorporates by reference its allegations in Paragraphs 1 through 30.

32. Plaintiff and Defendant entered into the Purchase Agreement, which included the Excess Claim Provision.

33. A justiciable controversy exists between Defendant and Plaintiff regarding their respective rights and obligations under the Excess Claim Provision.

34. Plaintiff is entitled to a declaration that the Excess Claim Provision requires Defendant to purchase from Plaintiff the distributions made in excess of the Claim Amount on account of the Claim at the “Purchase Rate” set forth in the Purchase Agreement. Further and consequential relief is claimed in the form of rescission of the Purchase Agreement and return of the Claim and any proceeds thereof to Plaintiff (less the purchase price), damages, and/or injunctive relief as set forth herein.

**SECOND CAUSE OF ACTION**

**(Anticipatory Breach of Contract)**

35. The Plaintiff realleges and incorporates by reference its allegations in Paragraphs 1 through 34.

36. Plaintiff and Defendant entered into the Purchase Agreement, which included the Excess Claim Provision.

37. Defendant positively and unequivocally declared that it will not fulfill its duties under the Purchase Agreement, and such declaration was made before the duties arose.



38. Plaintiff has duly performed all its obligations and duties under the Purchase Agreement and was at the time of the anticipatory breach, ready, willing and able to perform its obligations under the Purchase Agreement.

39. Due to Defendant's anticipatory breach, Plaintiff is entitled to rescission of the Purchase Agreement and return of the Claim and any proceeds thereof to Plaintiff (less the purchase price) and/or damages in an amount to be proved a trial, including attorneys' fees, expenses, and costs and other appropriate relief stemming from such breach.

### **THIRD CAUSE OF ACTION**

#### **(Declaratory Judgment Pursuant to CPLR § 3001)**

40. The Plaintiff realleges and incorporates by reference its allegations in Paragraphs 1 through 39.

41. Plaintiff and Defendant entered into the Purchase Agreement, which included the Excess Claim Provision.

42. Defendant positively and unequivocally declared that it will not fulfill its duties under the Purchase Agreement, and such declaration was made before the duties arose.

43. Plaintiff has duly performed all its obligations and duties under the Purchase Agreement and was at the time of the anticipatory breach, and remains, ready, willing and able to perform its obligations under the Purchase Agreement.

44. A justiciable controversy exists between Defendant and Plaintiff regarding their respective rights and obligations under the Purchase Agreement, and whether Defendant's actions constituted an anticipatory breach releasing the Plaintiff from all its ongoing obligations under the Purchase Agreement.

45. Plaintiff is entitled to a declaration that Defendant has anticipatorily breached the Purchase Agreement and that, as a result, Plaintiff is not required to perform its future obligations under the Purchase Agreement, including any requirement to remit distributions to Defendant, any prohibition on filing an objection to the transfer of the Claim in the Bankruptcy Court, or any prohibitions on transferring his ownership interests in the Claim. Further and consequential relief is claimed in the form of rescission of the Purchase Agreement and return of the Claim and any proceeds thereof to Plaintiff (less the purchase price), damages, and/or injunctive relief as set forth herein

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court enter a judgment in its favor as follows:

- a) A judgment declaring that the Purchase Agreement requires Defendant to purchase the distributions made in excess of the Claim Amount on account of the Claim at the “Purchase Rate” set forth in the Purchase Agreement;
- b) A judgment declaring that Olympus Peak has anticipatorily breached the Purchase Agreement and that, as a result, Plaintiff is not required to perform its future obligations under the Purchase Agreement, including any requirement to remit distributions to Defendant, any prohibition on filing an objection to the transfer of the Claim in the Bankruptcy Court, or any prohibitions on transferring his ownership interests in the Claim;
- c) An order rescinding the Purchase Agreement and directing the Defendant to return the Claim and any proceeds thereof to Plaintiff (less the purchase price);

- d) Damages in an amount to be proven at trial, including attorneys' fees, expenses, and costs and other appropriate relief stemming from Defendant's anticipatory breach;
- e) An order directing the Debtors to hold distributions on account of the Claim in escrow pending the Court's judgement and Defendant's compliance with the Court's order;
- f) Liens on the Claim to secure performance of this Court's orders; and
- g) Such other relief as the Court deems just and proper.

Dated: New York, New York  
November 20, 2024

Respectfully Submitted,

**ASHURAEY LAW PLLC**

*/s/ Sam Ashuraey*

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*Counsel for Alexander Nikolas Gierczyk*

**EXHIBITS**

- 1. Exhibit A – Purchase Agreement**
- 2. Exhibit B – Email Exchange**
- 3. Exhibit C – Disclosure Statement**
- 4. Exhibit D – Plan**
- 5. Exhibit E – Confirmation Order**