



Court File No.: CV-24-00728158-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
JUSTICE PETER CAVANAGH

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THURSDAY, THE 9th
DAY OF MARCH, 2026

B E T W E E N :

**AXIOM REAL-TIME METRICS INC., AXRM ACQUISITIONS INC., AXRM HOLDINGS,
INC., GPP III - AXIOM, LLC**

Plaintiffs

- and -

**ANDREW SCHACHTER, J2ASM INC., J2ASM AIR INC., THINKWORKS INC.,
GIANNI DI IORIO, TORKIN MANES LLP and BUSINESS DEVELOPMENT BANK OF
CANADA**

Defendants

AND B E T W E E N:

ANDREW SCHACHTER, J2ASM AIR INC., and THINKWORKS INC.

Plaintiffs by Counterclaim

- and -

**AXIOM REAL-TIME METRICS INC., AXRM ACQUISITIONS INC.,
AXRM HOLDINGS, INC., GPP III - AXIOM, LLC, NOAH RHODES, EDWARD
HJERPE, JEFFREY JAY and MARTIN LEBLANC**

Defendants to
the Counterclaim

ORDER

THIS MOTION made by KSV Restructuring Inc. (“**KSV**”), in its capacity as receiver and manager (the “**Receiver**”) of 2075508 Ontario Inc. (formerly Axiom Real-Time Metrics Inc.) (“**Axiom**”), for an order granting leave to amend the Statement of Claim in the Form attached as Appendix A; and an Order that Paliare Roland Rosenberg Rothstein LLP may, in its capacity as legal counsel to the Receiver, act for the plaintiff Axiom in this action, and that the plaintiffs AXRM Acquisitions Inc. AXRM Holdings, Inc. and GPP III – Axiom, LLC (collectively, the “**Non-Axiom Plaintiffs**”) may be represented by separate legal counsel was heard on March 9, 2026 by videoconference.

ON READING the Motion Record of KSV, Factum of KSV, and Book of Authorities of KSV, and on hearing the submissions of the lawyers for the parties:

1. **THIS COURT ORDERS** that KSV is granted leave to amend the Amended Statement of Claim in the form set out in “Appendix A”; and
2. **THIS COURT ORDERS** that Paliare Roland Rosenberg Rothstein LLP may, in its capacity as legal counsel to the Receiver, act for the plaintiff Axiom in this action, and that the “Non-Axiom Plaintiffs may be represented by separate legal counsel.



APPENDIX "A"

Court File No.: CV-24-00728158-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N :

AXIOM REAL-TIME METRICS INC., AXRM ACQUISITIONS INC., AXRM
HOLDINGS, INC., GPP III - AXIOM, LLC

Plaintiffs

- and -

ANDREW SCHACHTER, J2ASM INC., J2ASM AIR INC., THINKWORKS INC.,
GIANNI DI IORIO, TORKIN MANES LLP and BUSINESS DEVELOPMENT BANK
OF CANADA

Defendants

AMENDED STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 24, 2024

Issued by _____
Local registrar

Address of court office 330 University Ave. 9th Floor
Toronto, ON M5G 1R7

TO: Andrew Schachter

AND TO: Thinkworks Inc.

AND TO: J2ASM Inc.

AND TO: J2ASM Air Inc.

AND TO: Gianni Di Iorio

AND TO: Torkin Manes LLP

AND TO: Business Development Bank of Canada

CLAIM

1. The plaintiffs, Axiom Real-Time Metrics Inc. (“**Axiom**”), AXRM Acquisitions Inc. (“**AXRM Acquisitions**”), AXRM Holdings, Inc. (“**AXRM Holdings**”) and GPP III – Axiom, LLC (“**GPP**”), claim:

- (a) as against Andrew Schachter (“**Mr. Schachter**”), Thinkworks Inc. (“**Thinkworks**”), J2ASM Inc. (“**J2ASM**”) and J2ASM Air Inc. (“**J2ASM Air**”) and together with Thinkworks, J2ASM, the “**Schachter Affiliates**”), a declaration further to s. 248 of the *Business Corporations Act*, R.S.O. 1990, c. B. 16 (the “**OBCA**”), that the business and affairs of Axiom ~~Real-Time Metrics Inc. (“**Axiom**”)~~ and the Schachter Affiliates have been carried on in a manner that is oppressive, unfairly prejudicial to, and unfairly disregard the interests of AXRM Acquisitions; and
- (b) that as a remedy for such oppression:
 - (i) Mr. Schachter be removed as a director of AXRM Holdings Inc (“**AXRM Holdings**”), AXRM Acquisitions Inc. (“**AXRM Acquisitions**”), AXRM Acquisitions and Axiom; and
 - (ii) That the stockholders’ agreement among GPP, Mr. Schachter, Thinkworks, Axiom, AXRM Acquisitions, AXRM Holdings and Great Point Partners III, L.P. entered into as of May 3, 2019 (the “**Stockholders’ Agreement**”) be amended:
 - (A) to preclude Thinkworks or Mr. Schachter from participating in the purchase or issuance of any further equity interests of Axiom, AXRM Holdings or AXRM Acquisitions in any manner; and
 - (B) to cancel Thinkworks’s rights under section 3.4 of the Stockholders’ Agreement to nominate or elect any directors

to the boards of directors of Axiom, AXRM Acquisition or AXRM Holdings.

2. Axiom claims:

- (a) Further to section 132(9) of the *OBCA*:
 - (i) as against J2ASM, that the lease between J2ASM as landlord and Axiom as tenant made as of December 1, 2021 in respect of 5205 Satellite Drive (the “**Lease**”) be declared invalid and of no force or effect and be set aside as of the same date; and
 - (ii) as against J2ASM and Mr. Schachter, an order that they return to Axiom all amounts Axiom paid to J2ASM under the Lease and account to Axiom for all profits or gains realized from the Lease;
 - (iii) as against J2ASM Air, that the Dry Lease Agreement entered into between Axiom and J2ASM Air on July 23, 2020 (the “**Aircraft Lease**”) be declared invalid and of no force or effect and be set aside as of the same date; and
 - (iv) as against J2ASM Air and Mr. Schachter, an order that they account to Axiom for all profits or gains realized from the Aircraft Lease;
- (b) As against Mr. Schachter and Gianni Di Iorio (“**Mr. Di Iorio**”), damages for breach of their fiduciary duty to Axiom measured by:
 - (i) payments made under the Lease to J2ASM in excess of fair market value of rent for the leased premises; and
 - (ii) payments made to J2ASM Air under the Aircraft Lease for legitimate Axiom business in excess of fair market value for such services, and for all amounts not on account of legitimate business expenses; and

- (c) Against Mr. Schachter:
 - (i) for breach of fiduciary duty:
 - (A) Damages of:
 - (I) \$300,000 plus HST in compensation to Axiom for amounts billed to Axiom by Glanmire Advisory, described below; and
 - (II) Amounts paid to Samara Silverman in excess of amounts agreed to by Axiom's board of directors (the "**Board**") and GPP; and
 - (B) A constructive trust for Axiom's benefit over Mr. Schachter's shares in Analytica Ventures Inc. ("**Analytica**"); and
 - (ii) for breach of fiduciary duty, negligent misrepresentation, and/or fraudulent misrepresentation:
 - (I) \$10,000,000 (or such other amount as may be particularized before trial) for amounts Mr. Schachter drew down from Axiom's National Bank line of credit and, in large part, misappropriated for himself or entities related to him;
 - (iii) a declaration that Mr. Schachter is liable to Axiom for the tort of detinue and an order that he immediately return all Axiom property, including domain names, to the company that remain in his possession and, to the extent that he retains such property on personal devices or personal accounts on third party applications, that he provide Axiom with unrestricted access to such devices or personal accounts so that Axiom may retrieve its property.

- (iv) an interim, interlocutory, and permanent order prohibiting Mr. Schachter from directly or indirectly using or disclosing any confidential information belonging to Axiom (the “**Confidential Information**”);
- (v) an order requiring that Mr. Schachter immediately deliver up to Axiom and then delete any copies of all the Confidential Information in his possession, power or control;
- (vi) an accounting of all the Confidential Information that was in the possession of Mr. Schachter;
- (vii) an interim, interlocutory, and permanent order prohibiting Mr. Schachter from directly or indirectly, in any manner, soliciting any customer of Axiom or otherwise interfering, in any way, with the relationship between Axiom and any customer of Axiom for a period of two (2) years;

3. Axiom claims as against the Business Development Bank of Canada (“**BDC**”), further to section 67(1)(c) of the *Personal Property Security Act*, 1990 RSO c P10, that the guarantee Axiom granted in favour of BDC, guaranteeing obligations of J2ASM to BDC, dated September 3, 2021 (the “**Disputed Guarantee**”), as well as the general security agreement securing Axiom’s obligations under the Disputed Guarantee, dated September 3, 2021 (the “**Disputed GSA**” and together with the Disputed Guarantee, the “**Disputed Loan Documents**”), are invalid and of no force or effect, *nunc pro tunc* to their execution.

4. Axiom claims as against BDC and Torkin Manes LLP (“**Torkin Manes**”) damages for negligence, and against Mr. Di Iorio, damages for breach of fiduciary duty, sufficient to indemnify Axiom for the costs of investigating the claims against Mr. Schachter and the Schachter Affiliates described herein, jointly and severally, and to compensate Axiom for the harm Mr. Schachter caused Axiom and that would have been avoided but for

BDC's and Torkin Manes' negligence, and but for Mr. Di Iorio's breach of fiduciary duty, the particulars of which will be provided prior to trial.

5. Axiom claims against Torkin Manes, damages for negligence, and against Mr. Di Iorio and Mr. Schachter, damages for breach of fiduciary duty, sufficient to indemnify Axiom for its liability to BDC should this Court deny Axiom's claim to invalidate the Disputed Loan Documents, jointly and severally.

6. All the plaintiffs claim against all of the defendants, jointly and severally, as the Court deems appropriate:

- (a) prejudgment and post judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (b) their costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and
- (c) such further and other relief as to this Court may seem just.

THE PARTIES

7. Axiom is incorporated under the laws of Ontario, with its principal place of business at 5205 Satellite Drive, Mississauga, Ontario ("**Axiom's Headquarters**"). Axiom provides eClinical solutions to leading small and mid-sized life science businesses.

8. On July 11, 2025, the Ontario Superior Court of Justice (Commercial List) granted an order pursuant to an application by National Bank of Canada under subsection 243(1) of the *Bankruptcy and Insolvency Act* and section 101 of the *Courts of Justice Act* appointing KSV Restructuring Inc. as the receiver and manager of the assets, undertaking and property of 2075508 Ontario Inc., formerly Axiom.

9. AXRM Acquisitions is an Ontario corporation that directly owns all of the shares of Axiom. AXRM Acquisitions is, in turn effectively wholly owned and controlled by AXRM Holdings, a Delaware corporation which is now effectively controlled by GPP but

jointly owned by Thinkworks and GPP, but that until recently was effectively controlled by its former CEO, Mr. Schachter.

10. GPP is a Delaware limited liability company created by its ultimate parent, Great Point Partners, which manages private and public equity. GPP was created to hold an investment in AXRM Holdings.

11. Mr. Schachter was, until May 27, 2024, President and CEO of Axiom. He founded Axiom in 2005. He is the president and owner of J2ASM, J2ASM Air and Thinkworks.

12. Gianni Di Iorio was formerly Axiom's Chief Financial Officer. He ceased in that role in November 2023.

13. J2ASM is an Ontario corporation, with its registered office at 1 City View Drive, Toronto, Ontario.

14. J2ASM Air is an Alberta corporation, with its registered office at 3277 Parsons Road NW, Edmonton, Alberta.

15. Thinkworks is an Ontario corporation, with its registered office at 1 City View Drive, Toronto.

16. BDC is a financial Crown corporation wholly-owned by the Government of Canada, with its principal place of business at 5, Place Ville Marie, Montreal, Quebec. The purpose of the Bank is to support Canadian entrepreneurship by providing financial and consulting services.

17. Torkin Manes is a Toronto business law firm.

BACKGROUND

18. On May 3, 2019, AXRM Holdings, AXRM Acquisitions, GPP, Thinkworks, Mr. Schachter and Axiom entered into the Stockholders' Agreement.

19. The Stockholders' Agreement is a unanimous shareholders agreement for the purposes of the *OBCA*. The plaintiffs rely on all of the terms of the Stockholders' Agreement.

20. Pursuant to the Stockholders' Agreement, Thinkworks owns 1 Series V Preferred share of AXRM Holdings. The single Series V Preferred share entitles Thinkworks to 541,089 votes on the affairs of AXRM Holdings. Also pursuant to the Stockholders' Agreement, Thinkworks was entitled initially to elect up to four individuals to the AXRM Holdings board of directors and the boards of its subsidiaries and is now entitled to elect up to three individuals to the AXRM Holdings board of directors and the boards of its subsidiaries.

21. GPP, on the other hand, owns 458,911 Series A Preferred shares of AXRM Holdings, initially entitling it to 458,911 votes in the affairs of AXRM Holdings, and to initially appoint three directors to the AXRM Holdings board, and the board of any of AXRM Holdings' subsidiaries. Due to the accruing dividend associated with GPP's Series A Preferred shares of AXRM Holdings and due to the conversion and other mechanics of the Amended and Restated Certificate of Incorporation of AXRM Holdings and the Stockholders' Agreement, GPP is now entitled to 687,241 votes and to appoint four directors to the AXRM Holdings board, and the board of any of AXRM Holdings' subsidiaries.

22. Thus, upon execution of the Stockholders' Agreement in May 2019, Mr. Schachter, through Thinkworks, controlled Axiom subject to the terms of the Stockholders' Agreement. In particular, he controlled four seats on the Board out of a possible seven directors.

23. The Stockholders' Agreement, however, afforded GPP a series of approval rights enumerated in sections 3.4 and 3.5 of the Stockholders' Agreement. Further to those approval rights, Axiom was expressly precluded from taking various actions without GPP's prior written approval. Among other things, GPP had approval rights with respect to the incurrence of any debt by Axiom, the grant of any security in Axiom's assets or the

provision of any guarantee of indebtedness of any Person (as defined in the Stockholders' Agreement).

24. Mr. Schachter's employment with Axiom was governed by an employment agreement, made as of May 3, 2019 (the "**Employment Agreement**"), the express or implied terms of which required Mr. Schachter to:

- (a) refrain from disclosing or using any Confidential Information except as long as Mr. Schachter was employed or engaged by Axiom;
- (b) upon termination, deliver promptly or destroy, at the request and option of Axiom, all tangible embodiments (and all copies) of the Confidential Information in his possession;
- (c) return all Axiom property, documents and data belonging to Axiom which Mr. Schachter may then possess or have under his control; and
- (d) for a period of two (2) years following the termination of his employment, refrain from soliciting any Customer (as defined in the Employment Agreement) or in any way interfering with the relationship between Axiom and any Customer, including, without limitation, by making any negative or disparaging statements or communications regarding Axiom or any of its operations, officers, directors, managers, employees, Affiliates or investors (collectively, the "**Covenants**").

SCHACHTER CAUSES AXIOM TO ENTER A GUARANTEE FOR SCHACHTER'S BENEFIT

25. Upon GPP's investment in 2019, Axiom operated out of its headquarters at 1 Cityview Drive, Toronto ("**Cityview**"). J2ASM had purchased Cityview in 2016 with financing from BDC. GPP knew of J2ASM's interest in Cityview when entering into the Stockholders' Agreement.

26. Unbeknownst to GPP or GPP's nominees to the Board, J2ASM had leveraged Cityview to the point that, in early 2021, J2ASM had no equity left in the property and

could no longer manage the interest payments owed to its mortgage lender. Mr. Schachter arranged to sell Cityview.

27. However, and also unbeknownst to GPP and its nominees to the Board, the rent that Axiom paid to J2ASM was critical to Mr. Schachter's ability to finance his personal expenses. Thus, without telling GPP, Mr. Schachter set off to find a new building for J2ASM to buy that it would rent to Axiom ultimately to maintain a stream of cash for Mr. Schachter's benefit.

28. In May of 2021, Mr. Schachter, through J2ASM, explored the purchase of 5205 and 5225 Satellite Drive, Mississauga (together, the "**Properties**"). First, he obtained term sheets dated May 7, 2021 from BDC: one for a \$25,750,000 loan to be secured by a mortgage on the Properties and a secured guarantee from Axiom ("**Term Sheet 1**"); and another for a \$23,000,000 loan secured by a mortgage on the Properties but no guarantee from Axiom.

29. Term Sheet 1 required a series of documents for BDC to proceed with its diligence. Two of the documents were a "Consent form from the representative managing the investment into Axiom on behalf of Great Point Partners III LP" and a "Copy of AML/Sanctions policies [for] Great Point Partners III LP." These documents were standard requests for BDC to make in connection with loans of the size and nature contemplated in Term Sheet 1, the receipt, or non-receipt, of which would facilitate BDC's ability to detect fraud or illegality among potential borrowers or guarantors.

30. Mr. Schachter decided to pursue financing from BDC as described in Term Sheet 1. He instructed Axiom's then Chief Financial Officer, Mr. Di Iorio, to prepare a slide presentation for Axiom's board of directors in an effort to persuade the Board that a move from Cityview to one of the Properties was in Axiom's best interests.

31. On May 13, 2021, Mr. Di Iorio finalized a first draft of the slide presentation to Axiom's board of directors. On Mr. Schachter's instruction of the same day, Mr. Di Iorio intentionally excluded in the presentation any reference to Mr. Schachter's plan to

purchase the Properties through J2ASM or the requirement under Term Sheet 1 for Axiom to guarantee J2ASM's debt to BDC.

32. On May 19, 2021, J2ASM agreed to purchase the Properties.

33. In connection with the efforts to secure financing from BDC, Mr. Schachter, through J2ASM, obtained an appraisal for the Properties dated May 21, 2021 from Avison Young.

34. On May 26, 2021, Mr. Di Iorio sent the slide presentation he had prepared to Axiom's Board. On May 27, 2021, Mr. Schachter and Mr. Di Iorio delivered the slide presentation to the Axiom Board.

35. The slide presentation set out in detail several reasons why Axiom needed to expand from Cityview into a new, larger, facility. None of the reasons given made any reference to the financial challenge posed to Mr. Schachter by J2ASM's continued ownership of Cityview.

36. The slide presentation recommended that Axiom take on a lease of, and move into, one of the Properties, namely Axiom's Headquarters. The slide presentation did not, however, disclose that J2ASM had entered into an agreement to purchase Axiom's Headquarters or that Mr. Schachter was working toward closing that agreement through the procurement of Term Sheet 1 and the Avison Young appraisal, or that Mr. Schachter would have to cause Axiom to agree to guarantee J2ASM's loan from BDC in order to obtain the financing further to Term Sheet 1.

37. Both Mr. Schachter and Mr. Di Iorio knew that disclosure of the proposed guarantee to BDC to the Board was a requirement of their fiduciary duty to Axiom, and their intentional failure to do so was a breach of their fiduciary duty. At the meeting where the slide presentation was delivered, Mr. Schachter was asked directly whether he had an interest in what was proposed to be Axiom's Headquarters in any way whatsoever and he answered "no." Mr. Di Iorio knew that Mr. Schachter had an interest in what was proposed to be Axiom's Headquarters, heard Mr. Schachter's answer, but offered no correction or clarification or other comment.

38. In June of 2021, BDC was continuing its diligence on a loan contemplated by Term Sheet 1. As described above, part of BDC's diligence checklist called for the delivery of a consent from GPP or GPP's parent. Mr. Di Iorio, on Mr. Schachter's instruction, refused to provide BDC with any documentation from GPP, thus permitting Mr. Schachter to continue to hide the planned purchase of Axiom's Headquarters and Axiom's intended guarantee of J2ASM's debt for the purchase from the Board and GPP.

39. On July 30, 2021, J2ASM received a Letter of Offer from BDC for financing that would permit J2ASM to purchase the Properties with the benefit of a secured guarantee from Axiom. BDC gave J2ASM the Letter of Offer even though BDC never received the consent from GPP's parent that it had requested for its diligence contemplated in Term Sheet 1. BDC owed a duty of care to Axiom, arising out of BDC's requirement in Term Sheet 1 that its proposed loan to J2ASM be guaranteed by Axiom, to make reasonable efforts to follow through on its initial, standard, diligence requests. It failed to do so and thus breached its duty of care owed to Axiom.

40. BDC's duty of care to Axiom was reinforced by the conditions precedent under BDC's Letter of Offer requiring that BDC receive certificates, authorizations, resolutions and legal opinions as BDC may require before making any advance under the Letter of Offer. As described below, BDC never received certificates, authorizations, resolutions and legal opinions that it reasonably required, but nevertheless made advances to J2ASM, thus constituting a further breach of its duty of care owed to Axiom.

41. On receipt of BDC's Letter of Offer, Mr. Schachter, through counsel, waived the financing condition on the agreement of purchase and sale for the Properties.

42. On August 12, 2021, Mr. Di Iorio emailed Torkin Manes, who was acting as counsel for J2ASM and Axiom as guarantor, and introduced Torkin Manes to counsel for BDC on its loan to J2ASM further to the July 30, 2021 Letter of Offer, Macdonald Sager Manis LLP ("**MSM**").

43. On August 17, 2021, MSM sent an initial letter of requisition to Torkin Manes setting out diligence items it required in advance of closing BDC's financing to J2ASM

and the Axiom secured guarantee. The requests included copies of Axiom's articles, by-laws, director, officer and shareholder registers.

44. Torkin Manes asked Mr. Di Iorio and Mr. Schachter for Axiom's minute book on the same day, so as to obtain the documents that MSM had requested.

45. On August 19, 2021, Mr. Di Iorio emailed Torkin Manes Axiom's minute book. The minute book, however, was outdated and had not been updated since 2005. It included a shareholder register indicating that Thinkworks owned all of the shares of Axiom, and a director's register showing that Mr. Schachter was Axiom's sole director, even though neither of those things were true.

46. Axiom was now effectively wholly owned by ~~Axiom~~ AXRM Holdings, and there were several additional directors, including Noah Rhodes and Jeffrey Jay as GPP nominees to the Board. Nevertheless, Torkin Manes forwarded the outdated minute book without addressing any deficiencies to MSM almost right away, before reviewing it. In doing so, Torkin Manes fell short of the standard of care required of solicitors acting in respect of a guarantor on Axiom's guarantee of J2ASM's contemplated obligations to BDC.

47. MSM, perhaps based on a review of the outdated minute book, requested that it be provided with the shareholders of Thinkworks drilled down to individuals.

48. After having sent Axiom's outdated minute book to MSM, Torkin Manes completed its review of the minute book and emailed Mr. Di Iorio with a copy to Mr. Schachter later the same day. Torkin Manes indicated that the minutes and resolutions had not been kept up to date, and that there was an inconsistency between the officers and directors noted on the publicly available corporate profile report for Axiom versus what was shown in the minute book.

49. On August 23, 2021, MSM emailed a letter to Torkin Manes enclosing a series of attachments described as loan documents to be executed and returned, as well as a corporate profile report that MSM had apparently pulled from public records. The profile report indicated that Jeffrey Jay and Noah Rhodes had become directors of Axiom on May

3, 2019. Accordingly, MSM's letter enclosed with its email remarked that: "...our corporate search reveals several directors and officer's which do not show on the corporate registers provided by your office. Please provide us with updated corporate records. Enclosed is the Corporate Profile Report. In addition, please ensure to provide us with the Shareholder of ThinkWork Inc. (sic) drilled down to the individual."

50. Also enclosed with MSM's email was a resolution to be signed by "the sole director" of Axiom, even though the corporate profile report that MSM had obtained indicated that Axiom had four directors. Further, MSM enclosed an officer's certificate for Mr. Schachter to certify that, among other things, he was the only director of Axiom even though the corporate profile report that MSM had pulled indicated otherwise.

51. On August 25, 2021, Mr. Di Iorio, with a copy to Mr. Schachter, asked its historical corporate counsel ("**Corporate Counsel**") to address the issue of Axiom's outdated minute books, forwarding to Corporate Counsel Torkin Manes's email of August 19, 2021 highlighting the problem. The subject line of that email read: "BDC loan to J2ASM Inc. (the "Borrower") and guaranteed by AXIOM REAL-TIME METRICS INC. ("Axiom") and ANDREW LAWRENCE SCHACHTER ("Andrew")". Corporate Counsel agreed to assist, but asked if GPP had consented to Axiom guaranteeing J2ASM's loan from BDC.

52. Later in the day on August 25, 2021, Corporate Counsel forwarded by email to Mr. Di Iorio with a copy to Mr. Schachter, and Mr. Di Iorio forwarded to Torkin Manes, several documents to be included in Axiom's minute books. Corporate Counsel's email was in the same thread as his email setting out his question about whether GPP had consented to the guarantee. The documents included in the email included a resolution of Thinkworks as the sole shareholder of Axiom dated May 3, 2019, resolving, further to the Stockholders' Agreement, to set the number of Axiom directors as 4, and electing Mr. Schachter, Noah Rhodes, Glen Kowarsky and Jeffrey Jay as directors of Axiom. Corporate Counsel also forwarded a Stock Power effective May 3, 2019 conveying Thinkworks' shares in Axiom to AXRM Acquisitions. Corporate Counsel also included with his email a copy of Axiom's bylaws which made Axiom's CEO's powers limited by the provisions of the Stockholders' Agreement.

53. To the knowledge of Torkin Manes, neither Mr. Di Iorio nor Mr. Schachter ever answered Corporate Counsel's question as to whether GPP had consented to Axiom guaranteeing J2ASM's loan from BDC. GPP had given no such consent and was not even aware of the prospect of a guarantee of BDC's loan to J2ASM. Neither GPP nor the Board knew that J2ASM was taking any loan from BDC at all.

54. Torkin Manes did not review any of the updates to Axiom's minute books that Corporate Counsel had provided. This was a breach of the standard of care required of a solicitor acting for a corporation such as Axiom on a guarantee in the nature of the Disputed Guarantee.

55. Instead, Torkin Manes negligently prepared a resolution approving the Axiom guarantee to BDC for Mr. Schachter to sign as the sole director of Axiom even though there were three other Axiom directors who would not have agreed to the resolution, and a certificate for Mr. Schachter to sign as Axiom CEO certifying that causing Axiom to enter into the guarantee in favour of BDC was within his authority and not contrary to any shareholders agreement, even though it was not within his authority and was contrary to the Stockholders' Agreement.

56. On September 2, 2021, Torkin Manes forwarded several Axiom corporate documents to MSM which, among other things, made reference to the Stockholders' Agreement, demonstrated that AXRM Acquisitions and not Thinkworks owned all of Axiom's shares and that Axiom had four directors.

57. On September 3, 2021, J2ASM closed on its loan from BDC whereby J2ASM borrowed \$26.5 million from BDC secured by the Disputed Loan Agreements. MSM permitted the deal to close on the strength of an opinion from Torkin Manes (the "**Torkin Manes Opinion**"). Torkin Manes was negligent in preparing the opinion because, on its terms, the Torkin Manes Opinion relied on a review of documents that Torkin Manes had not reviewed, and an officer's certificate and director's resolution executed by Mr. Schachter that Torkin Manes ought to have known was false. BDC, as represented by MSM, was negligent in relying on the Torkin Manes Opinion to close the Disputed Loan Agreements because MSM had never resolved the basic disparities between the public

record of directors and officers of Axiom that it had identified for Torkin Manes in August 2021 and the documentation it required be prepared in connection with the Disputed Guarantee.

58. Mr. Schachter executed the Disputed Loan Agreements on behalf of Axiom without any notice to the Board and contrary to Axiom's and Mr. Schachter's obligations under the Stockholders' Agreement, and in breach of Mr. Schachter's fiduciary duties.

59. Mr. Schachter was well aware of those obligations.

SCHACHTER CAUSES AXIOM TO ENTER INTO AN UNAUTHORIZED, ABOVE MARKET, LEASE WITH J2ASM FOR SCHACHTER'S BENEFIT

60. As described above, after Mr. Schachter secured Term Sheet 1 from BDC with respect to the purchase of the Properties, he instructed Mr. Di Iorio to prepare a detailed presentation to the Board setting out the apparent necessity for Axiom to move into a bigger office space and recommending that Axiom lease Axiom's Headquarters. J2ASM closed on the purchase of both of the Properties on September 3, 2021, the same day that J2ASM closed on its loan from BDC guaranteed by Axiom.

61. Thereafter, Mr. Schachter arranged for Axiom to move from Cityview to Axiom's Headquarters and move in pursuant to the Lease.

62. The Lease was an "Affiliate Agreement" for the purposes of the Stockholders' Agreement because it was an agreement between Axiom and a company affiliated with Mr. Schachter. As such, the directors appointed to the Board by GPP had the sole authority under the Stockholders' Agreement to make any decisions with respect to the Lease. Accordingly, Mr. Schachter never had the authority to enter into the Lease.

63. Mr. Schachter never showed the Lease to the Board or disclosed his interest in the agreement before committing Axiom to its terms. Accordingly, neither the Board nor GPP knew that the Lease was an Affiliate Agreement upon its execution.

64. Irrespective of the specific terms of the Stockholders' Agreement, Mr. Schachter could not validly cause Axiom to enter into the Lease without complying with the conflict

disclosure provisions under section 132 of the *OBCA*. His failure to do so renders the Lease voidable at law and Mr. Schachter and J2ASM liable to account to Axiom and ~~Axiom~~ AXRM Acquisitions for all profits and gains realized under the Lease.

65. In any case, the Lease required Axiom to pay J2ASM above-market rent for use of Axiom's Headquarters. Mr. Schachter's decision to cause Axiom to enter into the Lease at above-market rent was a breach of his duty to act in the best interests of Axiom as an officer and director of the company. Mr. Di Iorio and J2ASM agreed in October 2021 with Mr. Schachter to have Axiom pay above-market rents. For Mr. Di Iorio, that agreement was a breach of his fiduciary duty, as an officer of Axiom, to act in Axiom's best interest.

66. Between December 2021 and Mr. Schachter's resignation in May 2024, Axiom overpaid rent to J2ASM by nearly \$2 million.

SCHACHTER CAUSES AXIOM TO IMPROPERLY REIMBURSE SCHACHTER FOR PERSONAL TRAVEL EXPENSES

67. The Lease was not the only instance of a self-dealing transaction by Mr. Schachter. In fact, on July 23, 2020 Mr. Schachter, through another of his companies, J2ASM Air, entered into the Aircraft Lease with Axiom, signing for both the lessor and lessee under the Aircraft Lease.

68. The Aircraft Lease was entered into in breach of section 3.5(o) of the Stockholders' Agreement. That section prohibits Axiom from entering into contracts in which Mr. Schachter has an interest without GPP approval. With respect to J2ASM Air, GPP knew that Mr. Schachter wished to arrive at an agreement for Axiom to lease the aircraft and as such, section 3.5(o) of the Stockholders' Agreement specifically contemplated an Aircraft Agreement "to be approved by GPP" after execution of the Stockholders' Agreement. GPP sent Corporate Counsel a draft form of aircraft dry lease agreement acceptable to GPP in February 2020. GPP followed up with Mr. Schachter about finalizing the agreement in November 2020 so that Axiom's payments for Mr. Schachter's use of J2ASM Air's aircraft would comply with the Stockholders' Agreement. Mr. Schachter,

however, ignored GPP's inquiries. Unbeknownst to the Board and GPP, he had already executed a different aircraft lease agreement contrary to the Stockholders' Agreement.

69. Just like the Lease, the Aircraft Lease was an "Affiliate Agreement" for the purposes of the Stockholders' Agreement. As such, the directors appointed to the Axiom board by GPP had the sole authority under the Stockholders' Agreement to make any decisions with respect to the Aircraft Lease. Accordingly, Mr. Schachter never had the authority to enter into the Aircraft Lease, and, irrespective of the specific terms of the Stockholders' Agreement, Mr. Schachter could not validly cause Axiom to enter into the Aircraft Lease without complying with the conflict disclosure provisions under section 132 of the *OBCA*. His failure to do so renders the Aircraft Lease voidable at law and Mr. Schachter and J2ASM Air liable to account to Axiom and GPP for all profits and gains realized under the Aircraft Lease.

70. Further, Mr. Schachter routinely engaged the services of J2ASM Air to travel for personal travel. Axiom, at Mr. Schachter's direction and with the cooperation of Mr. Di Iorio, made numerous payments to J2ASM Air to cover the costs of this personal travel by Mr. Schachter. Directing and permitting these payments was a breach by both Mr. Schachter and Mr. Di Iorio of the fiduciary duties they owed to Axiom to act in Axiom's best interests.

SCHACHTER OVERSEES IMPROPER FINANCIAL REPORTING

71. Axiom was marketed for sale in late 2022 and early 2023 as GPP sought to exit its position owing to its disagreement with business decisions Mr. Schachter insisted upon. Interested parties, however, expressed dissatisfaction with Axiom's financial statements. There was a disconnect between recognized revenues and cash receipts. Unable to adequately explain the discrepancies, the Board stopped the sales process.

72. Rich Vaillant ("**Mr. Vaillant**"), a management accounting expert, was hired as a financial advisor to examine Axiom's financials and its financial processes. Mr. Vaillant reported the concerning absence of basic control mechanisms within the finance

department of Axiom. Notably, too many accounting functions moved through Mr. Schachter leading to a concentration of power problem.

73. In December 2023, Mr. Schachter finally recognized that GPP had the right to appoint a majority of directors to the Board pursuant to the Stockholders' Agreement. The change in Board control resulted in additional oversight of Axiom's finances and the replacement of Mr. Di Iorio as CFO with Mr. Vaillant.

74. As CFO, Mr. Vaillant learned that much of Axiom's historically recognized revenue was on account of work done for potential Axiom customers who had yet to agree to pay for anything. In the absence of a signed contract, the recognized revenue was really just work in progress that might never be billed. Indeed, material portions of Axiom's work in progress accrued after GPP's investment had been on the books for many months and could not be tied to any contract.

75. It appeared that Mr. Schachter and Mr. Di Iorio had been augmenting Axiom's financial metrics in a fashion contrary to proper accounting practices. Mr. Schachter, for his part, was motivated to augment Axiom's earnings before interest, taxes, depreciation and amortization to keep Axiom onside covenants given to BDC in connection with the Disputed Loan Agreements.

76. Axiom's investigation into this practice of improper financial reporting is ongoing and the harm done to the company has yet to be quantified.

AXIOM SUFFERS A CASH CRUNCH LEADING TO SCHACHTER'S RESIGNATION

77. Part of the controls lacking at Axiom leading to the shift from Mr. Di Iorio to Mr. Vaillant as CFO involved the management of cash. Axiom's spending often exceeded its cash receipts requiring further borrowing. In breach of his fiduciary duty to Axiom, Mr. Di Iorio never reported the absence of appropriate controls to the Board.

78. Around the time Mr. Vaillant came on board, Axiom had nearly exhausted the room it had on its line of credit. Thus, with Board support given on February 27, 2024 and

while Mr. Vaillant endeavoured to gain control of Axiom's cash position, Mr. Schachter negotiated a larger revolving line of credit with the National Bank which closed on March 11, 2024. The National Bank line of credit would not have been advanced had Schachter not misrepresented Axiom's financial position to National Bank.

79. Long before Mr. Schachter had Board authorization to seek additional financing for Axiom, he purported to bind Axiom to Glanmire Advisory ("**Glanmire**") and Wherewithal Partners Inc. ("**Wherewithal**") for Glanmire and Wherewithal to provide consulting services in connection with a potential issuance of debt securities for Axiom pursuant to an engagement letter dated July 14, 2023 (the "**Wherewithal Engagement**"). Glanmire and Wherewithal now claim a fee from Axiom purportedly further to the Wherewithal Engagement. The Wherewithal Engagement was entirely unnecessary and not in the best interests of Axiom. Had Mr. Schachter discussed a desire for similar consulting services for Axiom with the Board, GPP would have simply arranged the debt facility without needing to hire any placement agent at all. Causing Axiom to purport to enter the Wherewithal Engagement was a further breach of Mr. Schachter's fiduciary duty to Axiom.

80. While the Board approved of the new line of credit from the National Bank, it authorized Mr. Schachter to draw on the new line of credit only to satisfy an existing amount owing of approximately \$1.8 million from TD Bank. Any further draw downs on the new line of credit from National Bank required express prior written approval of the Board and GPP under the terms of Stockholders' Agreement. However, without consulting further with the Board or GPP, Mr. Schachter caused Axiom to draw down a further \$7 million on the National Bank line of credit largely to fund expenses that were not necessary for Axiom to pay, but that benefited Mr. Schachter personally.

81. Mr. Schachter's financial mismanagement was untenable and he lost the support of the Board and resigned effective May 27, 2024.

SCHACHTER'S FURTHER WRONGS AND BREACH OF TRUST DISCOVERED FOLLOWING HIS RESIGNATION

82. The Board accepted Mr. Schachter's resignation with the expectation that he and Axiom would come to terms on a consulting role for Mr. Schachter to assist with the transition to new management and leverage relationships he had developed with customers for Axiom's continued benefit. The prospect, however, of a consulting relationship quickly vanished.

83. Following his resignation, Mr. Schachter no longer had any authority at Axiom. Nevertheless, he circumvented Mr. Vaillant as Axiom's then Chief Financial Officer and purported to authorize junior members of Axiom's accounting department on May 31, 2024 to draw down on the National Bank line of credit to pay approximately \$240,000 in rent to J2ASM. The junior members of Axiom's accounting department followed Mr. Schachter's instruction.

84. As a result, Mr. Schachter was asked to return his company devices to Axiom but he refused.

85. On June 7, 2024, Axiom learned that Mr. Schachter had, without notice or explanation, personally registered the domain names "axiommetrics.world" and "axiommetrics.pro." Mr. Schachter had no license to use Axiom's name for any reason, let alone for personal use, and his registrations of the domain names constitute a breach of the Covenants in his Employment Agreement. When the Board learned of the surreptitious registrations, it further undermined their trust in Mr. Schachter and the desire to have him retain any role with Axiom.

86. On June 11, 2024, Axiom learned that on June 6, 2024, Mr. Schachter transferred control of a personal Dropbox account he used to store Axiom financial information and Axiom customer records from an Axiom email account to a personal account of Mr. Schachter's. While Axiom had obtained a Dropbox enterprise account prior to Mr. Schachter's resignation, Mr. Schachter had not executed on transferring any company information from his personal account to the enterprise account. Thus, company and

customer data belonging to Axiom was exclusively in Mr. Schachter's control. Dropbox would not return control of the account to Axiom as it was a personal account to Mr. Schachter, and the account was thus frozen pending agreement between Axiom and Mr. Schachter on its release. Mr. Schachter's surreptitious transfer of control of the Dropbox account and refusal to transfer control of the Dropbox account to Axiom constitute a breach of the Covenants in his Employment Agreement and further eroded any remaining trust in Mr. Schachter that the Board retained.

87. On June 13, 2024, Axiom learned through a review of historical emails sent to Mr. Schachter's company email address, that the National Bank had issued a notice of default on the revolving credit facility on May 22, 2024. The National Bank's notice of default referenced, and brought to light for the first time, the Disputed Guarantee. Despite receiving this important and material notice, Mr. Schachter never made any reference of this to the Board.

88. Axiom has also learned that Mr. Schachter continues to contact and solicit Axiom customers and otherwise interfere in Axiom's relationships with its customers, including by advising, counseling, or encouraging customers to refrain from doing business with Axiom unless and until Axiom involves Mr. Schachter in the business, and by making agreements with customers purportedly on behalf of Axiom when, in fact, Mr. Schachter has no authority to do so. These actions constitute further breaches of Mr. Schachter's fiduciary duty and post-employment contractual obligations owed to Axiom.

89. Axiom has also learned that Mr. Schachter converted a consulting contract between Axiom and Mr. Schachter's wife, Samara Silverman, to an unwritten employment contract paying \$300,000 annually. This self-interested contract was a further Affiliated Agreement entered into in breach of the Stockholders' Agreement.

90. Also after Mr. Schachter's resignation, Axiom discovered a scheme to use Axiom funds to finance Mr. Schachter's personal investments. In or around January 2021, Mr. Schachter incorporated Analytica. Analytica invested millions of dollars using Axiom funds that Mr. Schachter, with Mr. Di Iorio's assistance, flowed through Thinkworks. Axiom continues to investigate these funding transactions, but it appears as though Mr.

Schachter may have repaid Axiom for funds transferred to Analytica through Thinkworks with inflated personal expense claims submitted to Axiom with Mr. Di Iorio's assistance. Mr. Schachter's actions with respect to Analytica were further breaches of his fiduciary duty to Axiom.

91. The plaintiffs propose that this action be tried in Toronto.

September 24, 2024

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AXIOM REAL-TIME METRICS INC. et al.
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v.

ANDREW SCHACHTER et al.
Defendants

Court File No.: CV-24-00728158-00CL

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