

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**MARGARITA CASTILLO**

Applicant  
(Moving Party)

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents  
(Respondent on Motion)

**MOTION RECORD  
(For Appointment of Equitable Receiver)**

January 15, 2019

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**TAB 1**

**ONTARIO  
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BETWEEN:

**MARGARITA CASTILLO**

Applicant  
(Moving Party)

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents  
(Respondent on Motion)

**NOTICE OF MOTION  
(For Appointment of Equitable Receiver)**

The applicant, Margarita Castillo (“**Margarita**”), will make a motion to the court on a date to be determined at 10:00 a.m. or soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

in writing under subrule 37.12.1 (1) because it is (insert one of consent, unopposed or made without notice);

in writing as an opposed motion under subrule 37.12.1 (4);

orally.



1. **THIS MOTION IS FOR:**

- (a) An order appointing a receiver over the respondent Xela Enterprises Ltd. (“**Xela**”);
- (b) An order granting the applicant her costs of this motion; and
- (c) Such other relief as this Honorable Court considers just and necessary.

2. **THE GROUNDS FOR THE MOTION ARE:**

*Overview*

- (a) The applicant, Margarita Castillo (“**Margarita**”), commenced an application against the respondents on January 18, 2011, seeking, among other things, relief from oppression against her father, Juan Arturo Gutierrez (“**Arturo**”), and brother, Juan Guillermo Gutierrez (“**Juan**”) with respect to her status as a director and minority shareholder of Tropic International Limited (“**Tropic**”), a family company, which is now majority owned by the respondent, Xela Enterprises Ltd. (“**Xela**”). Xela was run, at the time, by Juan and Arturo;
- (b) Pursuant to a judgment issued October 28, 2015, and a series of cost orders issued December 21, 2015, December 30, 2016 and March 27, 2017, the respondents, Xela, Juan, and Carmen S. Gutierrez, as executor of the estate of Juan Arturo Gutierrez (the “**Estate**”) (collectively, the “**Judgment Debtors**”) became jointly obligated to pay Margarita \$5,083,866.04 (plus accrued interest and reimbursable enforcement expenses, the “**Judgment Debt**”);

- (c) The basis for the judgment was that the respondents had engaged in conduct that was oppressive to and unfairly disregarded Margarita's interests as a director and minority shareholder of Tropic;
- (d) The Judgment Debt is for the purchase of Margarita's Tropic shares at fair value;
- (e) In the 21 months since the last of the above orders was issued, Margarita has diligently exhausted all ordinary remedies under rule 60 of the *Rules of Civil Procedure* for collecting the Judgment Debt, including by:
  - (i) Conducting examinations in aid of execution of each of the Judgment Debtors;
  - (ii) Pursuing refusals and unanswered undertakings from the examinations in aid of execution with a full-day refusals motion;
  - (iii) Attempting to conduct a second round of examinations in aid of execution of the Judgment Debtors (which was met with a non-attendance by one Judgment Debtor, and further refusals by the two others);
  - (iv) Issuing writs of execution in jurisdictions where it was known that the Judgment Debtors held assets;
  - (v) Issuing directions to enforce with respect to the Judgment Debtors' cars and real estate assets; and
  - (vi) Issuing notices of garnishments for the known bank accounts of the Judgment Debtors;

- (f) Despite the steps above, the outstanding balance of the Judgment Debt remains in excess of \$3.5 million. The approximately \$1.5 million that has been collected to date is primarily on account of the sale of cars and real estate owned by Juan;
- (g) The respondent, Xela, has contributed minimally to the repayment of the Judgment Debt. Xela holds significant value, but that value is not practically recoverable through the ordinary enforcement remedies available under rule 60 of the *Rules of Civil Procedure*;
- (h) Xela is the parent company of a multi-national business empire, which wholly owns a complex network of more than two dozen subsidiaries, located predominantly in Central America. Xela owns few tangible assets, beyond the common shares of its subsidiaries. Before the Judgment Debt was incurred, Xela routinely collected management fees from its subsidiaries of approximately \$500,000 per year, and it was owed more than \$20 million from its subsidiaries on account of intercompany loans;
- (i) Xela has repeatedly refused answering questions about the operations of its subsidiaries, but it has (upon being ordered by the court to do so) provided information indicative of significant continuing operations. There is also no dispute that one of Xela's wholly-owned indirect subsidiaries (Lisa S.A.) holds common shares in the "Avicola Group" (a group of vertically integrated poultry businesses operating in Central America), and that these shares (currently the subject of protracted litigation) are potentially worth hundreds of millions of dollars;

- (j) As has become clear, particularly after the most recent examination in aid of execution completed on November 27, 2018, Xela has been grossly delinquent in the management of its assets. Xela is exercising no supervision whatsoever over its subsidiaries, and refuses to disclose any efforts being made to realize on the value of the Avicola Group common shares, which have, to date, been ineffective. Xela has not held a board of directors meeting in several years, and its sole remaining officer is Juan (a Judgment Debtor in his personal capacity), who has indicated that he no longer expends any significant time managing the business;
- (k) Juan is an untrustworthy caretaker of Xela's assets;
- (l) Under the circumstances, it is just and equitable to appoint a receiver over Xela to competently manage its assets. Unless a receiver is appointed, it is practically impossible for Margarita to realize on the value of Xela's assets, and the value that currently exists is likely eroding;

***The \$5 Million Judgment Debt***

- (m) By judgment dated October 28, 2015, The Honourable Mr. Justice Newbould ordered the respondents, Juan, Xela and Arturo (who died on June 24, 2016, and is now represented by the executor of his estate, Carmen S. Gutierrez) to pay Margarita \$4,250,000.00 for her 100 common shares held in the respondent, Tropic, with interest at the rate of 2% per year commencing as of the date of the judgment (the "**Oppression Judgment**");

- (n) By order dated December 21, 2015, The Honourable Mr. Justice Newbould ordered the respondents (other than 696096 Alberta Inc.) to pay Margarita \$889,858.21 for costs, disbursements and expert fees, with interest at the rate of 2% per year commencing as of the date of the order;
- (o) By order dated December 30, 2016, the Ontario Superior Court (Divisional Court) dismissed an appeal of the Judgment and cost order, and awarded Margarita \$76,096.47 for the costs of the appeal, with interest at a rate of 2% per year commencing on January 30, 2017;
- (p) By order dated March 27, 2017, the Court of Appeal for Ontario dismissed a motion for leave to appeal and ordered the respondents (other than 696096 Alberta Ltd.) to pay costs to Margarita in the amount of \$1,500;
- (q) In addition to the above, Margarita has incurred enforcement expenses, which are compensable under rule 60.19 of the *Rules of Civil Procedure*, including in excess of \$25,000 in disbursements, and legal fees for more than 250 hours of work by lawyers and nearly 200 hours of work by law clerks. These costs continue to accumulate and have not yet been formally fixed or included in a writ of execution;

***Margarita's Efforts to Enforce Using Ordinary Remedies***

- (r) Margarita has issued and filed writs of seizure and sale with respect to the Oppression Judgment with the enforcement offices in each of the City of Toronto, the Town of Parry Sound, and the Regional Municipality of Halton;

- (s) From May 2017 to September 2017, Margarita delivered a total of 27 notices of garnishment, covering each of the Judgment Debtors, to various TD Canada Trust and ScotiaBank branch locations located in Ontario;
- (t) In September 2017, Margarita delivered a direction to enforce to the Sheriff of the Regional Municipality of Halton with respect to six vehicles, which Margarita believed to be located at MVL Leasing Limited, in Oakville, Ontario;
- (u) In or about the same timeframe, Margarita also sought to deliver a direction to enforce to the Sheriff for the Town of Parry Sound, with respect to a real estate property located at 174 Hammer Bay Road, Sequin, Ontario (the “Cottage”), which Juan jointly owned with his wife. However, the Parry Sound enforcement office advised that it required that the direction to enforce be accompanied by an appraisal, and an appraiser advised Margarita that he required access into the Cottage to complete the appraisal. Juan was initially non-cooperative in scheduling an appraisal, and required Margarita to bring a motion for an order compelling his cooperation. That order was ultimately granted by Justice McEwen on October 11, 2017, unopposed;
- (v) Margarita proceeded with obtaining an appraisal of the Cottage, which assessed its value to be \$3.9 million, as of November 6, 2017 (but with a \$1.85 million mortgage registered on title). Margarita also delivered a direction to enforce against Juan’s interest in the cottage. An auction, scheduled by the Sheriff, proceeded on April 12, 2018, but was declared unsuccessful, because the highest bid was too low;

- (w) A second auction of the Cottage was called for July 26, 2018. It was necessarily preceded by an updated appraisal, which assessed the value of the Cottage to be \$3.8 million, as at June 21, 2018. The second auction successfully closed with a winning bid of \$780,000. The winning bidder was Wencke Gutierrez (“**Wencke**”)—Juan’s wife and joint-owner of the Cottage. The Sheriff’s office advised Margarita that Wencke paid a 10% deposit due on the day of the auction, and paid the remaining balance within 10 business days. A second mortgage charge, in the amount of \$850,000, was registered against the Cottage on August 14, 2018;
- (x) Margarita also sought to issue a direction to enforce with respect to Juan’s principal residence, located at 2 Gordon Road in Toronto, Ontario (the “**Toronto House**”). However, as with the Cottage, Margarita first needed to obtain an appraisal, and completing an appraisal required access to the property. Juan’s lawyers repeatedly resisted granting such permission, citing the fact that the house was already listed for sale on the open market, and because The Bank of Nova Scotia (which held a mortgage over the property) was prepared to foreclose on the house if it did not sell promptly;
- (y) In fact, several individuals offered to purchase the Toronto House, yet no sale was completed until after Wencke secured ownership of the Cottage. The Toronto House was listed for sale on August 17, 2017, and the first signed offer was received less than one week later, on August 23, 2017, for \$3.998 million. Subsequent offers of \$4.2 million, \$4.0 million, \$4.1 million, \$3.5 million and \$3.7 million were received on September 14, 2017, January 27, 2018, February 13, 2018, May 11, 2018 and May 14, 2018, respectively. In the copies of these offer sheets produced

to Margarita, all are signed by the buyer, but none were accepted by Juan or Wencke, as the sellers;

- (z) The first offer accepted by Juan is dated July 9, 2018, in the amount of \$3.025 million. Further, this offer conferred back on Juan and Wencke continued tenancy in the Toronto House, for no additional rent cost, for a period of 24 months. Juan sought Margarita's consent to proceed with this sale, (*i.e.*, by lifting the writ of execution attached to the property);
- (aa) While Margarita was considering whether to consent to the sale, Juan received a different offer to purchase, dated July 27, 2018, for \$3,174,596. While the principal amount was larger, it conferred back on Juan and Wencke continued tenancy for a shorter period, until November 20, 2018 (in exchange for a "License Fee", but for which the purchase price would have been \$3.2 million);
- (bb) Margarita consented to the sale proceeding, on the condition of receiving \$425,000 from the proceeds. This reflected a calculation of Juan's one-half interest in the property, after deducting for the mortgage and outstanding brokerage fees. The sale closed and Margarita received \$425,000 from the sale;

***Judgment Debtors' Resistance to Examinations in Aid of Execution***

- (cc) On July 25, 26 and 27, 2018, Margarita conducted the initial round of examinations in aid of execution of Juan, Xela and the Estate. Xela's representative for the examination was Calvin Shields, a member of the company's board of directors;



- (dd) These examinations in aid of execution of the Judgment Debtors gave rise to, collectively, 88 undertakings and 129 refusals. As of October 23, 2017, all of these questions remained unanswered, and, accordingly, Margarita scheduled a refusals motion. The motion was ultimately heard by Master Graham on February 1, 2018;
- (ee) By the motion date, the Judgment Debtors provided answers to some questions, and Margarita narrowed the focus of her motion to 64 refusals and 40 unanswered undertakings. At the full-day hearing, the Judgment Debtors conceded that they were obliged to answer their undertakings, and were directed to provide answers to many of the questions that had been refused. Among the questions that Xela had refused to answer, and was directed to answer, were those concerning the business and operations of Xela's indirect wholly-owned subsidiaries. Master Graham directed that the Judgment Debtors would, unless counsel agreed otherwise, be required to re-attend in person to answer follow-up questions;
- (ff) Margarita received most of the Judgment Debtors' answers to the unanswered questions on March 20, 2018, and received further tranches of responsive documents on June 5, 6 and 15, 2018;
- (gg) On June 27, 2018, Margarita's lawyers began corresponding with the Judgment Debtors' lawyers regarding the scheduling a second series of examinations in aid of execution. Attempts to find dates agreeable to the Judgment Debtors were met with slow responses;
- (hh) Juan refused to offer dates for his examination any earlier than September 2018, but was summoned for (and attended) an examination in aid of execution on

August 30, 2018. Juan was evasive in answering questions, and refused to answer questions concerning Xela's subsidiaries, even when those questions were strictly limited to his personal role within those companies;

- (ii) After Juan's examination, Margarita's lawyers resumed attempts to schedule the examinations in aid of Carmen and Xela. Because of the initial lack of responsiveness of the Judgment Debtors' lawyers, Margarita scheduled a 9:30 appointment before The Honourable Mr. Justice McEwen for October 15, 2018. Before the appointment, the Judgment Debtors' lawyers offered dates for the examinations to take place. These dates (November 23 and 27, 2018) were confirmed at the 9:30 appointment by Justice McEwen's endorsement;
- (jj) On the afternoon of November 20, 2018, three days before Carmen's scheduled examination on November 23, 2018, the Estate issued a notice of change of lawyer, appointing Reginald McLean. Together with the notice, Mr. McLean delivered a letter requesting that Margarita reconsider whether to proceed with an in-person examination, out of concern for the distress it would purportedly cause to Carmen. After Margarita's lawyers confirmed that she intended to proceed with the examination, Mr. McLean advised, on the afternoon of November 22, 2018, that Carmen would not attend the examination. Despite Margarita's objection, Carmen failed to attend on November 23, 2018;
- (kk) With respect to Xela, the Judgment Debtors' lawyers offered Calvin Shields to be examined again as Xela's representative. Xela's lawyers declined proposals suggesting that either Juan (Xela's President) or Juan Jose Rodriguez (a lawyer

identified on Xela's corporate profile report as an officer) be examined instead. However, when Mr. Shields was examined on November 27, 2018, he professed that he had no new involvement in Xela over the past year, no current knowledge of its operations, and no familiarity with the documents that had been provided to Margarita in response to the questions asked at Mr. Shield's examination the year prior. Further, Mr. Shields refused to make any inquiries of Juan to determine the answers to questions concerning Xela's business;

- (11) The lengthy process of obtaining answers to undertakings and refusals from the initial examinations of Juan, Xela and Carmen, held in July 2017, shows the futility of continuing to pursue answers from the Judgment Debtors;

***The Bulk of the Judgment Debt Remains Unsatisfied***

- (mm) Margarita has recovered \$1,568,293.37 from the Judgment Debtors, on account of:
- (i) Garnishments from Judgment Debtor bank accounts held at TD Canada Trust, in amounts cumulatively totaling \$155,485.74;
  - (ii) The seizure and sale, by the Enforcement Office for the Regional Municipality of Halton, of four motor vehicles owned by Juan or Arturo, from the proceeds of which Margarita received \$213,685.37, in total;
  - (iii) The seizure and sale, by the Enforcement Office for Town of Parry Sound, of Juan's joint ownership interest in the Cottage, from the proceeds of which Margarita received \$774,122.26. On July 18, 2018, shortly before the second auction was held, Margarita received a cheque for \$16.58 from the Ministry of the Attorney General, possibly in connection with the deposit paid in respect of the failed first auction attempt;
  - (iv) The sale, with Margarita's consent, of the real estate property located at 2 Gordon Road, Toronto, Ontario (owned jointly by Juan and his wife), from the proceeds of which Margarita was paid \$425,000.
- (nn) Based on the answers received from Juan's and the Estate's examinations in aid of execution, Margarita does not anticipate obtaining significant further amounts from them;

- (oo) Juan has indicated that he is completely reliant on support from his wife, Wencke, and mother, Carmen, to finance his living expenses. However, Juan had also indicated, during his first examination in aid of execution, that Wencke did not have her own source of income and was financially reliant on Juan. Juan similarly indicated in his first examination that he had been providing financial assistance to Carmen. It is unclear how Wencke and Carmen now have assets available to support Juan;
- (pp) The Estate has indicated that it has more liabilities than assets, including a tax liability to the Canadian Revenue Agency of more than \$15 million;

***The Value Within Xela***

- (qq) Xela has produced unaudited, non-consolidated financial statements for the years ended May 31, 2011, 2012, 2013, 2015 and 2016, in response to requests for disclosure made by Margarita. These financial statements do not address the value of Xela's wholly-owned subsidiaries, but report annual "management fees" revenue ranging from \$396,197 to \$554,262, current assets of up to \$3,772,360 (in 2011), and a "related party" receivable balance of up to \$46,179,878 (in 2013);
- (rr) Xela has produced only limited documents in respect of its subsidiaries, having initially refused to produce such documents, and those documents that have been produced concern only a fraction of its subsidiaries;
- (ss) While no witness has been available to Margarita to answer questions about these documents, they suggest substantial business operations, with a significant number

of employees, and multi-million dollar cash flows. These statements beg many questions; for example, the financial statements for Empresas Arturos International Limited report current assets in excess of \$10.3 million as at June 30, 2015, and then current assets of approximately \$421,000 as at June 30, 2016 (in between which the Oppression Judgment was issued, in October 2015);

- (tt) Public records appear to indicate that a fast-food chain called “Arturos”, operated by a subsidiary of Empresas Arturos International Limited, remains active, and has opened a new location as recently as October 2017;
- (uu) A significant figure on the balance sheets of seemingly all Xela subsidiaries is “related party” loans (both payable and receivable), which are measured in the millions of dollars. The purpose and status of these loans, and the prospects for their repayment, is impossible to discern from the documents produced by Xela;
- (vv) Though not reflected on Xela’s balance sheets, there is no dispute that its most valuable asset is its interest in the Avicola Group, which is held by a wholly-owned indirect subsidiary, Lisa S.A. The Avicola Group is a collection of Guatemalan corporations that are among the largest producers of poultry throughout Central America. The Avicola Group companies are majority owned by Juan and Margarita’s extended family based in Guatemala (commonly referred to as the “**Cousins**”). Arturo and his two siblings each originally held a one-third interest in the group, and Arturo transferred his interest to Lisa S.A.;

***The Toronto Avicola Action***

- (ww) Litigation with respect to Lisa S.A.'s shares of the Avicola Group has been ongoing for nearly twenty years, and is complicated by personal animosity between Juan and the Cousins. The litigation includes hundreds of proceedings in Guatemala, and one proceeding commenced in Toronto, in which both the Cousins and Margarita (as well as Margarita's husband, Ricardo Castillo) are named as defendants (the "**Toronto Avicola Action**");
- (xx) The Toronto Avicola Action, which was commenced on April 12, 2011 (shortly after Margarita commenced this application in January 2011) claims damages in the amount of \$400 million for conspiracy, breaches of fiduciary duty, fraud, abuse of process and unjust enrichment. It alleges that Margarita's application was initiated as part of a conspiracy with the Cousins "for the ulterior and improper purpose of facilitating the confiscation of Xela Enterprises' shares in the Avicola Group without compensation", rather to redress a genuine grievance;
- (yy) In March 2013, a fresh claim was served in the Toronto Avicola Action and the non-attorning foreign defendants (each of whom resided in Guatemala) challenged service;
- (zz) On January 20, 2014, Madam Justice Thorburn declared that the non-attorning foreign defendants had been properly served;

- (aaa) The non-attorning foreign defendants sought and obtained leave to appeal Justice Thorburn's decision to the Divisional Court. The appeal was dismissed on February 5, 2015;
- (bbb) The non-attorning foreign defendants sought and obtained leave to appeal to the Court of Appeal for Ontario. The appeal was dismissed on June 3, 2016;
- (ccc) The non-attorning foreign defendants sought leave to appeal the decision on service to the Supreme Court of Canada. Leave to appeal was denied by the Supreme Court of Canada on February 23, 2017, nearly four years after the fresh claim was served;
- (ddd) In November 2016, the non-attorning foreign defendants served their materials challenging jurisdiction of the Ontario courts in the Toronto Avicola Action. Two years have passed and none of the plaintiffs (including Xela) have served responding motion material;
- (eee) Despite being nearly eight years old, the Toronto Avicola Action remains at the pleadings stage;
- (fff) Despite having significant assets and interests, the evidence of Juan and Mr. Shields is that Xela is effectively un-managed. There can be no assurance that it is taking appropriate steps to collect on related party receivables, to supervise and manage its subsidiaries (as it has historically done), or that it is appropriately handling the litigation regarding Lisa S.A.'s interest in the Avicola Group;



(ggg) Despite the Lisa S.A. shares in the Avicola Group being by far the most valuable asset of the Xela group, on examination, the representatives of Xela did not identify the location of those shares when asked;

***Margarita's Preference Shares of Xela***

(hhh) Xela, in addition to being a judgment debtor to Margarita, also owes money to Margarita pursuant to preference shares, held by her indirectly through a holding company, 696096 Alberta Ltd. The Xela preference shares were the subject of an estate-freeze that prevented them from being redeemed before Arturo's death. Juan owned an identical amount of preference shares and similarly has not received payment of them. On January 11, 2017 (after Arturo's death on June 24, 2016), Margarita gave formal notice to redeem the preference shares. Xela refused to pay Margarita or any other preferred shareholder, relying on section 32(2) of the *Ontario Business Corporations Act*;

***The Impracticality of Recovery Through Ordinary Means***

(iii) Margarita could theoretically seize and sell the common shares that Xela holds in its subsidiaries, as a means of realizing on the value of the subsidiaries. However, the sheriff's auction process provided by the *Rules of Civil Procedure* is ill-equipped to realize on the value of this type of asset, particularly given the difficulty, even with the enforcement tools available to Margarita, of determining the value of Xela's subsidiaries;

- (jjj) A receivership, by which a competent manager would stand in Xela's shoes in managing its assets, pursuing collection of its receivables, and taking steps towards resolving litigation concerning the Avicola Group, is a fair and just alternative for realizing on the value of Xela's assets;

***Legislative Provisions***

- (kkk) Section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

- (lll) Rules 57 and 60.02(1)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;  
and

- (mmm) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) Affidavit of Margarita Castillo sworn January 14, 2019;

January 15, 2019

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Fresh Quest Inc., 696096 Alberta Ltd. and Juan Guillermo Gutierrez

AND TO: **REGINALD M. MCLEAN**  
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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**NOTICE OF MOTION  
(For Appointment of Equitable Receiver)**

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Lawyers for the Applicant (Moving Party),  
Margarita Castillo

**TAB 2**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:

MARGARITA CASTILLO

Moving Party

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Responding Party

**AFFIDAVIT OF MARGARITA CASTILLO**

(Sworn January 14, 2019)

I, MARGARITA CASTILLO, of the City of Toronto, in the Province of Ontario, MAKE  
OATH AND SAY:

**Introduction**

1. I am the applicant and judgment creditor in this proceeding, as a former shareholder and director of Tropic International Limited (“**Tropic**”), a shareholder of 696096 Alberta Ltd. (“**Alberta Co.**”) and a former director of Xela Enterprises Ltd. (“**Xela**”). I know of the matters contained in this affidavit either from my personal knowledge, or where indicated, from information provided to me by others, which in all cases I believe to be true.

2. I swear this affidavit in support of my motion to appoint an equitable receiver over Xela.

3. Below I describe certain facts regarding my efforts, over the past two years, to try to collect on the judgment debt. Jason Woycheshyn, partner at Bennett Jones LLP, has been the source of that information. In providing that information in this affidavit, I do not intend to waive any privilege over any communications I have had with my lawyers or over any of the work that they have done. Rather, I provide that information to assist the court on this motion.

### **Background**

4. I started this application against the respondents on January 18, 2011, nearly eight years ago. In that application, I sought relief from oppression against my father, Juan Arturo Gutierrez (“**Arturo**”), and brother, Juan Guillermo Gutierrez (“**Juan**”) regarding my status as a director and minority shareholder of Tropic, a family company, which is now majority owned by Xela. Xela was run, at the time, by Juan and Arturo.

5. Under a judgment dated October 28, 2015 (the “**Oppression Judgment**”), and cost orders dated December 21, 2015, December 30, 2016 and March 27, 2017, the respondents, Xela, Juan, and Carmen S. Gutierrez (“**Carmen**”), as executor of the estate of Arturo (the “**Estate**”) (collectively, the “**Judgment Debtors**”) became jointly obligated to pay me \$5,083,866.04 (plus interest and reimbursable enforcement expenses, the “**Judgment Debt**”).

6. The basis for the Oppression Judgment was that the respondents were found to have engaged in conduct that oppressed and unfairly disregarded my interests as a director and minority shareholder of Tropic. The Judgment Debt is principally for the purchase of my Tropic shares at fair value.



7. In the 21 months since the last of the above orders was issued, with the help of my lawyers at Bennett Jones LLP, I have tried to collect the Judgment Debt, by:

- (a) Conducting examinations in aid of execution of each of the Judgment Debtors;
- (b) Pursuing refusals and unanswered undertakings from the examinations in aid of execution with a full-day refusals motion;
- (c) Attempting to conduct a second round of examinations in aid of execution of the Judgment Debtors (which was met with a non-attendance by one Judgment Debtor, and further refusals by the other two);
- (d) Issuing writs of execution in jurisdictions where it was known that the Judgment Debtor held assets;
- (e) Issuing directions to enforce with respect to the Judgment Debtors' cars and real estate assets; and
- (f) Issuing notices of garnishment for the known bank accounts of the Judgment Debtors.

8. Despite the above steps, the outstanding balance of the Judgment Debt remains over \$3.5 million. The approximately \$1.5 million collected to date is primarily because of the sale of cars and real estate owned by Juan.

### **Xela's Contribution to the Judgment Debt**

9. Xela has contributed little to the payment of the Judgment Debt.

10. Xela is the parent company of a multi-national business empire, which wholly owns a complex network of over two dozen subsidiaries, located predominantly in Central America. Attached as **Exhibit "A"** is a corporate organizational chart of Xela, which was marked as Exhibit "1" during the second examination in aid of execution of Xela. The chart was originally prepared by Xela for use by its board of directors, in or about 2010. Boucheron Universal Corp. (Panama) and Management Solutions Inc. (Guatemala) have been added to the chart, to reflect evidence given in this application. In particular, Mark Korol (then Xela's Chief Financial Officer) and Juan testified about companies excluded from the chart when they were cross-examined on their affidavits in July and August of 2012.

11. Xela appears to own few tangible assets, beyond the common shares of its subsidiaries. Attached as **Exhibit "B"** are copies of Xela's financial statements for the years ended in May of 2011, 2012, 2013, 2015 and 2016, which were produced by Xela's lawyers.

12. Xela has repeatedly refused answering questions about the operations of its subsidiaries, but it has (upon being ordered to do so by the court) provided information (including minute books and financial statements). I have not attached the documents about Xela's subsidiaries, out of consideration for the concerns repeatedly expressed by Juan about their public disclosure. My lawyers at Bennett Jones LLP have these documents available for review by the court.

13. There is also no dispute that one of Xela's wholly-owned indirect subsidiaries (Lisa S.A.) holds common shares in the "Avicola Group" (a group of vertically integrated poultry businesses operating in Central America), and these shares (currently the subject of lengthy litigation) are potentially worth hundreds of millions of dollars, if not more.

14. Based on the most recent examination in aid of execution completed on November 27, 2018, Xela appears not to be managing its assets. Xela is exercising no supervision over its subsidiaries, and refuses to disclose any efforts being made to realize on the value of the Avicola Group common shares. Xela has not held a board of directors meeting in several years, and its sole remaining officer is Juan (a Judgment Debtor in his personal capacity), who has indicated that he no longer expends any significant time managing the business.

15. Unless a receiver is appointed, I believe it would be practically impossible for me to realize on the value of Xela's assets.

### **The \$5 Million Judgment Debt**

16. By judgment dated October 28, 2015 (attached as **Exhibit "C"**), The Honourable Mr. Justice Newbould ordered the respondents, Juan, Xela and Arturo (who died on June 24, 2016, and is now represented by the executor of his estate, Carmen) to pay me \$4,250,000.00 for my 100 common shares held in Tropic, with interest at 2% per year commencing as of the date of the judgment.

17. By order dated December 21, 2015 (attached as **Exhibit "D"**), Justice Newbould ordered the respondents (other than 696096 Alberta Inc.) to pay me \$889,858.21 for costs, disbursements and expert fees, with interest at 2% per year commencing as of the date of the order.

18. By order dated December 30, 2016 (attached as **Exhibit “E”**), the Ontario Superior Court (Divisional Court) dismissed an appeal of the Judgment and cost order, and awarded me \$76,096.47 for the costs of the appeal, with interest at 2% per year commencing on January 30, 2017.

19. By order dated January 12, 2017 (attached as **Exhibit “F”**), this proceeding was continued with Carmen as executor of the estate of Arturo (following Arturo’s death on June 24, 2016).

20. By order dated March 27, 2017 (attached as **Exhibit “G”**), the Court of Appeal for Ontario dismissed a motion for leave to appeal and ordered the respondents (other than 696096 Alberta Ltd.) to pay me costs of \$1,500.

21. Besides the above, I have incurred enforcement expenses, including over \$25,000 in disbursements, and legal fees for over 250 hours of work by lawyers and nearly 200 hours of work by law clerks. These costs continue to accumulate and have not yet been formally fixed or included in a writ of execution.

#### **My Efforts to Collect on the Judgment Debt**

22. My lawyers have issued and filed writs of execution with respect to the Oppression Judgment with the enforcement offices in each of the City of Toronto and the Town of Parry Sound. Attached as **Exhibit “H”** are copies of the writs. I have separately also filed writs in these jurisdictions with respect to the costs orders.

23. From May 2017 to September 2017, my lawyers delivered 27 notices of garnishment, covering each of the Judgment Debtors, to various TD Canada Trust and ScotiaBank branch locations in Ontario.

24. In September 2017, my lawyers delivered a direction to enforce to the Sheriff of the Regional Municipality of Halton regarding six vehicles, which I believed to be at MVL Leasing Limited, in Oakville, Ontario. Attached as **Exhibit "I"** is a copy of this direction to enforce (excluding attachments).

25. Also in 2017, my lawyers sought to deliver a direction to enforce to the Sheriff for the Town of Parry Sound, regarding a property at 174 Hammer Bay Road, Seguin, Ontario (the "**Cottage**"), which Juan jointly owned with his wife. However, the Parry Sound enforcement office advised that it required that the direction to enforce come with an appraisal, and an appraiser advised that he required access into the Cottage to complete the appraisal. Juan was initially non-cooperative in scheduling an appraisal, and required me to move for an order compelling his cooperation. That order was ultimately granted by Justice McEwen on October 11, 2017, unopposed. A copy is attached as **Exhibit "J"**.

26. I obtained an appraisal of the Cottage, which assessed its value to be \$3.9 million, as of November 6, 2017 (but with a \$1.85 million mortgage). On November 9, 2017, my lawyers delivered a direction to enforce against Juan's interest in the cottage, a copy of which is attached as **Exhibit "K"** (excluding attachments). An auction, scheduled by the Sheriff, proceeded on April 12, 2018, but was declared unsuccessful, because the highest bid was too low.

27. A second auction of the Cottage was called for July 26, 2018, under a second direction to enforce, that my lawyers delivered on May 4, 2018 (attached as **Exhibit “L”**, excluding attachments). The auction required an updated appraisal, which assessed the value of the Cottage to be \$3.8 million, as at June 21, 2018. The second auction successfully closed with a winning bid of \$780,000 for Juan’s interest. The winning bidder was Wencke Gutierrez (“**Wencke**”)—Juan’s wife and joint-owner of the Cottage. The Sheriff’s office advised my lawyers that Wencke paid a 10% deposit due on the day of the auction, and paid the remaining balance on August 13, 2018. Attached as **Exhibit “M”** is a Sheriff’s report, dated August 13, 2018. A second mortgage charge, for \$850,000, was registered against the Cottage on August 14, 2018. A copy of a land title report which notes the new charge, dated on August 31, 2018, is attached as **Exhibit “N”**.

28. My lawyers also sought to issue a direction to enforce regarding Juan’s principal residence, at 2 Gordon Road in Toronto, Ontario (the “**Toronto House**”). However, as with the Cottage, I first needed an appraisal, and completing an appraisal required access to the property. Juan’s lawyers resisted granting such permission, stating that the house was already listed for sale, and because The Bank of Nova Scotia (which held a mortgage over the property) was prepared to foreclose on the house if it did not sell promptly.

29. On July 13, 2018, Wencke’s lawyer (Reginald McLean) provided a “Listing Analysis” prepared by Sotheby’s International Realty Canada, which showed that several individuals had offered to buy the Toronto House. A copy of the listing report, which includes several “registered offers”, is attached as **Exhibit “O”**. The Toronto House was listed for sale on August 17, 2017, and the first signed offer was received less than one week later, on August 23, 2017, for \$3.998 million. Later offers of \$4.2 million, \$4.0 million, \$4.1 million, \$3.5 million and \$3.7 million were received on September 14, 2017, January 27, 2018, February 13, 2018, May 11,

### **The Examinations in Aid of Execution**

33. On July 25, 26 and 27, 2017, my lawyers conducted examinations in aid of execution of Juan, Xela and the Estate. Copies of the transcripts of these examinations are attached as Exhibits as **Exhibit “S”**, **“T”** and **“U”**, respectively. Xela’s representative for the examination was Calvin Shields, a long-time member of the company’s board of directors.

34. These examinations in aid of execution of the Judgment Debtors gave rise to, collectively, 88 undertakings and 129 refusals. As of October 23, 2017, all these questions remained unanswered, so my lawyers scheduled a refusals motion. The motion was ultimately heard by Master Graham on February 1, 2018. Attached as **Exhibit “V”** is a copy of the notice of motion.

35. By the motion date, the Judgment Debtors provided answers to some questions, and my lawyers narrowed the focus of my motion to 64 refusals and 40 unanswered undertakings. At the full-day hearing, the Judgment Debtors indicated that they had to answer their undertakings, and will provide answers to many questions that had been refused. Among the questions that Xela had refused to answer, and was directed to answer, were those about the business and operations of Xela’s indirect wholly-owned subsidiaries. Master Graham directed that the Judgment Debtors would, unless counsel agreed otherwise, be required to re-attend in person to answer follow-up questions. Attached as **Exhibit “W”** is a copy of Master Graham’s endorsement determining the motion, and attached as **Exhibit “X”** is a transcript of Master Graham’s oral reasons regarding each category of refusal.

36. My lawyers received most of the Judgment Debtors' answers to the unanswered questions on March 20, 2018, and received further responsive documents in June 2018. Attached as **Exhibit "Y"** is the Judgment Debtors' consolidated answers to the undertakings chart delivered on March 20, 2018 (excluding attachments).

37. On June 27, 2018, my lawyers began corresponding with the Judgment Debtors' lawyers regarding the scheduling a second series of examinations in aid of execution. Attached as **Exhibits "Z"** and **"AA"** are email threads, capturing this correspondence with the Judgment Debtors' lawyers. I have excluded emails from the second thread that overlap with the first thread.

38. Juan refused to offer dates for his examination any earlier than September 2018, but was summoned for (and attended) an examination in aid of execution on August 30, 2018. Attached as **Exhibit "BB"** is a copy of the transcript from Juan's examination on that date.

39. After Juan's examination, my lawyers resumed attempts to schedule the examinations in aid of execution of the Estate and Xela. My lawyers scheduled a 9:30 appointment before Justice McEwen for October 15, 2018. Before the appointment, the Judgment Debtors' lawyers offered dates for the examinations to take place. These dates (November 23 and 27, 2018) were confirmed at the 9:30 appointment by Justice McEwen's endorsement. Attached as **Exhibit "CC"** is a copy.

40. On the afternoon of November 20, 2018, three days before the Estate's scheduled examination, the Estate issued a notice of change of lawyer, appointing Reginald McLean (who had previously acted for Wencke). With the notice, Mr. McLean delivered a letter requesting that I reconsider whether to proceed with an in-person examination, out of concern for the distress it



would cause Carmen. My lawyers confirmed that I intended to proceed with the examination. Mr. McLean advised, on the afternoon of November 22, 2018, that Carmen would not attend the examination. Carmen failed to attend on November 23, 2018. Attached as **Exhibit “DD”** is a copy of this correspondence with Mr. McLean. Attached as **Exhibit “EE”** is a certificate of non-attendance prepared by a commissioner of oaths at Network Reporting & Mediation.

41. Regarding Xela, the Judgment Debtors’ lawyers offered Calvin Shields to be examined again as Xela’s representative. As reflected in the correspondence attached above as Exhibit “Z”, Xela’s lawyers declined proposals suggesting that either Juan (Xela’s President) or Juan Jose Rodriguez (a lawyer identified on Xela’s corporate profile report as an officer) be examined instead. Attached as **Exhibit “FF”** is a transcript of Mr. Shield’s examination.

42. Based on the lengthy process of obtaining answers to undertakings and refusals from the initial examinations of Juan, Xela and Carmen, held in July 2017, I believe it would be futile to continue to pursue answers from the Judgment Debtors.

### **Most of the Judgment Debt Remains Unpaid**

43. Attached as **Exhibit “GG”** is a chart, prepared by my lawyers, summarizing the amounts I have recovered from the Judgment Debtors. The collected amounts total \$1,568,293.37, and arise from:

- (a) Garnishments from Judgment Debtor bank accounts held at TD Canada Trust, in amounts totaling \$155,485.74;

2018 and May 14, 2018, respectively. In the copies of the offer sheets in the Listing Report, all are signed by the buyer, but none were accepted by Juan or Wencke, as the sellers. With the listing report, Mr. McLean also produced an appraisal of the Toronto House, which estimated its value to be \$4.2 million, as of July 18, 2017.

30. The Listing Report and appraisal were provided to me because Juan and Wencke were seeking my consent to lift the Writ of Execution to allow a sale to proceed. The agreement of purchase and sale presented to me for my consent, on July 12, 2018, is dated July 9, 2018, for a sale price of \$3.025 million. Further, this agreement (a copy of which is attached as **Exhibit "P"**) gave Juan and Wencke continued tenancy in the Toronto House, for no additional rent cost, for 24 months. Attached as **Exhibit "Q"** is the Residential Tenancy Agreement, which was provided by Mr. McLean on July 13, 2018.

31. While I was considering whether to consent to this sale, Juan entered into a new purchase agreement with a different buyer, dated July 27, 2018, for \$3,174,596. A copy of this agreement (attached **Exhibit "R"**) was presented to me for my consent. While the principal amount was larger than the prior offer, it gave Juan and Wencke continued tenancy for a shorter period, until November 20, 2018 (in exchange for a "License Fee", but for which the purchase price would have been \$3.2 million).

32. I consented to the sale proceeding, on the condition of receiving \$425,000 from the proceeds. This reflected a calculation of Juan's one-half equity interest in the property, after deducting for the outstanding mortgage balance and outstanding brokerage fees. The sale closed and I received \$425,000 from the sale.

- (b) The seizure and sale, by the Enforcement Office for the Regional Municipality of Halton, of four motor vehicles owned by Juan or Arturo, from which I received \$213,685.37;
- (c) The seizure and sale, by the Enforcement Office for the Town of Parry Sound, of Juan's joint ownership interest in the Cottage, from which I received \$774,122.26. On July 18, 2018, shortly before the second auction was held, I received a cheque for \$16.58 from the Ministry of the Attorney General, possibly for the deposit paid regarding the failed first auction attempt; and
- (d) The sale, with my consent, of the Toronto House, from which I received \$425,000.

44. Based on the answers received from Juan's and the Estate's examinations in aid of execution, I do not anticipate obtaining significant further amounts from them.

45. Juan has indicated that he relies on financial support from his wife, Wencke, and mother, Carmen, to finance his living expenses. However, Juan had also indicated, during his first examination in aid of execution, that Wencke did not have her own source of income and was financially reliant on Juan. Juan similarly stated in his first examination he had been providing financial assistance to Carmen. It is unclear how Wencke and Carmen now have assets available to support Juan. Before 2010, I had a close relationship with Carmen (my mother) and Wencke (my sister-in-law). In the decades that I knew them, I never knew them to have independent sources of income or wealth. Rather, each was financially dependent on Arturo and Juan.

46. The Estate has indicated that it has more liabilities than assets, including a tax liability to the Canada Revenue Agency of more than \$15 million. Attached as **Exhibit “HH”** is a “Statement of Liabilities” of the Estate as at September 16, 2016, which was marked as Exhibit “B” to the examination of the Estate held on July 26, 2017. The tax liability, not referenced in the statement, was later disclosed in written answers to undertakings (referenced above as Exhibit “Y”).

### **Xela’s Value**

47. Xela has produced unaudited, non-consolidated financial statements for the years ended May 31, 2011, 2012, 2013, 2015 and 2016, in response to requests for disclosure that I made (referenced above as Exhibit “B”).

48. Xela has produced limited documents in respect of its subsidiaries, having initially refused to produce such documents, and those documents that have been produced concern only a some of its subsidiaries.

49. Public records appear to indicate that a fast-food chain called “Arturos”, operated by a subsidiary of Empresas Arturos International Limited, remains active, and has opened a new location as recently as October 2017. Attached as **Exhibit “II”** are screen captures from a Facebook webpage for Arturos.

50. Though not reflected on Xela’s financial statements, I believe its most valuable asset is its 33.3% interest in the Avicola Group, which is held by a wholly-owned indirect subsidiary, Lisa S.A. The Avicola Group is a collection of Guatemalan corporations that are among the largest producers of poultry throughout Central America. The Avicola Group companies are

majority owned by Lisa S.A. and my's extended family based in Guatemala (commonly called the "**Cousins**"). Arturo and his two siblings each originally held a one-third interest in the group, and Arturo transferred his interest to Lisa S.A.

*The Toronto Avicola Action*

51. Litigation regarding Lisa S.A.'s shares of the Avicola Group has been ongoing for nearly twenty years, and is complicated by personal animosity between Juan and the Cousins. The litigation includes hundreds of proceedings in Guatemala, and one proceeding commenced in Toronto, in which both the Cousins and me (as well as my husband, Ricardo Castillo) are named as defendants (the "**Toronto Avicola Action**").

52. The Toronto Avicola Action, which was commenced on April 12, 2011 (shortly after I commenced this application in January 2011), claims damages for \$400 million for conspiracy, breaches of fiduciary duty, fraud, abuse of process and unjust enrichment. It alleges that my application was started as part of a conspiracy with the Cousins.

53. In March 2013, a fresh claim was served in the Toronto Avicola Action and the Guatemalan defendants (excluding Roberta Barillas Castillo) challenged service. A copy of the fresh as amended statement of claim is attached as **Exhibit "JJ"**.

54. On January 20, 2014, Madam Justice Thorburn declared that the Guatemalan defendants had been properly served.

55. The Guatemalan defendants sought and obtained leave to appeal Justice Thorburn's decision to the Divisional Court. The appeal was dismissed on February 5, 2015.

56. The Guatemalan defendants sought and obtained leave to appeal to the Court of Appeal for Ontario. The appeal was dismissed on June 3, 2016.

57. The Guatemalan defendants sought leave to appeal the decision on service to the Supreme Court of Canada. Leave to appeal was denied on February 23, 2017, nearly four years after the fresh claim was served.

58. In November 2016, all Guatemalan defendants served their materials challenging jurisdiction of the Ontario courts in the Toronto Avicola Action. Two years have passed and none of the plaintiffs (including Xela) have served responding motion material.

59. Despite being nearly eight years old, the Toronto Avicola Action remains at the pleadings stage.

60. Despite having significant assets and interests, the evidence of Juan and Mr. Shields is that Xela is effectively un-managed. I have serious concerns that Xela is taking no steps to handle its finances including the litigation regarding Lisa S.A.'s interest in the Avicola Group.


61. Despite the Lisa S.A. shares in the Avicola Group being the most valuable asset of the Xela group, on examination, the representatives of Xela did not identify the location of those shares when asked.

**My Preference Shares of Xela**

62. Xela, besides being a judgment debtor also owes money to me under preference shares, held by me indirectly through a holding company, 696096 Alberta Ltd. The Xela preference shares were the subject of an estate-freeze that prevented them from being redeemed before Arturo’s death. On January 11, 2017 (after Arturo’s death on June 24, 2016), I gave formal notice to redeem the preference shares. Attached as **Exhibit “KK”** is a copy of my redemption notice addressed to Xela.

63. Attached as **Exhibit “LL”** is a copy of the response I received from Xela, dated January 31, 2017. Xela refused to pay me, or any other preferred shareholder, for their preference shares, relying on section 32(2) of the Ontario *Business Corporations Act*. Juan owned an identical amount of preference shares and, I believe, he has similarly has not received payment for them.

**SWORN BEFORE ME** at the City of  
Toronto, Ontario January 14, 201~~8~~<sup>9</sup>

  
\_\_\_\_\_  
Katrina Crocker  
A Commissioner for Taking Affidavits in and  
for the Courts in Ontario

  
\_\_\_\_\_  
MARGARITA CASTILLO

Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**  
Respondents  
Court File No. CV-11-9177-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AFFIDAVIT OF MARGARITA CASTILLO**  
(Sworn January 14, 2019)

**BENNETT JONES LLP**  
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Lawyers for the applicant, Margarita Castillo



# TAB A

THIS IS EXHIBIT "A" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

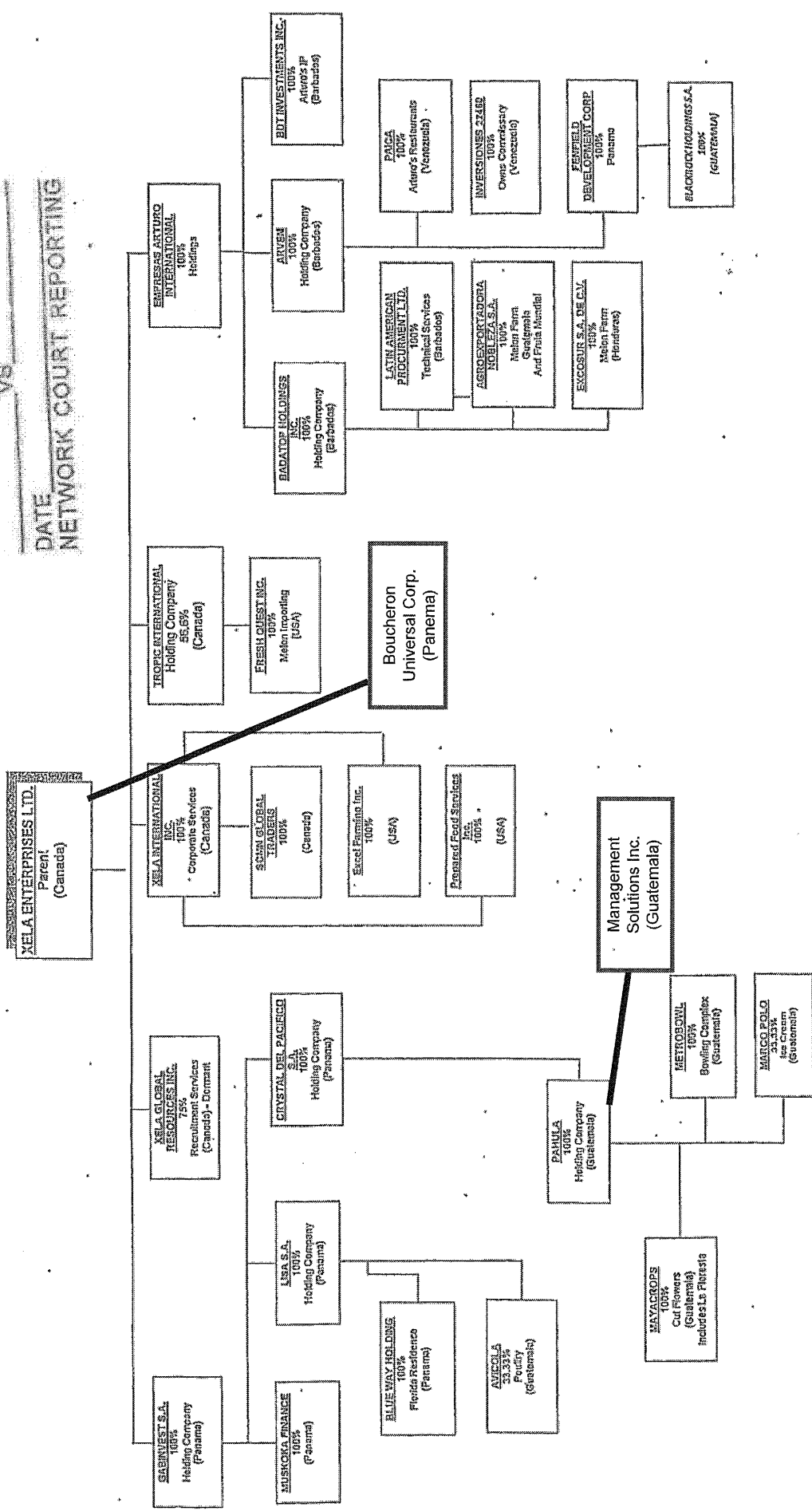
A Commissioner for Taking Affidavits in and for the Courts in Ontario

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**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

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0893-3200/05/\$12.00 DOI: 10.1037/0893-3200.19.4.505

EXHIBIT NO. 2  
EXAMINATION OF \_\_\_\_\_ VS \_\_\_\_\_  
DATE \_\_\_\_\_  
NETWORK COURT REPORTING



**TAB B**

THIS IS EXHIBIT "B" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Non-consolidated financial statements of

**Xela Enterprises Ltd.**

May 31, 2011

**Xela Enterprises Ltd.**

May 31, 2011

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## Review Engagement Report

To the Shareholders of  
Xela Enterprises Ltd.

We have reviewed the non-consolidated balance sheet of Xela Enterprises Ltd. as at May 31, 2011 and the non-consolidated statements of deficit, operations, and cash flows for the year then ended. These non-consolidated financial statements have been prepared in accordance with Canadian generally accepted accounting principles using differential reporting options available to non-publicly accountable enterprises, as described in note 3 to the non-consolidated financial statements. Our review was made in accordance with Canadian generally accepted standards for review engagements and accordingly consisted primarily of enquiry, analytical procedures and discussion related to information supplied to us by the management.

A review does not constitute an audit and consequently we do not express an audit opinion on these non-consolidated financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these non-consolidated financial statements are not, in all material respects, in accordance with Canadian generally accepted accounting principles.

*Deloitte & Touche, LLP*

Chartered Accountants  
Licensed Public Accountants  
December 9, 2011

**Xela Enterprises Ltd.**

Non-consolidated statement of deficit  
year ended May 31, 2011  
(Unaudited)

	2011	2010
	\$	\$
Deficit, beginning of year	(19,893,510)	(19,472,427)
Net loss	(1,099,176)	(421,083)
<b>Deficit, end of year</b>	<b>(20,992,686)</b>	<b>(19,893,510)</b>

# Xela Enterprises Ltd.

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## Non-consolidated statement of operations year ended May 31, 2011


(Unaudited)

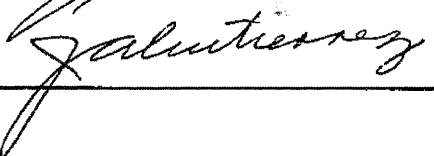
	2011	2010
	\$	\$
<b>Revenue</b>		
Management fees (Note 9)	554,262	455,197
Interest	45,940	23,830
Gain on sale of investment	5,220	-
	<b>605,422</b>	<b>479,027</b>
<b>Expenses</b>		
Foreign exchange gain	(2,752,744)	(1,317,441)
Interest (Note 9)	1,568,593	557,141
General and administrative	1,205,199	533,132
Consulting and professional fees	432,518	358,991
Occupancy costs	178,407	244,530
Salaries and employee benefits	155,639	305,135
Recovery of bad debts	(30,000)	(603)
Amortization	253,707	219,225
	<b>1,011,319</b>	<b>900,110</b>
Loss before income taxes	(405,897)	(421,083)
Income taxes		
Current (Note 11)	693,279	-
<b>Net loss</b>	<b>(1,099,176)</b>	<b>(421,083)</b>

**Xela Enterprises Ltd.**  
 Non-consolidated balance sheet  
 as at May 31, 2011  
 (Unaudited)

	2011	2010
	\$	\$
<b>Assets</b>		
<b>Current assets</b>		
Cash	65,330	572,888
Marketable securities	1,219,007	-
Precious metals	1,203,980	-
Prepaid expenses and sundry assets	1,229,345	1,057,956
	<b>3,717,662</b>	<b>1,630,844</b>
Property and equipment (Note 4)	410,707	363,204
Investments (Note 8)	1,339,224	1,339,224
Advances to related parties (Note 8)	31,885,654	25,645,469
	<b>37,353,247</b>	<b>28,978,741</b>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Bank indebtedness (Note 6)	2,834,570	2,916,000
Accounts payable and accrued liabilities	383,779	584,801
Income taxes payable	1,140,518	-
	<b>4,358,867</b>	<b>3,500,801</b>
Due to related parties (Note 5)	53,984,145	45,368,529
	<b>58,343,012</b>	<b>48,869,330</b>
<b>Shareholders' deficiency</b>		
Capital stock (Note 7)	2,921	2,921
Deficit	(20,992,686)	(19,893,510)
	<b>(20,989,765)</b>	<b>(19,890,589)</b>
	<b>37,353,247</b>	<b>28,978,741</b>

Approved on behalf of the Board

  
 \_\_\_\_\_ Director

  
 \_\_\_\_\_ Director

**Xela Enterprises Ltd.**Non-consolidated statement of cash flows  
year ended May 31, 2011

(Unaudited)

	2011	2010
	\$	\$
<b>Operating activities</b>		
Net loss	(1,099,176)	(421,083)
Items not affecting cash		
Amortization	253,707	219,225
Realized gain on sale of investments	(5,220)	-
	(850,689)	(201,858)
Change in non-cash operating items		
Prepaid expenses and sundry assets	(171,389)	(429,537)
Accounts payable and accrued liabilities	(201,022)	(29,650)
Income taxes payable	1,140,518	-
	(82,582)	(661,045)
<b>Investing activities</b>		
Advances to related parties	(6,240,185)	(14,220,565)
Purchase of property and equipment	(301,210)	(35,561)
Advances to shareholders	-	1,288,593
Purchase of investments	(2,417,767)	(1,177,634)
	(8,959,162)	(14,145,167)
<b>Financing activities</b>		
Decrease in bank indebtedness	(81,430)	(61,000)
Proceeds from issuance of capital stock	-	2
Increase in due to related parties	8,615,616	12,665,342
	8,534,186	12,604,344
Change in cash	(507,558)	(2,201,868)
Cash, beginning of year	572,888	2,774,756
<b>Cash, end of year</b>	<b>65,330</b>	<b>572,888</b>
<b>Other information</b>		
Interest paid	72,158	64,972
Income taxes paid	852,648	-

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

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### 1. Nature of organization

The Company was incorporated on June 13, 1984 and is subject to the provisions of the Ontario Business Corporations Act. Its primary business activity is an investment holding company.

### 2. Going concern

While the financial statements have been prepared on the basis of accounting principles applicable to a going concern, adverse conditions and events cast substantial doubt upon the validity of this assumption.

As May 31, 2011, the Company has an accumulated deficit of \$20,992,686.

These financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. The Company relies on continued support from a company under common control and one of the shareholders of the Company for its future viability.

If the going concern assumption were not appropriate for these financial statements, adjustments would be necessary in the carrying values of assets and liabilities, the reported net earnings and the balance sheet classifications used.

### 3. Summary of significant accounting policies

Private enterprises are not required to apply the following Sections of the Canadian Institute of Chartered Accountants ("CICA") Handbook: 1530, 3855, 3862, 3863 and 3865 which would otherwise have applied to the financial statements of the Company for the year ended May 31, 2011. The Company has elected to use this exemption and applies the requirements of Section 3860 and of Accounting Guideline 13 (AcG-13) of the CICA Handbook.

The Company, with the unanimous consent of its shareholders, has elected to prepare its financial statements in accordance with Canadian generally accepted accounting principles, using the differential reporting options described below available to non-publicly accountable enterprises. The significant accounting policies are:

#### *Differential reporting*

##### Income taxes

The Company has elected to account for income taxes using the taxes payable method.

##### Preferred share classification

The Company has elected to present preferred shares issued in tax planning arrangements under the Income Tax Act as equity. The Company would have otherwise presented these shares as liabilities.

##### Investment in subsidiaries and significant influence investments

The Company's investment in subsidiaries and significant influence investments are accounted for by the cost method, whereby the investment is carried at its original cost and the net earnings of the investments are reflected in the determination of the Company's operating results only to the extent of dividends received from the investments. If there is evidence of a permanent impairment in value that is other than temporary, the investment is written down to net realizable value in the year in which the loss becomes evident.

##### Revenue recognition

The company records revenue from monthly management fees as the services are rendered and collection is reasonable assured.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

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### 3. Significant accounting policies (continued)

#### *Property and equipment*

Property and equipment are recorded at cost. Amortization is based on their estimated useful life using the following methods and rates or term:

Furniture and fixtures	Straight-line	5 years
Computer equipment	Straight-line	3 years
Equipment	Straight-line	5 years
Leasehold improvements	Straight-line	Term of the lease

#### *Impairment of long-lived assets*

Long-lived assets are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when their carrying value exceeds the total undiscounted cash flows expected from their use and eventual disposition. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value.

#### *Marketable securities and precious metals*

Marketable securities consist of equity investments. Marketable securities are measured at fair value.

#### *Precious metals*

Precious metals consist of precious metals investments. Precious metals are measured at the lower of cost and net realizable value.

#### *Impairment of advances to related parties*

Advances to related parties are classified as impaired when, in the opinion of management, there is reasonable doubt as to the timely collection of the outstanding balance. The carrying amount of an advance to a related party classified as impaired is reduced to its estimated fair value.

#### *Foreign exchange translation*

Monetary assets and liabilities denominated in foreign currencies are translated into Canadian dollars at exchange rates in effect at the balance sheet date. All other assets and liabilities are translated at rates in effect at the time the transactions occurred. Revenue and expenses are translated using the rates in effect at the dates of the transactions. Foreign exchange gains and losses are included in operating results.

#### *Use of estimates*

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates. The financial statement items requiring the use of management estimates are advances to related parties, property and equipment, and accounts payable and accrued liabilities.

**Xela Enterprises Ltd.**

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

**3. Significant accounting policies (continued)***Future accounting changes**New accounting framework*

The CICA has issued a new accounting framework applicable to Canadian private enterprises. Effective for fiscal years beginning on January 1, 2011, private enterprises will have to choose between International Financial Reporting Standards and Accounting Standards for Private Enterprises ("ASPE"), whichever suits them best. The Company currently plans to adopt ASPE for its fiscal year beginning on June 1, 2011, however the impact of this transition has not yet been determined.

**4. Property and equipment**

			2011	2010
	Cost	Accumulated amortization	Net book value	Net book value
	\$	\$	\$	\$
Furniture and fixtures	259,105	183,610	75,495	128,603
Computer equipment	964,443	644,026	320,417	193,402
Equipment	40,264	40,264	-	6,602
Leasehold improvements	73,977	59,182	14,795	34,597
	<b>1,337,789</b>	<b>927,082</b>	<b>410,707</b>	<b>363,204</b>

**5. Due to related parties**

	2011	2010
	\$	\$
BDT Investments Inc.	19,239,638	9,456,683
Corporacion Arven, S.A.	6,421,007	7,387,105
Crystal del Pacifico, S.A.	8,451,475	8,605,198
Fresh Quest Inc. (i)	7,027,194	8,554,725
Badatop Holding Inc.	3,663,960	712,563
Lisa, S.A.	-	141,408
Maycrops, S.A.	1,040,663	1,123,748
Muskoka Finance, S.A.	870,868	938,211
Empresas Arturo Internacional, S.A.	4,948,671	6,699,803
Preparados Alimenticios Internacionales, C.A.	663,049	603,234
Tropic International Limited	1,599,286	1,087,519
Other	58,334	58,332
	<b>53,984,145</b>	<b>45,368,529</b>

These related parties represent companies under common control. The loans are non-interest bearing (except as noted below) and unsecured, with no fixed terms of repayment and are not to be repaid prior to June 1, 2012. For those identified as (i) the amounts payable to these related parties bear interest on balances outstanding at a rate of 5.3%, which is the rate prescribed by IRS plus 1%.



# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

### 6. Bank indebtedness

The Company has a credit facility with a major Canadian chartered bank. The credit facility consists of a Canadian dollar \$3,000,000 line of credit bearing interest at bank prime rate.

This facility is due on demand and is secured by a guarantee provided by a related party as well as a general security agreement over all present and future personal property with appropriate insurance coverage, loss if any, payable to the bank.

Under the terms of the credit facility, the Company must satisfy certain restrictive covenants as to minimum financial ratios. During the year, the Company was in compliance. As at May 31, 2011, there is \$2,773,866 (2010 - \$2,916,000) outstanding under the credit facility.

### 7. Capital stock

*Authorized, unlimited*

Preference shares, non-voting, 8% non-cumulative, without par value

Class A preference shares, non-participating, voting, without par value

Class B preference shares, participating, non-voting, redeemable at \$1,765 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Class C preference shares, non-voting, unspecified dividend rate, without par value, redeemable at \$10,000 per share plus all declared but unpaid dividends thereon

Class D preference shares, non-voting, redeemable at \$1,625,000 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Common shares

*Issued*

	2011	2010
	\$	\$
1,000 Class A preference shares	1,000	1,000
39,659 Class B preference shares (redemption amount \$69,998,135)	3	3
438.6118 Class C preference shares (redemption amount \$4,386,118)	2	2
2 Class D preference shares (redemption amount \$3,250,000)	2	2
140 Common shares	1,914	1,914
	<b>2,921</b>	<b>2,921</b>

The Company has no planned redemptions over the next five years for the Class B, C and D preference shares.

**Xela Enterprises Ltd.**

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

**8. Investments and advances to related parties**

	2011		2010	
	Amounts receivable	Investments	Amounts receivable	Investments
	\$	\$	\$	\$
<b>Subsidiaries - owned directly</b>				
Empresas Arturo Internacional, S.A. (100%)	-	121,607	-	121,607
Gabinvest, S.A. (100%)	9,729,814	32,500	9,765,908	32,500
Xela Global Resources Inc. (100%)	2,336,427	-	2,336,427	-
Xela International Inc. (100%)	10,529,854	-	10,221,120	-
Tropic International Limited (56.6%)	-	58,334	-	58,334
	<b>22,596,095</b>	<b>212,441</b>	<b>22,323,455</b>	<b>212,441</b>
<b>Subsidiaries - held through subsidiaries</b>				
Arpol Investments Corporation	-	-	417	-
Blue Way Holding Inc.	1,710,114	-	1,668,500	-
Latin American Procurement Ltd.	52,304	7,483	56,349	7,483
Marco Polo, S.A.	47,304	-	43,047	-
Metro Boliche, S.A.	102,895	-	103,490	-
Pahula, S.A.	748,528	-	768,149	-
Prepared Food Services Inc.	395,445	-	-	-
Gadais Limited	347,445	-	321,709	-
SCMN Global Traders Ltd.	1,075,593	-	351,060	-
Lisa, S.A.	4,799,587	-	-	-
	<b>9,279,215</b>	<b>7,483</b>	<b>3,312,721</b>	<b>7,483</b>
<b>Affiliated companies</b>				
696096 Alberta Ltd.	3,347	-	2,761	-
696093 Alberta Ltd.	3,502	-	2,845	-
696087 Alberta Ltd.	3,495	-	3,687	-
	<b>10,344</b>	<b>-</b>	<b>9,293</b>	<b>-</b>
<b>Other investments</b>				
Virdis Technologies Inc.	-	50,000	-	50,000
International Finance Bank	-	1,069,300	-	1,069,300
	<b>-</b>	<b>1,119,300</b>	<b>-</b>	<b>1,119,300</b>
	<b>31,885,654</b>	<b>1,339,224</b>	<b>25,645,469</b>	<b>1,339,224</b>

The amounts receivable from directly owned subsidiaries, subsidiaries held through subsidiaries and affiliated companies have no fixed terms of repayment, are unsecured and are non-interest bearing.

A substantial portion of amounts receivable from related parties are denominated in U.S. dollars.

In 2008, the Company sold one of its investments which resulted in a note receivable of \$347,445 (2010 - \$321,709), which is net of an unamortized discount based on an imputed interest rate of 8%, to a party related by common ownership. The long-term note receivable will be accreted up to its face amount of \$400,000 by 2013.

**Xela Enterprises Ltd.**

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

**9. Related party transactions**

	2011	2010
	\$	\$
Revenue		
Management fees	554,262	455,197
Expenses		
Interest	184,135	492,169

These transactions are in the normal course of operations and have been valued in these financial statements at the exchange amount which is the amount of consideration established and agreed to by the related parties.

Included in interest expense is \$184,135 (2010 - \$492,169) incurred by the Company by a subsidiary of a holding company in which the shareholders are related.

**10. Lease commitments**

The Company is committed to the following minimum annual lease payments for its operating premises (excluding common area charges):

	\$
2012	126,449
2013	93,820
	<u>220,269</u>

**11. Income taxes**

For income tax purposes, the company has non capital losses which can be applied to reduce future years' taxable income. These losses expire as follows:

	\$
2026	539,000
2027	1,666,000
2029	191,000
2030	391,000
2031	891,000
	<u>3,678,000</u>

The Company has accumulated capital losses of approximately \$5,697,000 (2010 - \$5,744,000) which are available to reduce taxes on future taxable capital gains.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

### 11. Income taxes (continued)

Income tax expense differs from the amount that would be computed by applying the combined federal and provincial statutory income tax rate of 23.86% (2010 – 32.66%) to earnings before income taxes. The reasons for the differences are as follows:

	\$
Computed tax recovery	(96,847)
Increase resulting from	
Tax loss not effected	(258,644)
Additional provincial tax reassessed for prior years	693,279
Other	355,491
<b>Total income taxes</b>	<b>693,279</b>

### 12. Contingencies

- (a) A subsidiary of the Company has incurred significant legal expenses in connection with claims made by the subsidiary against former partners. The Company has made payments on behalf of the subsidiary which have been recorded in amounts receivable from related parties. The amount likely to be recovered from the subsidiary has not been determined.
- (b) The Company has been re-assessed and is expecting further re-assessments for income taxes for prior years. No provision has been made in the non-consolidated financial statements for the amounts to be re-assessed as the settlement amount is not determinable at this time.

### 13. Financial instruments

Financial instruments consist of recorded amounts of cash and advances to related parties, which will result in future cash receipts, as well as bank indebtedness, accounts payable and accrued liabilities, and amounts due to related parties which will result in future cash outlays.

The Company is exposed to the following risks in respect of certain of the financial instruments held:

#### *Credit risk*

The Company is exposed to credit risk primarily as a result of advances to related parties, the collection of which depends on the financial stability of those related parties. The majority of the advances to related parties are due from companies outside of Canada.

#### *Fair value*

The company's carrying value of cash, bank indebtedness, accounts payable and accrued liabilities approximates their fair value due to the immediate or short term maturity of these instruments.

The fair value of the advances to related parties are less than carrying value as the amounts are non-interest bearing. As the amounts have no terms of repayment, the fair value cannot be calculated within the constraints of cost and timeliness.

The fair value of the amounts due to related parties are less than carrying value, as the amounts are non-interest bearing, except for those identified. As the amounts have no terms of repayment, the fair value cannot be calculated within the constraints of cost and timeliness.

#### *Interest rate risk*

The Company has exposure to interest rate risk as its credit facility is subject to a floating interest rate based on the prime rate of a major Canadian chartered bank.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2011

(Unaudited)

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### 13. Financial instruments (continued)

#### *Foreign exchange risk*

Currency risk is the risk to the corporation's earnings that arises from fluctuations of foreign exchange rates and the degree of volatility of these rates. The corporation does not use derivative instruments to reduce its exposure to foreign currency risk. At year end, the Company had bank indebtedness of \$1,814,115 (2010 - cash \$503,998), \$19,891,076 in advances to related parties (2010 - \$12,756,920), \$868,885 of marketable securities (2010 - \$Nil) and \$52,294,859 due to related parties (2010 - \$44,281,010) in U.S. dollars. The exchange rate that the company was using was .9686 (2010 - 1.0435).

### 14. Economic dependence

Xela Enterprises Ltd. derives 100% (2010 - 100%) of its revenues from related parties.

### 15. Capital management

The Company's main objectives when managing its capital are:

- a) to safeguard the Company's ability to obtain financing should the need arise; and
- b) to maintain financial flexibility in order to have access to capital in the event of future acquisitions.

The Company manages its capital structure and makes adjustments to it in accordance with the objectives stated above, and responds to changes in economic conditions and the risk characteristics of the underlying assets.

There were no changes to the Company's approach to capital management during the year ended May 31, 2011.



Non-consolidated financial statements of

**Xela Enterprises Ltd.**

May 31, 2012 and 2011

**Xela Enterprises Ltd.**

May 31, 2012 and 2011

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## Review Engagement Report

To the shareholders of  
Xela Enterprises Ltd.

We have reviewed the non-consolidated balance sheets of Xela Enterprises Ltd. as at May 31, 2012 and 2011 and June 1, 2010, and the non-consolidated statements of operations, deficit and cash flows for the years ended May 31, 2012 and 2011. Our reviews were made in accordance with Canadian generally accepted standards for review engagements and, accordingly, consisted primarily of inquiry, analytical procedures and discussion related to information supplied to us by the Company.

A review does not constitute an audit and, consequently, we do not express an audit opinion on these non-consolidated financial statements.

Based on our reviews, nothing has come to our attention that causes us to believe that these non-consolidated financial statements are not, in all material respects, in accordance with Canadian accounting standards for private enterprises.

*Deloitte LLP*

Chartered Professional Accountants  
Licensed Public Accountants  
February 6, 2013

**Xela Enterprises Ltd.**Non-consolidated statements of operations  
years ended May 31, 2012 and 2011

(Unaudited)

	2012	2011
		(Note 2)
	\$	\$
<b>Revenue</b>		
Management fees (Note 11)	467,128	554,262
Interest	44,082	45,940
Other income	-	5,220
	<b>511,210</b>	<b>605,422</b>
<b>Expenses</b>		
Foreign exchange loss (gain)	2,848,757	(2,752,744)
Consulting and professional fees	762,281	432,518
Interest (Note 11)	510,269	1,568,593
Occupancy costs	255,206	178,407
General and administrative	250,063	1,205,199
Amortization	214,308	253,707
Loss on sale of marketable securities	175,545	-
Salaries and employee benefits	150,457	155,639
Loss on disposal of property and equipment	929	-
Recovery of bad debts	-	(30,000)
	<b>5,167,815</b>	<b>1,011,319</b>
Loss from operations before the undernoted item	<b>(4,656,605)</b>	<b>(405,897)</b>
Other item		
Unrealized gain on precious metals	97,849	54,698
Unrealized (loss) on marketable securities	(232,023)	-
Loss before income taxes	<b>(4,790,779)</b>	<b>(351,199)</b>
Income taxes (Note 13)	539,668	693,279
<b>Net loss</b>	<b>(5,330,447)</b>	<b>(1,044,478)</b>

**Xela Enterprises Ltd.**

Non-consolidated statements of deficit  
years ended May 31, 2012 and 2011

(Unaudited)

	2012	2011 (Note 2)
	\$	\$
<b>Deficit, beginning of year</b>	<b>(20,937,988)</b>	<b>(19,893,510)</b>
Net loss	<b>(5,330,447)</b>	<b>(1,044,478)</b>
<b>Deficit, end of year</b>	<b>(26,268,435)</b>	<b>(20,937,988)</b>

**Xela Enterprises Ltd.**

Non-consolidated balance sheets

as at May 31, 2012 and 2011 and June 1, 2010

(Unaudited)

	May 31, 2012	May 31, 2011 (Note 2)	June 1, 2010 (Note 2)
	\$	\$	\$
<b>Assets</b>			
<b>Current assets</b>			
Cash	91,185	65,330	572,888
Marketable securities	875,886	1,219,007	-
Precious metals	1,305,695	1,258,678	-
Prepaid expenses and sundry assets	1,370,169	1,229,345	1,057,956
	<b>3,642,935</b>	<b>3,772,360</b>	<b>1,630,844</b>
Property and equipment (Note 5)	215,831	410,707	363,204
Investments (Note 10)	1,339,224	1,339,224	1,339,224
Advances to related parties (Note 10)	41,944,780	31,885,654	25,645,469
	<b>47,142,770</b>	<b>37,407,945</b>	<b>28,978,741</b>
<b>Liabilities</b>			
<b>Current liabilities</b>			
Bank indebtedness (Note 7)	2,975,832	2,834,570	2,916,000
Accounts payable and accrued liabilities (Note 8)	341,565	383,779	584,801
Income taxes payable	641,347	1,140,518	-
	<b>3,958,744</b>	<b>4,358,867</b>	<b>3,500,801</b>
Due to related parties (Note 6)	69,449,540	53,984,145	45,368,529
	<b>73,408,284</b>	<b>58,343,012</b>	<b>48,869,330</b>
<b>Shareholders' deficiency</b>			
Capital stock (Note 9)	2,921	2,921	2,921
Deficit	(26,268,435)	(20,937,988)	(19,893,510)
	<b>(26,265,514)</b>	<b>(20,935,067)</b>	<b>(19,890,589)</b>
	<b>47,142,770</b>	<b>37,407,945</b>	<b>28,978,741</b>

Approved on behalf of the Board

\_\_\_\_\_  
Director\_\_\_\_\_  
Director

# Xela Enterprises Ltd.

## Non-consolidated statements of cash flows years ended May 31, 2012 and 2011

(Unaudited)

	2012	2011
	\$	(Note 2) \$
<b>Operating activities</b>		
Net loss	(5,330,447)	(1,044,478)
Items not affecting cash		
Amortization	214,308	253,707
Realized loss on disposal of property and equipment	929	-
Realized loss on sale of marketable securities	175,545	-
Unrealized gain on precious metals	(97,849)	(54,698)
Unrealized loss on marketable securities	232,023	-
	<b>(4,805,491)</b>	<b>(845,469)</b>
Change in non-cash operating items		
Prepaid expenses and sundry assets	(140,824)	(171,389)
Accounts payable and accrued liabilities	(42,214)	(201,022)
Income taxes payable	(499,171)	1,140,518
	<b>(5,487,700)</b>	<b>(77,362)</b>
<b>Investing activities</b>		
Advances to related parties	(10,008,294)	(6,240,185)
Purchase of property and equipment	(20,361)	(301,210)
Purchase of precious metals	-	(1,203,980)
Purchase of marketable securities	(656,027)	(1,219,007)
Proceeds from sale of marketable securities	591,580	-
	<b>(10,093,102)</b>	<b>(8,964,382)</b>
<b>Financing activities</b>		
Increase (decrease) in bank indebtedness	141,262	(81,430)
Increase in due to related parties	15,465,395	8,615,616
	<b>15,606,657</b>	<b>8,534,186</b>
Change in cash	25,855	(507,558)
Cash, beginning of year	65,330	572,888
<b>Cash, end of year</b>	<b>91,185</b>	<b>65,330</b>
<b>Supplemental cashflow information</b>		
Non-cash conversion of precious metals to advances to related parties	50,832	-

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 1. Nature of organization

The Company was incorporated on June 13, 1984 and is subject to the provisions of the Ontario Business Corporations Act. Its primary business activity is an investment holding company.

### 2. Adoption of a new accounting framework

During the year ended May 31, 2012, the Company adopted the new accounting standards for private enterprises (the "new standards") issued by the Accounting Standards Board of the Canadian Institute of Chartered Accountants ("CICA") and set out in Part II of the CICA Handbook. In accordance with Section 1500 of Part II of the CICA Handbook, First-time adoption, ("Section 1500"), the date of transition to the new standards is June 1, 2010 and the Company has prepared and presented an opening balance sheet at the date of transition to the new standards. This opening balance sheet is the starting point for the entity's accounting under the new standards. In its opening balance sheet, under the recommendations of Section 1500, the Company:

- (a) recognized all assets and liabilities whose recognition is required by the new standards;
- (b) did not recognize items as assets or liabilities if the new standards do not permit such recognition;
- (c) reclassified items that it recognized previously as one type of asset, liability or component of equity, but are recognized as a different type of asset, liability or component of equity under the new standards; and
- (d) applied the new standards in measuring all recognized assets and liabilities.

In accordance with the requirements of Section 1500, the accounting policies set out in Note 4 have been consistently applied to all years presented and adjustments resulting from the adoption of the new standards have been applied retrospectively excluding cases where optional exemptions available under Section 1500 have been applied. The Company has not applied any of the exemptions available in Section 1500.

There was no impact on retained earnings as a result of the adoption of the new standards as at June 1, 2010.

The impact of the adoption of the new standards on the non-consolidated statement of operations for the year ended May 31, 2011 is summarized as follows:

	Balance as previously reported May 31, 2011	Adjustment	Reference	Balance as adjusted as at May 31, 2011
	\$	\$		\$
Other item				
Unrealized gain on precious metal	-	54,698	(a)	54,698
<b>Net loss</b>	<b>(1,099,176)</b>	<b>54,698</b>		<b>(1,044,478)</b>

#### Explanations of adjustments

##### (a) Investment in precious metals

Under the new standards, the investment in precious metals are accounted for at fair value with changes in fair value and transaction costs being recognized in net earnings. The adjustment of \$54,698 to unrealized gain on precious metals expense for the year ended May 31, 2011 represents the fair value adjustment at year end.

In addition, the operating activities' section of the cash flow statement for the year ended May 31, 2011 has been adjusted to reflect, as appropriate, the above change to the non-consolidated statement of operations and deficit for the year ended May 31, 2011.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

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### 3. Going concern

While the non-consolidated financial statements have been prepared on the basis of accounting principles applicable to a going concern, adverse conditions and events cast substantial doubt upon the validity of this assumption.

As at May 31, 2012, the Company has an accumulated deficit of \$26,268,435 (2011 - \$20,937,988).

These financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. The Company relies on continued support from a company under common control and one of the shareholders of the Company for its future viability.

If the going concern assumption were not appropriate for these financial statements, adjustments would be necessary in the carrying values of assets and liabilities, the reported net earnings and the balance sheet classifications used.

### 4. Summary of significant accounting policies

The non-consolidated financial statements have been prepared in accordance with Canadian accounting standards for private enterprises ("ASPE") and reflect the following significant accounting policies:

#### *Revenue recognition*

The company records revenue from monthly management fees as the services are rendered, persuasive evidence of an arrangement exists and collection is reasonable assured.

#### *Property and equipment*

Property and equipment are recorded at cost. Amortization is based on their estimated useful life using the following methods and rates or term:

Furniture and fixtures	Straight-line	5 years
Computer equipment	Straight-line	3 years
Equipment	Straight-line	5 years
Leasehold improvements	Straight-line	Term of the lease

#### *Impairment of long-lived assets*

Long-lived assets, which include property and equipment are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when their carrying value exceeds the total undiscounted cash flows expected from their use and eventual disposition. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value.

The Company has determined that there was no impairment of long-lived assets as at May 31, 2012, May 31, 2011 and June 1, 2010.

#### *Marketable securities*

Marketable securities consist of equity investments. Marketable securities are measured at fair value.

#### *Precious metals*

Precious metals consist of precious metals investments. Precious metals are measured at fair value. Fair value is based on the latest closing price.

#### *Impairment of advances to related parties*

Advances to related parties are classified as impaired when, in the opinion of management, there is reasonable doubt as to the timely collection of the outstanding balance. The carrying amount of an advance to a related party classified as impaired is reduced to its estimated fair value.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

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#### 4. Summary of significant accounting policies (continued)

##### *Foreign exchange translation*

Monetary assets and liabilities denominated in foreign currencies are translated into Canadian dollars at exchange rates in effect at the balance sheet date. All other assets and liabilities are translated at rates in effect at the time the transactions occurred. Revenue and expenses are translated using the rates in effect at the dates of the transactions. Foreign exchange gains and losses are included in operating results.

##### *Income taxes*

The Company follows the taxes payable method of accounting for income taxes. Under this method, only current income taxes payable or recoverable for the period, determined in accordance with the rules established by taxation authorities, are recognized as an expense or recovery.

##### *Investment in subsidiaries and significant influence investments*

The Company's investment in subsidiaries and significant influence investments are accounted for by the cost method, whereby the investment is carried at its original cost and the net earnings of the investments are reflected in the determination of the Company's operating results only to the extent of dividends received from the investments. If there is evidence of a permanent impairment in value that is other than temporary, the investment is written down to net realizable value in the year in which the loss becomes evident.

##### *Financial instruments*

Financial assets and financial liabilities are initially recognized at fair value when the Company becomes a party to the contractual provisions of the financial instrument. Subsequently, all financial instruments are measured at amortized cost except for the following instruments:

- (a) Investments in unlisted shares are measured at cost less any reduction for impairment; and
- (b) Investments in listed shares and derivative financial instruments that are not designated in a qualifying hedging relationship are measured at fair value at the balance sheet date. The fair value of listed shares is based on the latest closing price and the fair value quote received from the bank counterparty is used as a proxy for the fair value of derivative financial instruments.

Interest earned on short term investments and bonds, dividends received on unlisted shares, unrealized gains and losses on listed shares, and realized gains and losses on sale of short term investments and bonds are included in other income in the non-consolidated statement of loss.

Transaction costs related to financial instruments measured at fair value subsequent to initial recognition are expensed as incurred. Transaction costs related to other financial instruments are added to the carrying value of the asset or netted against the carrying value of the liability and are then recognized over the expected life of the instrument using the effective interest method. Any premium or discount related to an instrument measured at amortized cost is amortized over the expected life of the item using the effective interest method and recognized in net earnings as interest income or expense.

With respect to financial assets measured at cost or amortized cost, the Company recognizes in net earnings an impairment loss, if any, when there are indicators of impairment and it determines that a significant adverse change has occurred during the period in the expected timing or amount of future cash flows. When the extent of impairment of a previously written-down asset decreases and the decrease can be related to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed to net earnings in the period the reversal occurs.

##### *Retractable preferred shares*

Under the new standards, the retractable Class B preferred shares which were issued in a tax planning arrangement are presented at their paid in value and have been disclosed in note 9 of the non-consolidated financial statements.



# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

#### 4. Summary of significant accounting policies (continued)

##### *Use of estimates*

The preparation of financial statements in conformity with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates. The financial statement items requiring the use of management estimates are accounts payable and accrued liabilities, the valuation of advances to related parties and the useful lives of property and equipment.

#### 5. Property and equipment

	May 31, 2012		
	Cost	Accumulated amortization	Net book value
	\$	\$	\$
Furniture and fixtures	259,105	235,002	24,103
Computer equipment	982,325	796,762	185,563
Equipment	40,264	40,264	-
Leasehold improvements	73,977	67,812	6,165
	<b>1,355,671</b>	<b>1,139,840</b>	<b>215,831</b>
	May 31, 2011 (Note 2)		
	Cost	Accumulated amortization	Net book value
	\$	\$	\$
Furniture and fixtures	259,105	183,610	75,495
Computer equipment	964,443	644,026	320,417
Equipment	40,264	40,264	-
Leasehold improvements	73,977	59,182	14,795
	<b>1,337,789</b>	<b>927,082</b>	<b>410,707</b>
	June 1, 2010 (Note 2)		
	Cost	Accumulated amortization	Net book value
	\$	\$	\$
Furniture and fixtures	261,941	133,338	128,603
Computer equipment	665,964	472,562	193,402
Equipment	40,264	33,662	6,602
Leasehold improvements	73,977	39,380	34,597
	<b>1,042,146</b>	<b>678,942</b>	<b>363,204</b>

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 6. Due to related parties

	May 31, 2012	May 31, 2011 (Note 2)	June 1, 2010 (Note 2)
	\$	\$	\$
BDT Investments Inc.	28,166,288	19,239,638	9,456,683
Corporacion Arven, S.A.	6,594,303	6,421,007	7,387,105
Crystal del Pacifico, S.A.	9,010,936	8,451,475	8,605,198
Fresh Quest Inc. (i)	5,079,604	7,027,194	8,554,725
Badatop Holding Inc.	14,434,003	3,663,960	712,563
Lisa, S.A.	-	-	141,408
Maycrops, S.A.	570,792	1,040,663	1,123,748
Muskoka Finance, S.A.	928,680	870,868	938,211
Empresas Arturo Internacional, S.A.	3,007,315	4,948,671	6,699,803
Preparados Alimenticios Internacionales, C.A.	-	663,049	603,234
Tropic International Limited	1,599,285	1,599,286	1,087,519
Other	58,334	58,334	58,332
	<b>69,449,540</b>	<b>53,984,145</b>	<b>45,368,529</b>

These related parties represent companies under common control. The loans are non-interest bearing (except as noted below) and unsecured, with no fixed terms of repayment and are not to be repaid prior to June 1, 2013. For those identified as (i) the amounts payable to these related parties bear interest on balances outstanding at a rate of 5.3%, which is the rate prescribed by IRS plus 1%.

### 7. Bank indebtedness

The Company has a credit facility with a major Canadian chartered bank. The credit facility consists of a Canadian dollar \$3,000,000 line of credit bearing interest at bank prime rate.

This facility is due on demand and is secured by a guarantee provided by a related party as well as a general security agreement over all present and future personal property with appropriate insurance coverage, loss if any, payable to the bank.

Under the terms of the credit facility, the Company must satisfy certain restrictive covenants as to minimum financial ratios. As at May 31, 2012 the Company was in compliance. As at May 31, 2012, there is \$2,882,845 (May 31, 2011 - \$2,773,866; June 1, 2010 - \$2,916,000) outstanding under the credit facility.

### 8. Accounts payable and accrued liabilities

Included in accounts payable and accrued liabilities are government remittances payable of \$Nil (May 31, 2011 - \$Nil; June 1, 2010 - \$Nil).

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 9. Capital stock

*Authorized*, unlimited number

Preference shares, non-voting, 8% non-cumulative, without par value

Class A preference shares, non-participating, voting, without par value

Class B preference shares, participating, non-voting, redeemable at \$1,765 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Class C preference shares, non-voting, unspecified dividend rate, without par value, redeemable at \$10,000 per share plus all declared but unpaid dividends thereon

Class D preference shares, non-voting, redeemable at \$1,625,000 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Common shares

*Issued*

	May 31, 2012	May 31, 2011 (Note 2)	June 1, 2010 (Note 2)
	\$	\$	\$
1,000 Class A preference shares	1,000	1,000	1,000
39,659 Class B preference shares (redemption amount \$69,998,135)	3	3	3
438,6118 Class C preference shares (redemption amount \$4,386,118)	2	2	2
2 Class D preference shares (redemption amount \$3,250,000)	2	2	2
140 common shares	1,914	1,914	1,914
	<b>2,921</b>	<b>2,921</b>	<b>2,921</b>

The Company has no planned redemptions over the next five years for the Class B, C and D preference shares.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 10. Investments and advances to related parties

	May 31, 2012		May 31, 2011 (Note 2)		June 1, 2010 (Note 2)	
	Amounts receivable	Investments	Amounts receivable	Investments	Amounts receivable	Investments
	\$	\$	\$	\$	\$	\$
<b>Subsidiaries - owned directly</b>						
Empresas Arturo Internacional, S.A. (100%)	-	121,607	-	121,607	-	121,607
Gabinvest, S.A. (100%)	9,767,211	32,500	9,729,814	32,500	9,765,908	32,500
Xela Global Resources Inc. (100%)	2,225,796	-	2,336,427	-	2,336,427	-
Xela International Inc. (100%)	9,941,788	-	10,529,854	-	10,221,120	-
Tropic International Limited (56.6%)	-	58,334	-	58,334	-	58,334
	<b>21,934,795</b>	<b>212,441</b>	<b>22,596,095</b>	<b>212,441</b>	<b>22,323,455</b>	<b>212,441</b>
<b>Subsidiaries - held through subsidiaries</b>						
Arpol Investments Corporation	-	-	-	-	417	-
Blue Way Holding Inc.	2,016,952	-	1,710,114	-	1,668,500	-
Latin American Procurement	63,259	7,483	52,304	7,483	56,349	7,483
Marco Polo, S.A.	47,310	-	47,304	-	43,047	-
Metro Boliche, S.A.	6,629	-	102,895	-	103,490	-
Pahula, S.A.	772,396	-	748,528	-	768,149	-
Prepared Food Services Inc. Preparados Alimenticios Internacionales, C.A.	980,644	-	395,445	-	-	-
Gadais Limited	11,652	-	-	-	-	-
Fenfield Development Corp.	375,241	-	347,445	-	321,709	-
SCMN Global Traders Ltd.	10,345	-	-	-	-	-
Lisa, S.A.	1,470,364	-	1,075,593	-	351,060	-
	14,244,132	-	4,799,587	-	-	-
	<b>19,998,924</b>	<b>7,483</b>	<b>9,279,215</b>	<b>7,483</b>	<b>3,312,721</b>	<b>7,483</b>
<b>Affiliated companies</b>						
696096 Alberta Ltd.	3,347	-	3,347	-	2,761	-
696093 Alberta Ltd.	3,892	-	3,502	-	2,845	-
696087 Alberta Ltd.	3,822	-	3,495	-	3,687	-
	<b>11,061</b>	<b>-</b>	<b>10,344</b>	<b>-</b>	<b>9,293</b>	<b>-</b>
<b>Other investments</b>						
Virdis Technologies Inc.	-	50,000	-	50,000	-	50,000
International Finance Bank	-	1,069,300	-	1,069,300	-	1,069,300
	-	<b>1,119,300</b>	-	<b>1,119,300</b>	-	<b>1,119,300</b>
	<b>41,944,780</b>	<b>1,339,224</b>	<b>31,885,654</b>	<b>1,339,224</b>	<b>25,645,469</b>	<b>1,339,224</b>

The amounts receivable from directly owned subsidiaries, subsidiaries held through subsidiaries and affiliated companies have no fixed terms of repayment, are unsecured and are non-interest bearing.

In 2008, the Company sold one of its investments which resulted in a note receivable of \$375,241 (May 31, 2011 - \$347,445; June 1, 2010 - \$321,709), which is net of an unamortized discount based on an imputed interest rate of 8%, to a party related by common ownership. The long-term note receivable will be accreted up to its face amount of \$400,000 by 2013.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 11. Related party transactions

	2012	2011 (Note 2)
	\$	\$
Revenue		
Management fees	467,128	554,262
Expenses		
Interest	131,048	184,135

These transactions are in the normal course of operations and have been valued in these financial statements at the exchange amount which is the amount of consideration established and agreed to by the related parties.

Included in interest expense is \$131,048 (2011 - \$184,135) incurred by the Company by a subsidiary of a holding company in which the shareholders are related.

### 12. Lease commitments

The Company is committed to the following minimum annual lease payments for its operating premises (excluding common area charges):

	\$
2013	93,820

### 13. Income taxes

For income tax purposes, the company has non capital losses which can be applied to reduce future years' taxable income. These losses expire as follows:

	\$
2026	539,000
2027	1,666,000
2029	191,000
2030	391,000
2031	867,000
2032	662,000
	<u>4,316,000</u>

The Company has accumulated capital losses of approximately \$5,974,000 (2011 - \$5,697,000) which are available to reduce taxes on future taxable capital gains.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

### 13. Income taxes (continued)

Income tax expense differs from the amount that would be computed by applying the combined federal and provincial statutory income tax rate of 26.5% (2011 - 23.86%) to earnings before income taxes. The reasons for the differences are as follows:

	2012	2011 (Note 2)
		\$
Computed tax recovery	(1,269,556)	(83,796)
Increase resulting from		
Tax losses	175,667	(258,644)
Additional provincial tax reassessed for prior years	539,668	693,279
Temporary differences	856,264	(13,051)
Permanent differences	196,834	-
Other	40,791	355,491
<b>Total income taxes</b>	<b>539,668</b>	<b>693,279</b>

### 14. Contingencies

- (a) A subsidiary of the Company has incurred significant legal expenses in connection with claims made by the subsidiary against former partners. The Company has made payments on behalf of the subsidiary which have been recorded in amounts receivable from related parties. The amount likely to be recovered from the subsidiary has not been determined.
- (b) The Company has been re-assessed and is expecting further re-assessments for income taxes for prior years. No provision has been made in the non-consolidated financial statements for the amounts to be re-assessed as the settlement amount is not determinable at this time.

### 15. Subsequent event

Subsequent to year end, the Company guaranteed the outstanding receivable from Excotur in the amount of \$5,203,752 U.S. payable to Fresh Quest Inc., a related party. Approximately \$3,850,000 has been repaid subsequent to year end.

### 16. Financial instruments

#### *Financial assets and liabilities*

Financial assets include cash, marketable securities, precious metals and advances to related parties. Financial liabilities include bank indebtedness, accounts payable and accrued liabilities and due to related parties. These financial instruments are measured at amortized cost with the exception of marketable securities and precious metals which are measured at fair value.

#### *Credit risk*

The Company is exposed to credit risk primarily as a result of advances to related parties, the collection of which depends on the financial stability of those related parties. The majority of the advances to related parties are due from companies outside of Canada.

#### *Interest rate risk*

The Company has exposure to interest rate risk as its credit facility is subject to a floating interest rate based on the prime rate of a major Canadian chartered bank.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2012 and 2011

(Unaudited)

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### 16. Financial instruments (continued)

#### *Foreign exchange risk*

Currency risk is the risk to the corporation's earnings that arises from fluctuations of foreign exchange rates and the degree of volatility of these rates. The corporation does not use derivative instruments to reduce its exposure to foreign currency risk. At year end, the Company had bank indebtedness of \$1,889,390 (May 31, 2011 - bank indebtedness \$1,814,115; June 1, 2010 - cash \$503,998), \$28,404,296 in advances to related parties (May 31, 2011 - \$19,891,076; June 1, 2010 - \$12,756,920), \$670,068 of marketable securities (May 31, 2011 - \$868,885; June 1, 2010 - \$Nil) and \$67,791,921 due to related parties (May 31, 2011 - \$52,294,859; June 1, 2010 - \$44,281,010) in U.S. dollars. The exchange rate that the company was using was 1.0329 (May 31, 2011 - 0.9686; June 1, 2010 - 1.0435).

### 17. Economic dependence

Xela Enterprises Ltd. derives 100% (2011 - 100%) of its revenues from related parties.

Non-consolidated financial statements of

**Xela Enterprises Ltd.**

May 31, 2013

**Confidential**



**Xela Enterprises Ltd.**

May 31, 2013

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Confidential

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## Review Engagement Report

To the shareholders of  
Xela Enterprises Ltd.

We have reviewed the non-consolidated balance sheet of Xela Enterprises Ltd. as at May 31, 2013, and the non-consolidated statements of operations, deficit and cash flows for the year then ended. Our review was made in accordance with Canadian generally accepted standards for review engagements and, accordingly, consisted primarily of inquiry, analytical procedures and discussion related to information supplied to us by the Company.

A review does not constitute an audit and, consequently, we do not express an audit opinion on these non-consolidated financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these non-consolidated financial statements are not, in all material respects, in accordance with Canadian accounting standards for private enterprises.

*Deloitte LLP*

Chartered Professional Accountants, Chartered Accountants  
Licensed Public Accountants  
November 11, 2013

**Xela Enterprises Ltd.**Non-consolidated statement of operations  
year ended May 31, 2013

(Unaudited)

	2013	2012
	\$	\$
<b>Revenue</b>		
Management fees (Note 10)	396,197	467,128
Interest	42,367	44,082
	<b>438,564</b>	<b>511,210</b>
<b>Expenses</b>		
Consulting and professional fees	870,033	762,281
General and administrative	562,579	250,063
Bad debt on advances to related parties	400,000	-
Interest (Note 10)	284,114	510,269
Foreign exchange loss	273,136	2,848,757
Occupancy costs	250,903	255,206
Loss on sale of marketable securities	152,156	175,545
Salaries and employee benefits	150,290	150,457
Amortization	141,528	214,308
Loss on disposal of property and equipment	6,165	929
	<b>3,090,904</b>	<b>5,167,815</b>
Loss from operations before the undernoted item	<b>(2,652,340)</b>	<b>(4,656,605)</b>
Other items		
Unrealized (loss) gain on precious metals	(140,172)	97,849
Unrealized loss on marketable securities	(182,758)	(232,023)
Write down of prepaid expenses and sundry assets	(200,000)	-
Loss before income taxes	<b>(3,175,270)</b>	<b>(4,790,779)</b>
Income taxes (Note 12)	(9,242)	539,668
<b>Net loss</b>	<b>(3,166,028)</b>	<b>(5,330,447)</b>

The accompanying notes to the non-consolidated financial statements are an integral part of this financial statement.

**Xela Enterprises Ltd.**

Non-consolidated statement of deficit  
year ended May 31, 2013

(Unaudited)

	2013	2012
	\$	\$
Deficit, beginning of year	(26,268,435)	(20,937,988)
Net loss	(3,166,028)	(5,330,447)
<b>Deficit, end of year</b>	<b>(29,434,463)</b>	<b>(26,268,435)</b>

Confidential

The accompanying notes to the non-consolidated financial statements are  
an integral part of this financial statement.

**Xela Enterprises Ltd.**  
 Non-consolidated balance sheet  
 as at May 31, 2013  
 (Unaudited)

	2013	2012
	\$	\$
<b>Assets</b>		
<b>Current assets</b>		
Cash	30,232	91,185
Marketable securities	449,518	875,886
Income taxes receivable	100,000	-
Precious metals	1,165,523	1,305,695
Prepaid expenses and sundry assets	974,696	1,370,169
	<u>2,719,969</u>	<u>3,642,935</u>
Property and equipment (Note 4)	162,119	215,831
Investments (Note 9)	1,473,644	1,339,224
Advances to related parties (Note 9)	46,179,878	41,944,780
	<u>50,535,810</u>	<u>47,142,770</u>
<b>Liabilities</b>		
<b>Current liabilities</b>		
Bank indebtedness (Note 6)	2,760,409	2,975,832
Accounts payable and accrued liabilities (Note 7)	496,942	341,565
Income taxes payable	-	641,347
	<u>3,257,351</u>	<u>3,958,744</u>
Due to related parties (Note 5)	76,710,001	69,449,540
	<u>79,967,352</u>	<u>73,408,284</u>
<b>Contingencies (Notes 2)</b>		
<b>Shareholders' deficiency</b>		
Capital stock (Note 8)	2,921	2,921
Deficit	(29,434,463)	(26,268,435)
	<u>(29,431,542)</u>	<u>(26,265,514)</u>
	<u>50,535,810</u>	<u>47,142,770</u>
Approved on behalf of the Board		
_____	Director	
_____	Director	

The accompanying notes to the non-consolidated financial statements are an integral part of this financial statement.

**Xela Enterprises Ltd.**Non-consolidated statement of cash flows  
year ended May 31, 2013

(Unaudited)

	2013	2012
	\$	\$
<b>Operating activities</b>		
Net loss	(3,166,028)	(5,330,447)
Items not affecting cash		
Amortization	141,528	214,308
Realized loss on disposal of property and equipment	6,165	929
Realized loss on sale of marketable securities	152,156	175,545
Unrealized (loss) gain on precious metals	140,172	(97,849)
Unrealized loss on marketable securities	182,758	232,023
Write down of prepaid expenses and sundry assets	200,000	-
	(2,543,249)	(4,805,491)
Change in non-cash operating items		
Prepaid expenses and sundry assets	395,473	(140,824)
Accounts payable and accrued liabilities	155,377	(42,214)
Income taxes receivable/payable	(741,347)	(499,171)
	(2,733,746)	(5,487,700)
<b>Investing activities</b>		
Advances to related parties	(4,235,098)	(10,008,294)
Purchase of property and equipment	(93,981)	(20,361)
Purchase of investments	(134,620)	-
Purchase of marketable securities	(1,087,326)	(656,027)
Proceeds from sale of marketable securities	1,178,780	591,580
	(4,372,245)	(10,093,102)
<b>Financing activities</b>		
(Decrease) increase in bank indebtedness	(215,423)	141,262
Increase in due to related parties	7,260,461	15,465,395
	7,045,038	15,606,657
Change in cash	(60,953)	25,855
Cash, beginning of year	91,185	65,330
<b>Cash, end of year</b>	<b>30,232</b>	<b>91,185</b>
<b>Supplemental cash flow information</b>		
Non-cash conversion of precious metals to advances to related parties	-	50,832

The accompanying notes to the non-consolidated financial statements are an integral part of this financial statement.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

### 1. Nature of organization

The Company was incorporated on June 13, 1984 and is subject to the provisions of the Ontario Business Corporations Act. Its primary business activity is an investment holding company.

### 2. Going concern

While the non-consolidated financial statements have been prepared on the basis of accounting principles applicable to a going concern, adverse conditions and events cast substantial doubt upon the validity of this assumption.

As at May 31, 2013, the Company has an accumulated deficit of \$29,434,463 (2012: \$26,268,435).

These financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. The Company relies on continued support from a company under common control and one of the shareholders of the Company for its future viability.

If the going concern assumption were not appropriate for these financial statements, adjustments would be necessary in the carrying values of assets and liabilities, the reported net loss and the balance sheet classifications used.

### 3. Summary of significant accounting policies

The non-consolidated financial statements have been prepared in accordance with Canadian accounting standards for private enterprises ("ASPE") and reflect the following significant accounting policies:

#### *Revenue recognition*

The company records revenue from monthly management fees as the services are rendered, persuasive evidence of an arrangement exists and collection is reasonable assured.

#### *Property and equipment*

Property and equipment are recorded at cost. Amortization is based on their estimated useful life using the following methods and rates or term:

Furniture and fixtures	Straight-line	5 years
Computer equipment	Straight-line	3 years
Equipment	Straight-line	5 years
Leasehold improvements	Straight-line	Term of the lease

#### *Impairment of long-lived assets*

Long-lived assets, which include property and equipment are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when their carrying value exceeds the total undiscounted cash flows expected from their use and eventual disposition. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value.

The Company has determined that there was no impairment of long-lived assets as at May 31, 2013.

#### *Marketable securities*

Marketable securities consist of equity investments. Marketable securities are measured at fair value.

#### *Precious metals*

Precious metals consist of precious metals investments. Precious metals are measured at fair value. Fair value is based on the latest closing price.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

### 3. Summary of significant accounting policies (continued)

#### *Impairment of advances to related parties*

Advances to related parties are classified as impaired when, in the opinion of management, there is reasonable doubt as to the timely collection of the outstanding balance. The carrying amount of an advance to a related party classified as impaired is reduced to its estimated fair value.

#### *Foreign exchange translation*

Monetary assets and liabilities denominated in foreign currencies are translated into Canadian dollars at exchange rates in effect at the balance sheet date. All other assets and liabilities are translated at rates in effect at the time the transactions occurred. Revenue and expenses are translated using the rates in effect at the dates of the transactions. Foreign exchange gains and losses are included in operating results.

#### *Income taxes*

The Company follows the taxes payable method of accounting for income taxes. Under this method, only current income taxes payable or recoverable for the period determined in accordance with the rules established by taxation authorities, are recognized as an expense or recovery.

#### *Investment in subsidiaries and significant influence investments*

The Company's investment in subsidiaries and significant influence investments are accounted for by the cost method, whereby the investment is carried at its original cost and the net earnings of the investments are reflected in the determination of the Company's operating results only to the extent of dividends received from the investments. If there is evidence of a permanent impairment in value that is other than temporary, the investment is written down to net realizable value in the year in which the loss becomes evident.

#### *Financial instruments*

Financial assets and financial liabilities are initially recognized at fair value when the Company becomes a party to the contractual provisions of the financial instrument. Subsequently, all financial instruments are measured at amortized cost except for the following instruments:

- (a) Investments in unlisted shares are measured at cost less any reduction for impairment; and
- (b) Investments in listed shares and derivative financial instruments that are not designated in a qualifying hedging relationship are measured at fair value at the balance sheet date. The fair value of listed shares is based on the latest closing price and the fair value quote received from the bank counterparty is used as a proxy for the fair value of derivative financial instruments.

Interest earned on short term investments and bonds, dividends received on unlisted shares, unrealized gains and losses on listed shares, and realized gains and losses on sale of short term investments and bonds are included in other income in the non-consolidated statement of loss.

Transaction costs related to financial instruments measured at fair value subsequent to initial recognition are expensed as incurred. Transaction costs related to other financial instruments are added to the carrying value of the asset or netted against the carrying value of the liability and are then recognized over the expected life of the instrument using the effective interest method. Any premium or discount related to an instrument measured at amortized cost is amortized over the expected life of the item using the effective interest method and recognized in net earnings as interest income or expense.

With respect to financial assets measured at cost or amortized cost, the Company recognizes in net earnings an impairment loss, if any, when there are indicators or impairment and it determines that a significant adverse change has occurred during the period in the expected timing or amount of future cash flows. When the extent of impairment of a previously written-down asset decreases and the decrease can be related to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed to net earnings in the period the reversal occurs.



# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

### 3. Summary of significant accounting policies (continued)

#### *Retractable preferred shares*

The retractable Class B and Class D preferred shares which were issued in a tax planning arrangement are presented at their paid in value and have been disclosed in note 8 of the non-consolidated financial statements.

#### *Use of estimates*

The preparation of financial statements in conformity with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates. The financial statement items requiring the use of management estimates are accounts payable and accrued liabilities, the valuation of advances to related parties and the useful lives of property and equipment.

### 4. Property and equipment

			2013	2012
	Cost	Accumulated amortization	Net book value	Net book value
	\$	\$	\$	\$
Furniture and fixtures	259,899	257,472	2,427	24,103
Computer equipment	1,074,078	915,552	158,526	185,563
Equipment	41,714	40,548	1,166	-
Leasehold improvements	67,812	67,812	-	6,165
	<b>1,443,503</b>	<b>1,281,384</b>	<b>162,119</b>	<b>215,831</b>

### 5. Due to related parties

	2013	2012
	\$	\$
Badatop Holding Inc.	16,432,503	14,434,003
BDT Investments Inc.	35,752,924	28,166,288
Corporacion Arven, S.A.	6,275,232	6,594,303
Crystal del Pacifico, S.A.	9,078,153	9,010,936
EAI	1,002,090	-
Fresh Quest Inc. (i)	5,516,952	5,079,604
Maycrops, S.A.	572,548	570,792
Muskoka Finance, S.A.	932,187	928,680
Empresas Arturo Internacional, S.A.	-	3,007,315
Tropic International Limited	996,326	1,599,285
Other	151,086	58,334
	<b>76,710,001</b>	<b>69,449,540</b>

These related parties represent companies under common control. The loans are non-interest bearing (except as noted below) and unsecured, with no fixed terms of repayment and are not to be repaid prior to June 1, 2014. For those identified as (i) the amounts payable to these related parties bear interest on balances outstanding at a rate of 5.3%, which is the rate prescribed by IRS plus 1%.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

### 6. Bank indebtedness

The Company has a credit facility with a major Canadian chartered bank. The credit facility consists of a Canadian dollar \$3,000,000 line of credit bearing interest at bank prime rate.

This facility is due on demand and is secured by a guarantee provided by a related party as well as a general security agreement over all present and future personal property with appropriate insurance coverage, loss if any, payable to the bank.

Under the terms of the credit facility, the Company must satisfy certain restrictive covenants as to minimum financial ratios. As at May 31, 2013, the Company was in compliance. As at May 31, 2013, there is \$2,981,650 (2012 - \$2,882,845) outstanding under the credit facility.

### 7. Accounts payable and accrued liabilities

Included in accounts payable and accrued liabilities are government remittances payable of \$Nil (2012 - \$Nil).

### 8. Capital stock

*Authorized*, unlimited number

Preference shares, non-voting, 8% non-cumulative, without par value

Class A preference shares, non-participating-voting, without par value

Class B preference shares, participating, non-voting, redeemable at \$1,765 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Class C preference shares, non-voting, unspecified dividend rate, without par value, redeemable at \$10,000 per share at the option of the Company plus all declared but unpaid dividends thereon

Class D preference shares, non-voting, redeemable at \$1,625,000 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Common shares

*Issued*

	2013	2012
	\$	\$
1,000 Class A preference shares	1,000	1,000
39,659 Class B preference shares (redemption amount \$69,998,135)	3	3
438,618 Class C preference shares (redemption amount \$4,386,118)	2	2
2 Class D preference shares (redemption amount \$3,250,000)	2	2
140 common shares	1,914	1,914
	<b>2,921</b>	<b>2,921</b>

The Company has no planned redemptions over the next five years for the Class B, C and D preference shares.

# Xela Enterprises Ltd.

Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

## 9. Investments and advances to related parties

	2013		2012	
	Amounts receivable	Investments	Amounts receivable	Investments
	\$	\$	\$	\$
<b>Subsidiaries - owned directly</b>				
Empresas Arturo Internacional, S.A. (100%)	-	121,607	-	121,607
Gabinvest, S.A. (100%)	9,764,120	32,500	9,767,211	32,500
Xela Global Resources Inc. (100%)	2,231,693	-	2,225,796	-
Xela International Inc. (100%)	11,107,186	-	9,947,788	-
Tropic International Limited (56.6%)	-	58,334	-	58,334
	<b>23,102,999</b>	<b>212,441</b>	<b>21,934,795</b>	<b>212,441</b>
<b>Subsidiaries - held through subsidiaries</b>				
Blue Way Holding Inc.	2,215,375	-	2,016,952	-
Latin American Procurement Ltd.	97,426	7,483	63,259	7,483
Marco Polo, S.A.	49,804	-	47,310	-
Metro Boliche, S.A.	2,131	-	6,629	-
Pahula, S.A.	749,652	-	772,396	-
PAICA	554,687	-	-	-
Prepared Food Services Inc. Preparados Alimenticios Internacionales, C.A.	1,221,756	-	980,644	-
Gadais Limited	-	-	375,241	-
Global Traders	1,183,504	-	-	-
Greenpack	43,068	-	-	-
Fenfield Development Corp.	58,346	-	10,345	-
SCMN Global Traders Ltd.	-	-	1,470,364	-
Lisa, S.A.	16,889,322	-	14,244,132	-
	<b>23,065,071</b>	<b>7,483</b>	<b>19,998,924</b>	<b>7,483</b>
<b>Affiliated companies</b>				
696096 Alberta Ltd.	3,347	-	3,347	-
696093 Alberta Ltd.	4,269	-	3,892	-
696087 Alberta Ltd.	4,192	-	3,822	-
	<b>11,808</b>	<b>-</b>	<b>11,061</b>	<b>-</b>
<b>Other investments</b>				
Virdis Technologies Inc.	-	50,000	-	50,000
International Finance Bank	-	1,069,300	-	1,069,300
Pennybacker	-	134,620	-	-
	<b>-</b>	<b>1,253,920</b>	<b>-</b>	<b>1,119,300</b>
	<b>46,179,878</b>	<b>1,473,844</b>	<b>41,944,780</b>	<b>1,339,224</b>

The amounts receivable from directly owned subsidiaries, subsidiaries held through subsidiaries and affiliated companies have no fixed terms of repayment, are unsecured and are non-interest bearing.

In 2008, the Company sold one of its investments which resulted in a note receivable of \$400,000 to a party related by common ownership. During the year, the long-term note receivable was written down to its estimated recoverable amount of \$Nil.

# Xela Enterprises Ltd.

Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

## 10. Related party transactions

	2013	2012
	\$	\$
Revenue		
Management fees	396,197	467,128
Expenses		
Interest	93,358	131,048

These transactions are in the normal course of operations and have been valued in these financial statements at the exchange amount which is the amount of consideration established and agreed to by the related parties.

Included in interest expense is \$93,358 (2012 - \$131,048) incurred by the Company by a subsidiary of a holding company in which the shareholders are related.

## 11. Lease commitments

The Company is committed to the following minimum annual lease payments for its operating premises (excluding common area charges):

	\$
2014	104,280
2015	104,280
2016	78,210

## 12. Income taxes

For income tax purposes, the company has non capital losses which can be applied to reduce future years' taxable income. These losses expire as follows:

	\$
2026	539,000
2027	1,666,000
2029	191,000
2030	391,000
2031	867,000
2032	663,000
2033	2,402,000
	<u>6,719,000</u>

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

### 12. Income taxes (continued)

The Company has accumulated capital losses of approximately \$6,050,000 (2012 - \$5,974,000) which are available to reduce taxes on future taxable capital gains.

Income tax expense differs from the amount that would be computed by applying the combined federal and provincial statutory income tax rate of 26.5% (2012 - 26.5%) to earnings before income taxes. The reasons for the differences are as follows:

	2013	2012
	\$	\$
Computed tax recovery	(834,548)	(1,269,556)
Increase resulting from		
Tax losses	636,611	175,667
Additional provincial tax reassessed for prior years	-	539,668
Temporary differences	151,177	856,264
Permanent differences	40,947	196,834
Other	(3,429)	40,791
<b>Total income taxes</b>	<b>(9,242)</b>	<b>539,668</b>

### 13. Financial instruments

#### *Financial assets and liabilities*

Financial assets include cash, marketable securities, precious metals and advances to related parties. Financial liabilities include bank indebtedness, accounts payable and accrued liabilities and due to related parties. These financial instruments are measured at amortized cost with the exception of marketable securities and precious metals which are measured at fair value.

#### *Credit risk*

The Company is exposed to credit risk primarily as a result of advances to related parties, the collection of which depends on the financial stability of those related parties. The majority of the advances to related parties are due from companies outside of Canada.

#### *Interest rate risk*

The Company has exposure to interest rate risk as its credit facility is subject to a floating interest rate based on the prime rate of a major Canadian chartered bank.

#### *Liquidity risk*

The Company's objective is to have sufficient liquidity to meet its liabilities when due. The Company monitors its cash balances and cash flows generated from operations to meet its requirements. As at May 31, 2013, the most significant financial liabilities are the bank indebtedness and due to related parties.

#### *Foreign exchange risk*

Currency risk is the risk to the Company's earnings that arises from fluctuations of foreign exchange rates and the degree of volatility of these rates. The Company does not use derivative instruments to reduce its exposure to foreign currency risk. At year end, the Company had bank indebtedness of \$1,850,971 (2012 - \$1,889,390), \$28,623,534 in advances to related parties (2012 - \$28,404,296); \$886,164 of marketable securities (2012 - \$670,068); and \$82,107,357 due to related parties (2012 - \$67,791,921) in U.S. dollars. The exchange rate that the Company was using at May 31, 2013 was 1.0368 (2012 - 1.0329).

## **Xela Enterprises Ltd.**

Notes to the non-consolidated financial statements

May 31, 2013

(Unaudited)

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**14. Subsequent event**

Subsequent to year end, the Company guaranteed the outstanding receivable from Excotur, a related party through common control in the amount of \$5,111,282 U.S. payable to Fresh Quest Inc., a related party.

**15. Economic dependence**

Xela Enterprises Ltd. derives 100% (2012 - 100%) of its revenues from related parties

Confidential

CONFIDENTIAL

Non-consolidated financial statements of

**Xela Enterprises Ltd.**

May 31, 2015

**Xela Enterprises Ltd.**

May 31, 2015

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## Review Engagement Report

To the shareholders of  
Xela Enterprises Ltd.

We have reviewed the non-consolidated balance sheet of Xela Enterprises Ltd. as at May 31, 2015, and the non-consolidated statements of operations, deficit and cash flows for the year then ended. Our review was made in accordance with Canadian generally accepted standards for review engagements and, accordingly, consisted primarily of inquiry, analytical procedures and discussion related to information supplied to us by the Company.

A review does not constitute an audit and, consequently, we do not express an audit opinion on these non-consolidated financial statements.

Based on our review, nothing has come to our attention that causes us to believe that these non-consolidated financial statements are not, in all material respects, in accordance with Canadian accounting standards for private enterprises.

*Deloitte LLP*

Chartered Professional Accountants  
Licensed Public Accountants  
January 20, 2016

**XELA000254**

## Xela Enterprises Ltd.

### Non-consolidated statement of operations year ended May 31, 2015

(Unaudited)

	2015	2014
	\$	\$
<b>Revenue</b>		
Management fees (Note 9)	449,123	354,528
Interest (Note 9)	134,770	9,312
	<u>583,893</u>	<u>363,840</u>
<b>Expenses</b>		
Foreign exchange loss	8,476,443	2,546,737
Consulting and professional fees	512,090	445,454
General and administrative	494,240	446,994
Interest (Note 9)	262,452	255,335
Occupancy costs	236,444	234,420
Salaries and employee benefits	150,000	150,000
Amortization	71,830	95,630
Bad debt on advances to related parties	11,761,235	(12,728)
	<u>21,964,734</u>	<u>4,161,842</u>
Loss from operations before the undernoted items	(21,380,841)	(3,798,002)
<b>Other items</b>		
Loss on sale of marketable securities	-	82,713
Loss on sale of precious metals	-	71,444
Loss before income taxes	(21,380,841)	(3,952,159)
Income tax expense (Note 11)	-	204
<b>Net loss</b>	<u>(21,380,841)</u>	<u>(3,952,363)</u>

The accompanying notes to the non-consolidated financial statements are an integral part of this non-consolidated financial statement.

**Xela Enterprises Ltd.**

Non-consolidated statement of deficit  
year ended May 31, 2015

(Unaudited)

	2015	2014
	\$	\$
Deficit, beginning of year	(33,386,826)	(29,434,463)
Net loss	(21,380,841)	(3,952,363)
<b>Deficit, end of year</b>	<b>(54,767,667)</b>	<b>(33,386,826)</b>

The accompanying notes to the non-consolidated financial statements are an integral part of this non-consolidated financial statement.

Page 3

**XELA000256**

**Xela Enterprises Ltd.**  
 Non-consolidated balance sheet  
 as at May 31, 2015  
 (Unaudited)

	2015	2014
	\$	\$
<b>Assets</b>		
Current assets		
Cash	36,917	34,033
Prepaid expenses and sundry assets	140,497	90,679
	<u>177,414</u>	<u>124,712</u>
Property and equipment (Note 4)	102,383	142,595
Investments (Note 8)	1,390,550	1,479,180
Advances to related parties (Note 8)	9,745,386	38,854,841
	<u>11,415,733</u>	<u>40,601,328</u>
<b>Liabilities</b>		
Current liabilities		
Bank indebtedness (Note 6)	9,053,516	7,739,080
Accounts payable and accrued liabilities	1,049,951	427,941
Due to related parties (Note 5)	57,154	-
	<u>10,160,621</u>	<u>8,167,021</u>
Due to related parties (Note 5)	56,019,858	65,818,212
	<u>66,180,479</u>	<u>73,985,233</u>
<b>Contingencies (Notes 2 and 10)</b>		
<b>Shareholders' deficiency</b>		
Capital stock (Note 7)	2,921	2,921
Deficit	(54,767,667)	(33,386,826)
	<u>(54,764,746)</u>	<u>(33,383,905)</u>
	<u>11,415,733</u>	<u>40,601,328</u>

The accompanying notes to the non-consolidated financial statements are an integral part of this non-consolidated financial statement.

**Xela Enterprises Ltd.****Non-consolidated statement of cash flows**  
**year ended May 31, 2015**

(Unaudited)

	2015	2014
	\$	\$
<b>Operating activities</b>		
Net loss	(21,380,841)	(3,952,363)
Items not affecting cash		
Amortization	71,830	95,630
Realized loss on sale of marketable securities	-	82,713
Realized loss on sale of precious metals	-	71,444
	<b>(21,309,011)</b>	<b>(3,702,576)</b>
Change in non-cash operating items		
Prepaid expenses and sundry assets	(49,818)	884,017
Accounts payable and accrued liabilities	622,010	(69,001)
Income taxes receivable/payable	-	100,000
	<b>(20,736,819)</b>	<b>(2,787,560)</b>
<b>Investing activities</b>		
Advances (to) from related parties	29,109,455	7,325,037
Purchase of property and equipment	(31,618)	(76,106)
Distributions from investments	88,630	(5,336)
Purchase of marketable securities	-	(996,940)
Proceeds from sale of marketable securities	-	1,363,745
Proceeds from sale of precious metals	-	1,094,079
	<b>29,166,467</b>	<b>8,704,479</b>
<b>Financing activities</b>		
Increase in bank indebtedness	1,314,436	4,978,671
Increase (decrease) in due to related parties	(9,741,200)	(10,891,789)
	<b>(8,426,764)</b>	<b>(5,913,118)</b>
Change in cash	2,884	3,801
Cash, beginning of year	34,033	30,232
<b>Cash, end of year</b>	<b>36,917</b>	<b>34,033</b>

The accompanying notes to the non-consolidated financial statements are an integral part of this non-consolidated financial statement.

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**XELA000258**

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

### 1. Nature of organization

The Company was incorporated on June 13, 1984 and is subject to the provisions of the Ontario Business Corporations Act. Its primary business activity is an investment holding company.

### 2. Going concern

While the non-consolidated financial statements have been prepared on the basis of accounting principles applicable to a going concern, adverse conditions and events cast substantial doubt upon the validity of this assumption.

As at May 31, 2015, the Company has an accumulated deficit of \$54,767,667 (2014 - \$33,386,826).

These financial statements have been prepared on a going concern basis which contemplates the realization of assets and the payment of liabilities in the ordinary course of business. The Company relies on continued support from a company under common control and one of the shareholders of the Company for its future viability.

If the going concern assumption were not appropriate for these financial statements, adjustments would be necessary in the carrying values of assets and liabilities, the reported net loss and the balance sheet classifications used.

### 3. Summary of significant accounting policies

The non-consolidated financial statements have been prepared in accordance with Canadian accounting standards for private enterprises ("ASPE") and reflect the following significant accounting policies:

#### *Revenue recognition*

The Company records revenue from monthly management fees as the services are rendered, persuasive evidence of an arrangement exists and collection is reasonable assured.

#### *Property and equipment*

Property and equipment are recorded at cost. Amortization is based on their estimated useful life using the following methods and rates or term:

Furniture and fixtures	Straight-line	5 years
Computer equipment	Straight-line	3 years
Equipment	Straight-line	5 years

Amortization of leasehold improvements is recorded on a straight-line basis over the term of the lease.

#### *Impairment of long-lived assets*

Long-lived assets, which include property and equipment are tested for recoverability whenever events or changes in circumstances indicate that their carrying amount may not be recoverable. An impairment loss is recognized when their carrying value exceeds the total undiscounted cash flows expected from their use and eventual disposition. The amount of the impairment loss is determined as the excess of the carrying value of the asset over its fair value.

The Company has determined that there was no impairment of long-lived assets as at May 31, 2015.

#### *Impairment of advances to related parties*

Advances to related parties are classified as impaired when, in the opinion of management, there is reasonable doubt as to the timely collection of the outstanding balance. The carrying amount of an advance to a related party classified as impaired is reduced to its estimated fair value.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

### 3. Summary of significant accounting policies (continued)

#### *Foreign exchange translation*

Monetary assets and liabilities denominated in foreign currencies are translated into Canadian dollars at exchange rates in effect at the balance sheet date. All other assets and liabilities are translated at rates in effect at the time the transactions occurred. Revenue and expenses are translated using the rates in effect at the dates of the transactions. Foreign exchange gains and losses are included in operating results.

#### *Income taxes*

The Company follows the taxes payable method of accounting for income taxes. Under this method, only current income taxes payable or recoverable for the period, determined in accordance with the rules established by taxation authorities, are recognized as an expense or recovery.

#### *Investment in subsidiaries and significant influence investments*

The Company's investment in subsidiaries and significant influence investments are accounted for by the cost method, whereby the investment is carried at its original cost and the net earnings of the investments are reflected in the determination of the Company's operating results only to the extent of dividends received from the investments. If there is evidence of a permanent impairment in value that is other than temporary, the investment is written down to net realizable value in the year in which the loss becomes evident.

#### *Financial instruments*

Financial assets and financial liabilities are initially recognized at fair value when the Company becomes a party to the contractual provisions of the financial instrument. Subsequently, all financial instruments are measured at amortized cost except for the following instruments:

- (a) Investments in unlisted shares are measured at cost less any reduction for impairment; and
- (b) Investments in listed shares and derivative financial instruments that are not designated in a qualifying hedging relationship are measured at fair value at the balance sheet date. The fair value of listed shares is based on the latest closing price and the fair value quote received from the bank counterparty is used as a proxy for the fair value of derivative financial instruments.

Interest earned on short term investments and bonds, dividends received on unlisted shares, unrealized gains and losses on listed shares, and realized gains and losses on sale of short term investments and bonds are included in other income in the non-consolidated statement of operations.

Transaction costs related to financial instruments measured at fair value subsequent to initial recognition are expensed as incurred. Transaction costs related to other financial instruments are added to the carrying value of the asset or netted against the carrying value of the liability and are then recognized over the expected life of the instrument using the effective interest method. Any premium or discount related to an instrument measured at amortized cost is amortized over the expected life of the item using the effective interest method and recognized in net earnings as interest income or expense.

With respect to financial assets measured at cost or amortized cost, the Company recognizes in net earnings an impairment loss, if any, when there are indicators of impairment and it determines that a significant adverse change has occurred during the period in the expected timing or amount of future cash flows. When the extent of impairment of a previously written-down asset decreases and the decrease can be related to an event occurring after the impairment was recognized, the previously recognized impairment loss is reversed to net earnings in the period the reversal occurs.

# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

### 3. Summary of significant accounting policies (continued)

#### *Retractable preferred shares*

The retractable Class B and Class D preferred shares which were issued in a tax planning arrangement are presented at their paid in value and have been disclosed in note 8 of the non-consolidated financial statements.

#### *Use of estimates*

The preparation of financial statements in conformity with ASPE requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from these estimates. The financial statement items requiring the use of management estimates are accounts payable and accrued liabilities, the valuation of advances to related parties, the valuation of investments in subsidiaries and significant influence investments, and the valuation and useful lives of property and equipment.

### 4. Property and equipment

	2015		2014	
	Cost	Accumulated amortization	Net book value	Net book value
	\$	\$	\$	\$
Furniture and fixtures	259,899	257,868	2,031	2,189
Computer equipment	1,174,343	1,080,739	93,604	139,806
Equipment	41,714	41,680	34	600
Leasehold improvements	75,272	68,558	6,714	-
	<u>1,551,228</u>	<u>1,448,845</u>	<u>102,383</u>	<u>142,595</u>

### 5. Due to related parties

	2015	2014
	\$	\$
BDT Investments Inc.	26,168,125	39,072,957
Badatop Holding Inc.	20,119,578	17,035,294
Corporacion Arven, S.A.	6,873,383	6,286,119
Muskoka Finance, S.A.	1,118,211	974,804
Tropic International Limited	730,243	879,216
Fresh Quest Inc. (i)	252,794	875,860
Mayacrops, S.A.	685,982	598,007
Preparados Alimenticios Internacionales, C.A.	-	40,904
Pahula, S.A.	31,092	27,105
Latin American Procurement	40,450	-
Other	57,154	27,946
	<u>56,077,012</u>	<u>65,818,212</u>
Less: current portion	57,154	-
	<u>56,019,858</u>	<u>65,818,212</u>



# Xela Enterprises Ltd.

## Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

### 5. Due to related parties (continued)

These related parties represent shareholders and companies under common control. The loans are non-interest bearing (except as noted below) and unsecured, with no fixed terms of repayment and are not to be repaid prior to June 1, 2016. For those identified as (i) the amounts payable to these related parties bear interest on balances outstanding at a rate of 3.47%, which is the rate prescribed by United States Internal Revenue Service ("IRS") plus 1%.

### 6. Bank indebtedness

The Company has a credit facility with a major Canadian chartered bank. The credit facility consists of a Canadian dollar \$10,500,000 line of credit bearing interest at bank prime rate.

This facility is due on demand and is secured by a guarantee provided by a related party as well as a general security agreement over all present and future personal property with appropriate insurance coverage, loss if any, payable to the bank.

As at May 31, 2015, there is \$9,006,566 (2014 - \$7,728,422) outstanding under the credit facility.

### 7. Capital stock

*Authorized*, unlimited number

Preference shares, non-voting, 8% non-cumulative, without par value

Class A preference shares, non-participating, voting, without par value

Class B preference shares, participating, non-voting, redeemable at \$1,765 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Class C preference shares, non-voting, unspecified non-cumulative dividend rate, without par value, redeemable at \$10,000 per share at the option of the Company plus all declared but unpaid dividends thereon

Class D preference shares, non-voting, redeemable at \$1,625,000 per share at the option of either the Company or the holder, 8% non-cumulative, without par value

Common shares

*Issued*

	2015	2014
	\$	\$
1,000 Class A preference shares	1,000	1,000
39,659 Class B preference shares (redemption amount \$69,998,135)	3	3
438,611 Class C preference shares (redemption amount \$4,386,118)	2	2
2 Class D preference shares (redemption amount \$3,250,000)	2	2
140 common shares	1,914	1,914
	<u>2,921</u>	<u>2,921</u>

The Company has no planned redemptions over the next five years for the Class B, C and D preference shares.

# Xela Enterprises Ltd.

Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

## 8. Investments and advances to related parties

	2015		2014	
	Amounts		Amounts	
	receivable	Investments	receivable	Investments
	\$	\$	\$	\$
<b>Subsidiaries - owned directly</b>				
Empresas Arturo Internacional, S.A. (100%)	1,454,192	121,607	17,498	121,607
Gabinvest, S.A. (100%)	2,572,599	32,500	3,429,180	32,500
Xela International Inc. (100%)	-	99	10,412,022	-
Tropic International Limited (56.6%)	-	58,334	-	58,334
	<b>4,026,791</b>	<b>212,540</b>	<b>13,858,700</b>	<b>212,441</b>
<b>Subsidiaries - held through subsidiaries</b>				
Xela Global Resources Inc.	-	-	2,230,806	-
Blue Way Holding Inc.	406,600	-	152,468	-
Latin American Procurement Ltd.	-	7,483	51,431	7,483
Marco Polo, S.A.	53,745	-	46,852	-
Metro Boliche, S.A.	51,472	-	44,871	-
Preparados Alimenticios Internacionales, C.A.	786,282	-	-	-
Prepared Food Services Inc.	130,589	-	1,290,440	-
Crystal del Pacifico, S.A.	31,270	-	25,826	-
Global Traders	1,597,047	-	1,220,975	-
Greenpack Guatemala	2,406,199	-	489,822	-
Greenpack Barbados	106,575	-	107,655	-
Greenpack Chile	39,461	-	-	-
Greenpack Asia	25,968	-	-	-
Fenfield Development Corp.	70,508	-	61,466	-
Lisa, S.A.	-	-	19,260,650	-
	<b>5,705,716</b>	<b>7,483</b>	<b>24,983,262</b>	<b>7,483</b>
<b>Affiliated companies</b>				
696096 Alberta Ltd.	3,347	-	3,347	-
696093 Alberta Ltd.	4,807	-	4,807	-
696087 Alberta Ltd.	4,725	-	4,725	-
	<b>12,879</b>	<b>-</b>	<b>12,879</b>	<b>-</b>
<b>Other investments</b>				
Virdis Technologies Inc.	-	50,000	-	50,000
International Finance Bank	-	1,069,300	-	1,069,300
Pennybacker II GP, LLC	-	51,227	-	139,956
	<b>-</b>	<b>1,170,527</b>	<b>-</b>	<b>1,259,256</b>
	<b>9,745,386</b>	<b>1,390,550</b>	<b>38,854,841</b>	<b>1,479,180</b>

The amounts receivable from directly owned subsidiaries, subsidiaries held through subsidiaries and affiliated companies have no fixed terms of repayment, are unsecured and are non-interest bearing.

The amounts receivable from Xela Global Resources Inc., Prepared Food Services Inc. and Xela International Inc. are net of an allowance for doubtful accounts of \$2,230,806, \$1,349,692 and \$8,180,738, respectively (2014 - \$Nil, \$Nil and \$Nil).

## Xela Enterprises Ltd.

### Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

#### 9. Related party transactions

	2015	2014
	\$	\$
Revenue		
Management fees	449,123	354,528
Interest	120,919	-
	<u>570,042</u>	<u>354,528</u>
Expenses		
Interest	-	77,760

These transactions are in the normal course of operations and have been recorded in these financial statements at the exchange amount which is the amount of consideration established and agreed to by the related parties.

The interest income and expense were received from and paid to a subsidiary of a holding company in which the shareholders are related.

#### 10. Commitments and contingencies

The Company is committed to the following minimum annual lease payments for its operating premises (excluding common area charges):

	\$
2016	<u>78,210</u>

The Company is subject to various claims and actions which arise in the normal course of business. The Company believes that it has good defences against these claims and management has accrued their best estimate of losses where final determination of claims exceeds applicable insurance coverage.

The Company believes that these claims will not materially affect the financial position or results of the operations of the Company.

#### 11. Income taxes

For income tax purposes, the company has non capital losses which can be applied to reduce future years' taxable income. These losses expire as follows:

	\$
2026	523,000
2027	1,666,000
2029	191,000
2030	391,000
2031	891,000
2032	673,000
2033	1,050,000
2034	590,000
2035	546,000
	<u>6,521,000</u>

## Xela Enterprises Ltd.

### Notes to the non-consolidated financial statements

May 31, 2015

(Unaudited)

#### 11. Income taxes (continued)

The Company has accumulated capital losses of approximately \$6,642,000 (2014 - \$6,558,000) which are available to reduce taxes on future taxable capital gains.

Income tax expense differs from the amount that would be computed by applying the combined federal and provincial statutory income tax rate of 26.5% (2014 - 26.5%) to earnings before income taxes. The reasons for the differences are as follows:

	2015	2014
	\$	\$
Computed tax recovery	(5,665,923)	(1,047,322)
Increase resulting from		
Tax losses not recognized	144,690	156,350
Temporary differences	5,382,020	740,983
Permanent differences	139,249	153,290
Other	(36)	(3,097)
Total income taxes	-	204

#### 12. Financial instruments

##### *Financial assets and liabilities*

Financial assets include cash and advances to related parties. Financial liabilities include bank indebtedness, accounts payable and accrued liabilities and due to related parties. These financial instruments are measured at amortized cost.

##### *Credit risk*

The Company is exposed to credit risk primarily as a result of advances to related parties, the collection of which depends on the financial stability of those related parties. The majority of the advances to related parties are due from companies outside of Canada.

##### *Interest rate risk*

The Company has exposure to interest rate risk as its credit facility is subject to a floating interest rate based on the prime rate of a major Canadian chartered bank.

##### *Liquidity risk*

The Company's objective is to have sufficient liquidity to meet its liabilities when due. The Company monitors its cash balances and cash flows generated from operations to meet its requirements. As at May 31, 2015, the most significant financial liabilities are the bank indebtedness and amounts due to related parties.

##### *Foreign exchange risk*

Foreign exchange risk is the risk to the Company's earnings that arises from fluctuations of foreign exchange rates and the degree of volatility of these rates. The Company does not use derivative instruments to reduce its exposure to foreign exchange risk. At year end, the Company had the following balances for which cash flows were denominated in U.S. dollars (expressed here in U.S. dollars): bank indebtedness of \$1,750,354 (2014 - \$4,956,322), \$5,365,060 in advances to related parties (2014 - \$29,180,649); and \$49,836,120 due to related parties (2014 - \$79,046,679). The exchange rate that the Company was using at May 31, 2015 was 1.2437 (2014 - 1.0842).

#### 13. Economic dependence

Xela Enterprises Ltd. derives 100% (2014 - 100%) of its revenues from related parties.

**Xela Enterprises Ltd**  
**Non-consolidated Balance Sheet**  
**Year Ended May 31, 2016**  
**(Unaudited)**

	2016 C\$
<b>Assets</b>	
Current Assets	
Cash	84,775
Prepaid expenses and sundry assets	142,919
	<u>227,694</u>
Property & Equipment	52,848
Investments	1,381,348
Advances to Related Parties	24,658,546
	<u>26,320,436</u>
<b>Liabilities</b>	
Current Liabilities	
Bank Indebtedness	-
Accounts Payable and Accrued Liabilities	1,425,698
Allowance for Doubtful Accts.	8,180,738
Due to related parties	320,077
	<u>9,926,513</u>
Due to related parties	75,379,270
	<u>85,305,783</u>
<b>Shareholders' Deficiency</b>	
Capital stock	2,921
Deficit	(58,988,268)
	<u>(58,985,347)</u>
	<u>26,320,436</u>

**Xela Enterprises Ltd**

Non-consolidated statements of operations

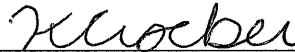
Year Ended May 31, 2016

(Unaudited)

	2016
	C\$
<b>Revenue</b>	
Management Fees	354,528
Interest and Investment	30,327
	<u>384,855</u>
<b>Expenses</b>	
Foreign Exchange Loss	3,135,495
Consulting & Professional Fees	561,927
General & Administrative	565,401
Interest	97,258
Occupancy Costs	223,721
Salaries and Employee Benefits	150,000
Amortization	55,929
Bad Debt on Advances to Related Parties	<u>(184,275)</u>
	<u>4,605,456</u>
<b>Net Loss</b>	<u><u>(4,220,601)</u></u>

**TAB C**

THIS IS EXHIBIT "C" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 28<sup>th</sup>  
 )  
MR. JUSTICE NEWBOULD ) DAY OF OCTOBER, 2015

BETWEEN:

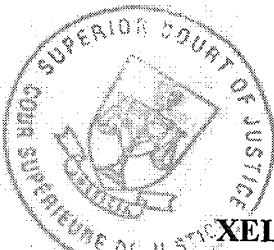
**MARGARITA CASTILLO**

Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and JUAN ARTURO GUTIERREZ**

Respondents



**JUDGMENT**

**THIS APPLICATION**, heard only with respect to issues relating to the respondent, Tropic International Limited ("**Tropic**"), was heard on June 4 and June 5, 2015, at the Court House, 330 University Avenue, Toronto, Ontario, in the presence of the lawyers for Margarita Castillo ("**Margarita**"), Xela Enterprises Ltd. ("**Xela**"), Tropic, Fresh Quest, Inc. ("**Fresh Quest**"), 696096 Alberta Ltd., Juan Guillermo Gutierrez ("**Juan**") and Juan Arturo Gutierrez ("**Arturo**").

**ON READING THE APPLICATION RECORDS, COMPENDIA, FACTA AND BOOKS OF AUTHORITIES** and upon hearing the submissions of the lawyers for the parties appearing in this application,

AND FOR THE REASONS set out in the Reasons for Judgment dated October 28, 2015,

1. **THIS COURT DECLARES THAT** the respondents, other than 696096 Alberta Inc., engaged in conduct that was oppressive to Margarita's interests as a director and shareholder of Tropic, within the meaning of section 248 of the *Business Corporations Act*, R.S.O. 1990, c. B.16;
2. **THIS COURT ORDERS AND ADJUDGES THAT** the fair value of Margarita's 100 common shares in Tropic is \$4,250,000.00;
3. **THIS COURT ORDERS THAT** Arturo, Juan and Xela jointly pay Margarita \$4,250,000.00 for her 100 common shares held in Tropic;
4. The remaining issues in the application, including the issue of costs, will be addressed separately.

This judgment bears interest at the rate of 2 per cent per year from its date.



NOV 27 2015

R. Ittleman, Registrar  
Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

NOV 27 2015



**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**

Court File No. CV-11-9062-00CL

Respondents

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**JUDGMENT**

**BENNETT JONES LLP**  
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Suite 3400, P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon** (LSUC# 18855L)  
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**Jason W.J. Woycheshyn** (LSUC# 53318A)  
Tel: (416) 777-4662  
Fax: (416) 863-1716  
woycheshynj@bennettjones.com

Lawyers for the applicant

**TAB D**

THIS IS EXHIBIT "D" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE ) WEDNESDAY, THE 21<sup>st</sup>  
MR. JUSTICE NEWBOULD ) DAY OF DECEMBER, 2015

BETWEEN:

**MARGARITA CASTILLO**

Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and JUAN ARTURO GUTIERREZ**

Respondents

**ORDER**

**THIS APPLICATION**, heard only with respect to issues relating to the respondent, Tropic International Limited ("**Tropic**"), was heard on June 4 and June 5, 2015, at the Court House, 330 University Avenue, Toronto, Ontario, in the presence of the lawyers for Margarita Castillo ("**Margarita**"), Xela Enterprises Ltd. ("**Xela**"), Tropic, Fresh Quest, Inc. ("**Fresh Quest**"), 696096 Alberta Ltd., Juan Guillermo Gutierrez ("**Juan**") and Juan Arturo Gutierrez ("**Arturo**").

**AND WHEREAS** Judgment was granted in favour of Margarita on October 28, 2015, with the issue of costs to be addressed separately.


**ON READING THE COSTS SUBMISSIONS** of the parties, including the Bill of Costs of Margarita,

AND FOR THE REASONS set out in the Cost Endorsement dated December 21, 2015,

1. **THIS COURT ORDERS THAT** the respondents, other than 696096 Alberta Inc., pay Margarita a total of \$889,858.21 for costs, disbursements and expert fees associated with this portion of the Application.
2. The amount ordered to be paid in paragraph 1, above, bears interest at the rate of 2 per cent per year from the date of this Order.

  
\_\_\_\_\_  
THE HONOURABLE MR. JUSTICE NEWBOULD

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

 JAN 06 2016

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**

Court File No. CV-11-9062-00CL

Respondents

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (LSUC# 18855L)**  
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**Jason W.J. Woycheshyn (LSUC# 53318A)**  
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woycheshynj@bennettjones.com

Lawyers for the applicant



# **T A B E**

THIS IS EXHIBIT "E" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Divisional Court File No. 65/16

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

THE HONOURABLE )

)

FRIDAY, THE 30<sup>th</sup>

JUSTICE MOLLOY )

)

JUSTICE DAMBROT )

)

DAY OF DECEMBER, 2016

JUSTICE VARPIO )

)

BETWEEN:

**MARGARITA CASTILLO**

Respondent / Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Appellants / Respondents

**ORDER**

**THIS APPEAL**, by the appellants of the Judgment of The Honourable Justice Newbould dated October 28, 2015 (the "Judgment") and the Order of Justice Newbould dated December 21, 2015 (the "Costs Order"), was heard on September 26, 2016 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario, M5H 2N5.

**ON READING** the materials filed, including the Appeal Book and Compendium of the Appellants, the Exhibit Books, the Respondent's Compendium, and the Facta and Books of

Authorities of the Appellants and Respondent, and on hearing the submissions of counsel for the Appellants and Respondent, <sup>v.k.</sup> judgement reserved to this day, <sup>v.v.</sup>

1. **THIS COURT ORDERS** that leave to appeal the Costs Order is granted;
2. **THIS COURT ORDERS** that the appeal of the Judgment and the Costs Order is dismissed; and
3. **THIS COURT ORDERS** that the respondent, Margarita Castillo, is awarded \$76,096.47 for the costs of this appeal, inclusive of HST, fees and disbursements, and payable by the Appellants within 30 days from the date of this Order.

**THIS ORDER BEARS INTEREST** at the rate of 2.0 per cent per year commencing on January 30, 2017.

ENTERED AT / INSCRIT A TORONTO ON / BOOK NO.: 22 LE / DANS LE REGISTRE NO.: 16 FEB 09 2017 PER / PAR: M.O.
---

*U. Waralus.*  
 A/Assistant - Registrar

**MARGARITA CASTILLO**  
Respondent / Applicant

-and-

**XELA ENTERPRISES LTD. ET AL.**  
Appellants / Respondents

Divisional Court File No. 65/16

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
Barristers & Solicitors  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4

**Jeffrey S. Leon** (LSUC No. 18855L)  
**Jason W. Woycheslyn** (LSUC No: 53318A)  
Tel: (416) 777-7472/4662  
Fax: (416) 863-1716

Lawyers for the Applicant,  
Margarita Castillo

**TAB F**

THIS IS EXHIBIT "F" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

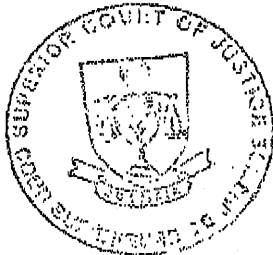
A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

BETWEEN:



MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
JUAN ARTURO GUTIERREZ

Respondents

ORDER TO CONTINUE

ON THE REQUISITION of Xela Enterprises Ltd., and on the reading of the affidavit of Carol Kermath sworn on January 12, 2017, filed, which indicates that the Defendant, Juan Arturo Gutierrez died on June 24, 2016 and that Carmen S. Gutierrez is the Executor of the Estate of Juan Arturo Gutierrez,

1. IT IS ORDERED that this proceeding continue and that the title of the proceeding in all documents issued, served or filed after the date of this order be as follows:

MARGARITA CASTILLO

Applicant

-and-

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH  
QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and  
CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Respondents



122

Date: JAN 12 2017

Rm. Littleman

Local Registrar  
Superior Court of Justice  
330 University Avenue, 8<sup>th</sup> floor, Toronto,  
Ontario  
R. Littleman, Registrar  
Superior Court of Justice

A party who wishes to set aside or vary this order must make a motion to do so forthwith after the order comes to his or her attention.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

JAN 12 2017

PER / PAR: [Signature]

XELA ENTERPRISES LTD. et al.  
Applicants and Respondents  
MARGARITA CASTILLO et al.

Court File No: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE -  
COMMERCIAL LIST**

Proceeding commenced at Toronto

**ORDER TO CONTINUE**

**GROIA & COMPANY**  
Professional Corporation  
Wildboer Dellece Place  
365 Bay St., Suite 1100  
Toronto, ON M5H 2V1  
Fax: 416-203-9231

**Joseph Greia LSUC # 206121**  
Tel: 416-203-4472

**Kevin Richard LSUC # 43160P**  
Tel: 416-203-448

Lawyers for the Respondent, Xela Enterprises Ltd.

**TAB G**

THIS IS EXHIBIT "G" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



**COURT OF APPEAL FOR ONTARIO**

JUSTICE FELDMAN  
JUSTICE SHARPE  
JUSTICE ROBERTS

)  
)  
)  
)  
)

FRIDAY, THE 27<sup>th</sup>  
DAY OF MARCH, 2017

BETWEEN:

**MARGARITA CASTILLO**

Respondent

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Moving Parties

**ORDER**

**THIS MOTION**, made by the Moving Parties, Xela Enterprises Ltd., Tropic International Limited, Fresh Quest, Inc., Juan Guillermo Gutierrez and Carmen S. Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, for Leave to Appeal was heard this day at the Court of Appeal for Ontario, 130 Queen Street West, Toronto, Ontario M5H 2N5.

**ON READING** the materials filed, including the Factums, Motion Records and Books of Authorities of the Moving and Responding parties,


1. THIS COURT ORDERS that the motion for leave to appeal be dismissed with costs payable by the Moving Parties in the amount of \$1,500 inclusive of disbursements and HST.

THIS ORDER BEARS INTEREST at the rate of 2% per annum from its date.

ENTERED AT / INSCRIPT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE N°:

APR 21 2017

PER / PAR: R.f.

  
\_\_\_\_\_  
Registrar:  
Court of for Ontario

**MARGARITA CASTILLO**  
Responding Party

-and- **XELA ENTERPRISES LTD. et al.**  
Moving Parties

Court of Appeal File No.: M47420

**COURT OF APPEAL FOR ONTARIO**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon** (LSUC# 18855L)  
Tel: (416) 777-7472  
leonj@bennettjones.com

**Jason W.J. Woycheshyn** (LSUC# 53318A)  
Tel: (416) 777-4662  
Fax: (416) 863-1716  
woycheshynj@bennettjones.com

Lawyers for the Respondent (Responding Party),  
Margarita Castillo

**TAB H**



THIS IS EXHIBIT "H" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law,  
Expires March 22, 2020.**

Castillo - Judgment - Feb 17-17.txt  
WRIT DETAILS REPORT - Printed on Fri, 17 Feb 2017 @ 3:07 PM

## BASIC INFORMATION

Writ Type: WRIT OF SEIZURE AND SALE (FORM 60A)  
Enforcement Office(s):  
TORONTO

Is this judgment a result of a Restitution Order: N  
Provincial Filer: N  
Court file #: CV-11-9062-00CL  
Jurisdiction: Toronto-SCJ  
Judgment Date: 2015-10-28  
Paper Based Writ: N

## DEBTOR(S) INFORMATION

DEBTOR #1  
Surname:  
Given Name(s):  
Birth Date:  
Company Name: XELA ENTERPRISES LTD.

DEBTOR #2  
Surname: GUTIERREZ  
Given Name(s): JUAN GUILLERMO  
Birth Date:  
Company Name:

DEBTOR #3  
Surname:  
Given Name(s):  
Birth Date:  
Company Name: CARMEN S. GUTIERREZ AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ

## DEFENDANT(S) INFORMATION

DEFENDANT #1  
Name: XELA ENTERPRISES LTD.  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #2  
Name: TROPIC INTERNATIONAL LIMITED  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #3  
Name: FRESH QUEST, INC.  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #4  
Name: 696096 ALBERTA LTD.  
Address:  
Tel:

Castillo - Judgment - Feb 17-17.txt

Fax:  
E-mail:

## DEFENDANT #5

Name: JUAN GUILLERMO GUTIERREZ  
Address:  
Tel:  
Fax:  
E-mail:

## DEFENDANT #6

Name: CARMEN S. GUTIERREZ AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ  
Address:  
Tel:  
Fax:  
E-mail:

## CREDITOR(S) INFORMATION

## CREDITOR #1

Surname: CASTILLO  
Given Name(s): MARGARITA  
Company Name:  
Address:  
Tel:  
Fax:  
E-mail:

## LAWYER INFORMATION

Same as first creditor ? N  
Surname: WOYCHESHYN  
Given Name(s): JASON  
Company Name: BENNETT JONES  
Address: SUITE 3400 1 KING STREET WEST TORONTO ONTARIO M5X 1A4  
Tel: 4168631200  
Fax:  
E-mail: WOYCHESHYNJ@BENNETTJONES.COM

## JUGMENT(S) INFORMATION

## JUDGMENT #1

Currency: CDN  
Amount: 4250000.00  
Interest rate: 2.0000  
Start date: 2015-10-28  
Debtor: --ALL DEBTORS--  
Comments:Cost Currency: CDN  
Cost Amount:  
Cost Interest rate:  
Cost Start Date:  
Cost Comments:

## PAYMENT(S) INFORMATION

Matter Number:60037.1

## NOTES

--- END OF REPORT ---

Castillo Judgment - PS.txt  
WRIT DETAILS REPORT - Printed on Thu, 6 Apr 2017 @ 9:33 AM

## BASIC INFORMATION

Writ Type: WRIT OF SEIZURE AND SALE (FORM 60A)  
Enforcement Office(s):  
PARRY SOUND

Is this judgment a result of a Restitution Order: N  
Provincial Filer: N  
Court file #: CV-11-9062-00CL  
Jurisdiction: Toronto-SCJ  
Judgment Date: 2015-10-28  
Paper Based Writ: N

## DEBTOR(S) INFORMATION

DEBTOR #1  
Surname:  
Given Name(s):  
Birth Date:  
Company Name: XELA ENTERPRISES LTD.

DEBTOR #2  
Surname: GUTIERREZ  
Given Name(s): JUAN GUILLERMO  
Birth Date:  
Company Name:

DEBTOR #3  
Surname:  
Given Name(s):  
Birth Date:  
Company Name: CARMEN S. GUTIERREZ AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ

## DEFENDANT(S) INFORMATION

DEFENDANT #1  
Name: XELA ENTERPRISES LTD.  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #2  
Name: TROPIC INTERNATIONAL LIMITED  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #3  
Name: FRESH QUEST, INC.  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #4  
Name: 696096 ALBERTA LTD.  
Address:  
Tel:

## Castillo Judgment - PS.txt

Fax:  
E-mail:

DEFENDANT #5  
Name: JUAN GUILLERMO GUTIERREZ  
Address:  
Tel:  
Fax:  
E-mail:

DEFENDANT #6  
Name: CARMEN S. GUTIERREZ AS EXECUTOR OF THE ESTATE OF JUAN ARTURO GUTIERREZ  
Address:  
Tel:  
Fax:  
E-mail:

## CREDITOR(S) INFORMATION

CREDITOR #1  
Surname: CASTILLO  
Given Name(s): MARGARITA  
Company Name:  
Address:  
Tel:  
Fax:  
E-mail:

## LAWYER INFORMATION

Same as first creditor ? N  
Surname: WOYCHESHYN  
Given Name(s): JASON  
Company Name: BENNETT JONES  
Address: SUITE 3400 1 KING STREET WEST TORONTO ONTARIO M5X 1A4  
Tel: 4168631200  
Fax:  
E-mail: WOYCHESHYNJ@BENNETTJONES.COM

## JUGMENT(S) INFORMATION

JUDGMENT #1  
Currency: CDN  
Amount: 4250000.00  
Interest rate: 2.0000  
Start date: 2015-10-28  
Debtor: --ALL DEBTORS--  
Comments:

Cost Currency: CDN  
Cost Amount:  
Cost Interest rate:  
Cost Start Date:  
Cost Comments:

## PAYMENT(S) INFORMATION

Matter Number:60037.1

NOTES

--- END OF REPORT ---

# TAB I

THIS IS EXHIBIT "I" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019

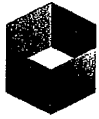


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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



Jason W.J. Woycheshyn  
Partner  
Direct Line: 416.777.4662  
e-mail: woycheshynj@bennettjones.com  
Our File No.: 60037.1

September 26, 2017

**Via Courier**

Sheriff of the Regional Municipality of Halton  
Enforcement Office  
Milton Courthouse  
491 Steeles Avenue East  
Milton, ON L9T 1Y7

Dear Sir or Madam:

**Re: Margarita Castillo v. Xela Enterprises Ltd. et al.  
Court File No. CV-11-9062-00CL**

We are lawyers for Margarita Castillo, plaintiff in the above-noted action. Enclosed please find the following documents:

1. Direction to Enforce Writ;
2. Copy of Writ of Seizure and Sale No. 17-0001417 (\$4,500,000.00 judgement);
3. PPSA Search results for six vehicles (no registrations);
4. Used Vehicle Information Packages for six vehicles (appraised cumulative value of \$328,822.00);
5. Letter from Maurice Bramhall & Associates with appraisal values of six vehicles; and
6. One cheque in the amount of \$3,000 for future disbursements related to the enforcement of this matter.

We require you to enforce the Writ of Seizure and Sale against Carmen S. Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez. All eight vehicles can be located at the following address:

MVL Leasing Limited  
1064 South Service Road East  
Oakville, ON L6J 2X7



September 26, 2017


Page 2

We require you to seize the six vehicles specified in the Direction to Enforce, transport, store and sell them at auction. A representative of our offices will attend with the Sheriff at MVL Leasing Limited during the seizure.

Please feel free to contact us with any questions or concerns, or if you require additional information.

Yours truly,

**BENNETT JONES LLP**

  
Jason W.J. Woycheshyn

JWW:ef  
Enclosures



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**MARGARITA CASTILLO**

Plaintiff

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Defendants

**DIRECTION TO ENFORCE WRIT**

TO: the Sheriff of the Regional Municipality of Parry Sound

Under an order of this court in favour of Margarita Castillo made on October 28, 2015, Xela Enterprises Ltd., Juan Guillermo Gutierrez and Juan Arturo Gutierrez were ordered to pay the sum of \$4,250,000.00 with interest at the rate of 2 per cent per year commencing on October 28, 2015. Since the order was made, the creditor has received the following payments:

Date of payment	Amount of payment
August 9, 2017	\$133,568.64

Under rule 60.19 of the *Rules of Civil Procedure*, the creditor is entitled to costs in the amount of,

- (a) \$50 for the preparation of documents in connection with issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;
- (b) \$203.84 for disbursements paid to a sheriff, registrar, official examiner, court reporter or other public officer and to which the creditor is entitled under subrule 60.19 (1); (*Attach copy of all receipts.*)

YOU ARE DIRECTED to enforce the writ of seizure and sale issued on April 6, 2017 and filed in your office for a sum sufficient to satisfy the total of the amounts set out above, together with subsequent interest, and your fees and expenses, against the following motor vehicles:

- (a) 1982 Porsche 928; VIN: WP0JA0929CS821676
- (b) 2001 BMW Z8S; VIN: WBAEJ13481AH60700
- (c) 1972 Mercedes Benz 350; VIN: 10702310002578
- (d) 1927 Buick; VIN 1946303
- (e) 2003 Mercedes Benz SLR; VIN: WDBSK75F93F049657
- (f) 1994 Mercedes Benz SL5; VIN: WDBFA67E2RF096895

Date September 26, 2017

  
\_\_\_\_\_  
Jason Woycheshyn

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**  
Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200  
Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

Order Receipt

Customer ID: 143293

Transaction ID:	2216846	Date/Time:	02/17/17 3:09 PM
Account No:	*****5617	Account Type:	Visa
Account Holder:	Katherine Anderson	Amount:	\$203.84
Auth No:	078900	Reference Code:	661836080012690150

Email Receipt Sent To = pluolszn@bennettjones.com

Item Information

Service ID	Product ID	Matter #	Description	Qty	Price	SNR Credit^	Subtotal
31339735	1100	60037.1	WEF Issue and Filing IssueAndFileWrit *	1	\$199.95	\$0.00	\$199.95
				Sub Total: \$199.95			
				HST: \$3.89			
				Total: \$203.84			

Note:

All items with \* will have the result sent to you in email when the result is available.

^SNR Credit also known as Search Name Report Credit, is only applicable to CSP Property Search Product.

For billing related questions on Search: Info@teranetexpress.ca

For billing related questions on Search Writs, OWL and WritFiling: 1-800-208-5263 or 416-360-1190

**MARGARITA CASTILLO**  
Plaintiff

-and-

**139**  
**XELA ENTERPRISES LTD. et al.**  
Defendants

Court File No.: CV-11-9177-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(Commercial List)**

Proceeding commenced at Toronto

**DIRECTION TO ENFORCE WRIT**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Tel: (416) 777-7472  
Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**  
Tel: (416) 777-4662  
Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200  
Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

**TAB J**

THIS IS EXHIBIT "J" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

THE HONOURABLE MR. JUSTICE            ) WEDNESDAY, THE 11<sup>TH</sup> DAY  
THOMAS J. McEWEN                        ) )  
  ) OF OCTOBER, 2017

BETWEEN:

**MARGARITA CASTILLO**

Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**ORDER**

**THIS MOTION**, made by the applicant, Margarita Castillo ("**Margarita**"), unopposed, for orders in aid of enforcement, was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

**UPON READING** the Motion Record of Margarita dated October 2, 2017;

1. **THIS COURT ORDERS AND DIRECTS THAT** the respondents, Juan Guillermo Gutierrez ("**Juan**") and Carmen S. Gutierrez as Executor of the Estate of Juan Arturo Gutierrez (the "**Estate**"), cooperate in allowing Margarita's agents to access the following assets (by



authorizing such access, where Juan or the Estate are capable of doing so, and otherwise by not interfering with or obstructing such access), for the purpose of appraising the assets' value:

- (a) six motor vehicles ordinarily stored at the property municipally known as 1064 South Service Road East, Oakville, Ontario (the "**Warehouse**"), being:
  - (i) 1982 Porsche 928 (VIN: WP0JA0929CS821676);
  - (ii) 2001 BMW Z8S (VIN: WBAEJ13481AH60700);
  - (iii) 1972 Mercedes Benz 350 (VIN: 10702310002578);
  - (iv) 1927 Buick (VIN 1946303);
  - (v) 2003 Mercedes Benz SLR (VIN: WDBSK75F93F049657); and
  - (vi) 1994 Mercedes Benz SL5 (VIN: WDBFA67E2RF096895)(collectively, the "**Stored Cars**");
  
- (b) the real estate property municipally known as 174 Hammer Bay Road, Seguin, Ontario (the "**Cottage**") and owned jointly by Juan;
  
- (c) the two motorboats owned by Juan and stored at the Cottage, being:
  - (i) a Ski Boat Mastercraft; and
  - (ii) a Sea-Doo;(collectively, the "**Cottage Motorboats**")

## 2. THIS COURT ORDERS AND DIRECTS THAT Juan:

- (a) provide Margarita's lawyers with a copy of any agreement of purchase and sale in the event that any person or persons ("**Purchaser(s)**") agree to purchase the real estate property municipally known as 2 Gordon Road, Toronto, Ontario (the "**Primary Residence**") within three (3) days of the signing of any such agreement of purchase and sale;
- (b) refrain from closing such transaction (a "**Sale**") until at least fourteen (14) days after the notice provided for in sub-paragraph 2(a), above, has been delivered to Margarita's lawyers; and
- (c) pay or cause to be paid 50% of the net sale proceeds arising from a Sale (meaning the purchase price, exclusive of taxes, commissions and any amounts which must be applied to discharge a priority security interest registered against the Principal Residence) to the lawyers for Margarita within two (2) business days of the closing of that Sale in partial satisfaction of the Judgment of The Honourable Mr. Justice Newbould granted in this proceeding on October 28, 2015.



ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

OCT 11 2017

PER / PAR: 

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al**  
Respondents **4**

Court File No.: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**ORDER**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Tel: (416) 777-7472  
Email: leonj@bennettjones.com

**Jason W.J. Woycheshyn (#53318A)**  
Tel: (416) 777-4662  
Email: woycheshynj@bennettjones.com

**William A. Bortolin (#65426V)**  
Tel: (416) 777-6126  
Email: bortolinw@bennettjones.com

Facsimile: (416) 863-1716

Lawyers for the Applicant,  
Margarita Castillo

**TAB K**

THIS IS EXHIBIT "K" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



Jason W.J. Woycheshyn  
Partner  
Direct Line: 416.777.4662  
e-mail: woycheshynj@bennettjones.com  
Our File No.: 60037.1

November 9, 2017

Via Courier

Enforcement Office  
Territorial District of Parry Sound  
89 James Street  
Parry Sound, ON P2A 1T7

Dear Sir or Madam:

**Re: Margarita Castillo v. Xela Enterprises Ltd. et al.  
Court File No. CV-11-9062-00CL**

We are lawyers for Margarita Castillo, judgment creditor in the above-noted proceeding. Please find enclosed the following documents regarding the judgment debtor, Juan Guillermo Gutierrez:

1. Direction to Enforce Writ and attached Affidavit of Louise McLean sworn November 10, 2017 and Writ of Seizure and Sale No. 17-0000060;
2. Full legal description of property (Transfer/Deed of Land);
3. Abbreviated Parcel Register search conducted November 9, 2017, including Abstract and charges/transfer documents;
4. Municipal address: 174 Hamer Bay Road, Seguin Township, ON, P0C 1H0;
  - i. Wood frame.
  - ii. Detached, 1.5 story, 15 rooms.
  - iii. Forced air heating.
  - iv. Detached garage and detached boathouse.
  - v. Two wood burning fireplaces.
5. Account Summary from ScotiaBank dated July 24, 2017 (marked as Exhibit "H" to the July 25, 2017 examination in aid of execution of the judgment debtor, Juan Guillermo Gutierrez) showing balances owing on the property referred to in #4 above totaling \$962,355.05;

6. The property is owned jointly with Wencke Gutierrez (Juan Guillermo's spouse) as joint tenants. However, this is not their matrimonial home. The couple's primary residence and matrimonial home is located at 2 Gordon Road in Toronto, Ontario;
7. Deposit for costs which includes the prescribed fees in accordance with local practice - cheque in the amount of \$3,500.00 attached; and
8. Certified appraisal of the premises.

In addition regarding two watercraft located in boathouse:

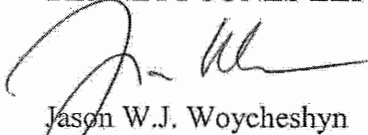
1. Excerpts from the examinations of the debtor, Juan Guillermo Gutierrez and Carmen S. Gutierrez, as executor of the estate of Juan Arturo Gutierrez regarding the watercraft located in or around the boathouse at the above premises;
2. Photographs of the buildings at 174 Hamer Bay Road and two watercraft contained in the boathouse; and
3. Appraisals obtained from the National Appraisal Guides, Inc. website and autotrader listings regarding the SeaDoo and Mastercraft Ski Boat contained in or around the boathouse at the premises.

We require you to enforce the Writ of Seizure and Sale against the above property and watercraft.

Please feel free to contact us with any questions or concerns, or if you require additional information.

Yours very truly,

**BENNETT JONES LLP**



Jason W.J. Woycheshyn

JWW  
Enclosures



Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**MARGARITA CASTILLO**

Applicant  
(Judgment Creditor)

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents  
(Judgment Debtors)

**DIRECTION TO ENFORCE WRIT**

TO: the Sheriff of the Regional Municipality of Parry Sound

Under an order of this court in favour of Margarita Castillo made on October 28, 2015, Xela Enterprises Ltd., Juan Guillermo Gutierrez and Juan Arturo Gutierrez were ordered to pay the sum of **\$4,250,000.00** with interest at the rate of 2 per cent per year commencing on October 28, 2015. Since the order was made, the creditor has received the following payments:

<b>Date of payment</b>	<b>Amount of payment</b>
August 9, 2017	\$133,568.64
August 15, 2017	\$3,211.00
September 11, 2017	\$838.00

Under rule 60.19 of the *Rules of Civil Procedure*, the creditor is entitled to costs in the amount of,

- (a) \$50 for the preparation of documents in connection with issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;
- (b) \$203.84 for disbursements paid to a sheriff, registrar, official examiner, court reporter or other public officer and to which the creditor is entitled under subrule 60.19 (1); (*Attach copy of all receipts.*)

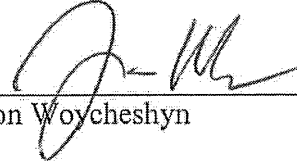


(c) \$956.60 for an amount determined in accordance with Tariff A for conducting an examination in aid of execution (*affidavit with receipts attached*);

(d) \$0.00 for any other costs to which the creditor is entitled under subrule 60.19(1).

YOU ARE DIRECTED to enforce the writ of seizure and sale issued on April 6, 2017 and filed in your office, upon the property located at 174 Hamer Bay Road, Seguin Township, Ontario, P0C 1H0 for a sum sufficient to satisfy the total of the amounts set out above, together with subsequent interest, and your fees and expenses.

Date November 9, 2017



---

Jason Woycheshyn

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**  
Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200  
Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

**MARGARITA CASTILLO**  
Plaintiff

-and-

**XELA ENTERPRISES LTD. et al.**  
Defendants

Court File No.: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**DIRECTION TO ENFORCE WRIT**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Tel: (416) 777-7472  
Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**  
Tel: (416) 777-4662  
Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200  
Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

# TAB L

THIS IS EXHIBIT "L" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

Katrina Elizabeth Crocker, a Commissioner, **etc.**,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**MARGARITA CASTILLO**

Applicant  
(Judgment Creditor)

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents  
(Judgment Debtors)

**DIRECTION TO ENFORCE WRIT**

TO: the Sheriff of the Regional Municipality of Parry Sound

Under an order of this court in favour of Margarita Castillo made on October 28, 2015, Xela Enterprises Ltd., Juan Guillermo Gutierrez and Juan Arturo Gutierrez were ordered to pay the sum of **\$4,250,000.00** with interest at the rate of 2 per cent per year commencing on October 28, 2015. Since the order was made, the creditor has received the following payments:

<b>Date of payment</b>	<b>Amount of payment</b>
August 9, 2017	\$133,568.64
August 15, 2017	\$3,211.00
September 11, 2017	\$838.00
December 15, 2017	\$13,213.72
February 28, 2018	\$181,607.90
March 5, 2018	\$3,764.72
March 22, 2018	\$27,350.40
April 27, 2018	\$4,710.49

Under rule 60.19 of the *Rules of Civil Procedure*, the creditor is entitled to costs in the amount of,

(a) \$50 for the preparation of documents in connection with issuing, renewing and filing with the sheriff the writ of execution or notice of garnishment;

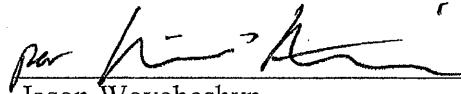
(b) \$203.84 for disbursements paid to a sheriff, registrar, official examiner, court reporter or other public officer and to which the creditor is entitled under subrule 60.19 (1); (*Attach copy of all receipts.*)

(c) \$956.60 for an amount determined in accordance with Tariff A for conducting an examination in aid of execution (*affidavit with receipts attached*);

(d) \$0.00 for any other costs to which the creditor is entitled under subrule 60.19(1).

YOU ARE DIRECTED to enforce the writ of seizure and sale issued on April 6, 2017 and filed in your office, upon the property located at 174 Hamer Bay Road, Seguin Township, Ontario, P0C 1H0 for a sum sufficient to satisfy the total of the amounts set out above, together with subsequent interest, and your fees and expenses.

Date May 4, 2018



Jason Woycheshyn

**BENNETT JONES LLP**

3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**

Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**

Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200

Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

**MARGARITA CASTILLO**  
Plaintiff

-and-

**XELA ENTERPRISES LTD. et al.**  
Defendants

Court File No.: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**DIRECTION TO ENFORCE WRIT**

**BENNETT JONES LLP**  
3400 One First Canadian Place  
P.O. Box 130  
Toronto ON M5X 1A4

**Jeffrey S. Leon (#18855L)**  
Tel: (416) 777-7472  
Email: leonj@bennettjones.com

**Jason Woycheshyn (#53318A)**  
Tel: (416) 777-4662  
Email: woycheshynj@bennettjones.com

Telephone: (416) 863-1200  
Facsimile: (416) 863-1716

Lawyers for the plaintiff, Margarita Castillo

**TAB M**



THIS IS EXHIBIT "M" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019

A handwritten signature in cursive script, appearing to read "K Crocker", is written over a horizontal line.

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

FORM 60N  
*Courts of Justice Act*  
SHERIFF'S REPORT

Marguerita Castillo  
- and -  
Xela Enterprises Ltd; Juan Guillermo Gutierrez;  
Carmen S. Gutierrez as executor of the estate of Juan Arturo Gutierrez

Sheriff's report

In response to your request of November 9, 2017 concerning the execution of the writ of seizure and sale against Xela Enterprises Ltd; Juan Guillermo Gutierrez; Carmen S. Gutierrez as executor of the estate of Juan Arturo Gutierrez, filed with me, I report that I have taken the following action, with the following results:

*Sheriff's auction successful; bid of \$780,000.00 – deposit received July 26, 2018, remainder received August 13, 2018. This amount will be paid to the solicitor of the creditor after the 30-day holding period*

*August 13, 2018*

W. Schroeder  
Sheriff's Office,  
Territorial District of Parry Sound

TO Bennett Jones  
3400 One First Canadian Place  
Box 130  
Toronto, ON M5X 1A4  
Attn.: Jason Woycheshyn

Sent via fax to  
416-863-1716

**TAB N**

THIS IS EXHIBIT "N" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



ServiceOntario

LAND  
REGISTRY  
OFFICE #42

PARCEL REGISTER (ABBREVIATED) FOR PROPERTY IDENTIFIER

PAGE 1 OF 1  
PREPARED FOR JPetrovic  
ON 2018/08/31 AT 15:19:57

52193-0908 (LT)

\* CERTIFIED IN ACCORDANCE WITH THE LAND TITLES ACT \* SUBJECT TO RESERVATIONS IN CROWN GRANT \*

PROPERTY DESCRIPTION: PT LT 29 CON 6 HUMPHREY PT 2 42R5848; PT SHORE RDAL IN FRONT LT 29 CON 6 HUMPHREY PTS 1 & 2 42R19805 (CLOSED BY BY-LAW 2014-012 AS IN GB71242); TOWNSHIP OF SEGUIN

PROPERTY REMARKS: CROWN GRANT SEE LP1258.

ESTATE/QUALIFIER: RECENTLY.  
FEE SIMPLE CONSOLIDATION FROM 52193-0194, 52193-0895  
ABSOLUTE

OWNERS' NAMES: CAPACITY SHARE  
GUTIERREZ, JUAN GUILLERMO UTEN  
GUTIERREZ, WENCKE UTEN

PIN CREATION DATE:  
2014/07/07

REG. NUM.	DATE	INSTRUMENT TYPE	AMOUNT	PARTIES FROM	PARTIES TO	CERT/CHKD
** PRINTOUT INCLUDES ALL DOCUMENT TYPES AND DELETED INSTRUMENTS SINCE 2014/07/07 **						
42R5848	1978/11/14	PLAN REFERENCE				C
LT194742	1992/09/30	TRANSFER	\$307,000		GUTIERREZ, JUAN GUILLERMO GUTIERREZ, WENCKE	C
LT263182	2004/11/15	CHARGE	\$1,850,000		THE BANK OF NOVA SCOTIA	C
42R19805	2012/12/11	PLAN-REFERENCE				C
GB69256	2013/11/27	APL (GENERAL)		THE CORPORATION OF THE TOWNSHIP OF SEGUIN	THE CORPORATION OF THE TOWNSHIP OF SEGUIN	C
REMARKS: APPLICATION TO BE ENTERED AS OWNER						
GB71242	2014/03/06	BYLAW		THE CORPORATION OF THE TOWNSHIP OF SEGUIN		C
REMARKS: BEING A BY-LAW TO STOP UP CLOSE AND SELL PTS 1 & 2 42R19805.						
GB72199	2014/04/23	TRANSFER	\$8,280	THE CORPORATION OF THE TOWNSHIP OF SEGUIN	GUTIERREZ, JUAN GUILLERMO GUTIERREZ, WENCKE	C
GB72200	2014/04/23	APL ANNEX REST COV		GUTIERREZ, JUAN GUILLERMO GUTIERREZ, WENCKE	GUTIERREZ, JUAN GUILLERMO GUTIERREZ, WENCKE	C
GB74096	2014/07/04	APL CH NAME OWNER		GUTIERREZ, JUAN GUILLERMO	GUTIERREZ, JUAN GUILLERMO	C
GB74097	2014/07/04	APL CONSOLIDATE		GUTIERREZ, JUAN GUILLERMO GUTIERREZ, WENCKE	GUTIERREZ, WENCKE	C
GB114228	2018/08/14	APL (GENERAL)		GUTIERREZ, WENCKE	GUTIERREZ, WENCKE	C
GB114229	2018/08/14	CHARGE	\$850,000	GUTIERREZ, WENCKE	NORTHERN FUNDING GROUP INC.	C
GB114230	2018/08/14	NO ASSIGN RENT GEN		GUTIERREZ, WENCKE	NORTHERN FUNDING GROUP INC.	C

NOTE: ADJOINING PROPERTIES SHOULD BE INVESTIGATED TO ASCERTAIN DESCRIPTIVE INCONSISTENCIES, IF ANY, WITH DESCRIPTION REPRESENTED FOR THIS PROPERTY.  
NOTE: ENSURE THAT YOUR PRINTOUT STATES THE TOTAL NUMBER OF PAGES AND THAT YOU HAVE PICKED THEM ALL UP.

**TAB 0**

THIS IS EXHIBIT "O" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

# LISTING ANALYSIS

PREPARED FOR: 2 GORDON RD  
JUNE 20, 2018

-PRIVATE AND CONFIDENTIAL-



#### CONFIDENTIALITY & DISCLAIMER:

The information contained in this document is proprietary and strictly confidential. It is intended to be reviewed only by the party receiving it from Sotheby's International Realty Canada, Brokerage and should not be made available to any other person or entity without the written consent of the Listing Brokerage or their designated representatives. This document has been prepared to provide summary, unverified information to prospective purchasers, and to establish only a preliminary level of interest in the subject property. The information contained herein is not a substitute for a thorough due diligence investigation and is intended for information purposes only and may not be considered any sort of guarantee, warranty or assurance of accuracy. Any investigations of the Property are at the sole risk and expense of the Recipient and Sotheby's International Realty Canada will not be liable for any costs related to such investigations or due diligence.

Sotheby's International Realty Canada has not made any investigation, and makes no warranty or representation, with respect to the income or expenses for the subject property, the future projected financial performance of the property, the size and square footage of the property and improvements, the presence or absence of contaminating substances, PCB's or asbestos, the compliance with Provincial and Federal regulations, the physical condition of the improvements thereon. The information contained in this Marketing Brochure has been obtained from sources we believe to be reliable; however, Sotheby's International has not verified, and will not verify, any of the information contained herein, nor has Sotheby's International Realty Canada conducted any investigation regarding these matters and makes no warranty or representation whatsoever regarding the accuracy or completeness of the information provided. All potential buyers must take appropriate measures to verify all of the information set forth herein.

In consideration of receiving the Confidential Information from the Provider, the Recipient agrees to hold and treat the Confidential Information in the strictest confidence and agrees not to disclose the Confidential Information to any party. The Recipient agrees that any investigations of the Property are at the sole risk and expense of the Recipient and the Provider will not be liable for any costs related to such investigations or due diligence without the express written authorization from the Provider.

The Provider is not liable for the accuracy or completeness of the Confidential Information and is not liable in any way to the Recipient as a result of providing the Confidential Information to the Recipient.

Not intended to solicit properties currently for sale or anyone under agency with another Realtor® or Brokerage. E & OE

**ALL PROPERTY SHOWINGS ARE BY APPOINTMENT ONLY. PLEASE CONTACT US DIRECTLY TO ARRANGE A VIEWING AT  
theannolivergroup@gmail.com or through our office at 416-960-9995**

MARKETING PIECE

Just Listed

RELEASE DATE

AUG 17, 2017

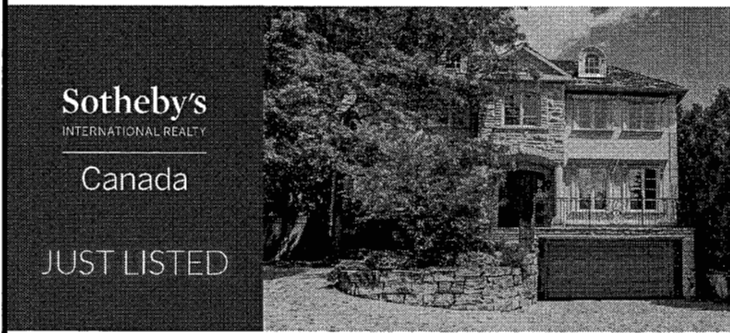
162

DELIVERY METHOD

Hand delivery

DELIVERY CT

500



FRONT



**STUNNING 5 BEDROOM FAMILY HOME**  
 2 GORDON ROAD, TORONTO, ON | \$4,699,000

Refined and stately, this perfect family home offers 5 bedrooms, gourmet kitchen with stone and butcher block counters, custom centre island, floating cabinets, stainless steel appliances and breakfast bar seating. Double sided fieldstone fireplace, formal parlour, office with french doors, formal dining room and main floor laundry room. Space to die for. Finished basement with games room, bedroom and studio, and sparkling inground pool on expansive lot.

**ANNA OLIVER**  
 Sales Representative  
 c 416.206.9957  
 aoliver@sothebyrealealty.ca

**ROBERT NELSON**  
 Sales Representative  
 c 416.848.8413  
 rnelson@sothebyrealealty.ca

Sotheby's | Canada  
 INTERNATIONAL REALTY  
 416.960.9995 sothebyrealealty.ca

FIGURE: This is a model of a home represented in an advertisement. It is not intended to be a representation of the actual home. It is subject to change without notice. Sotheby's International Realty Canada, Toronto, Ont. is a member of the Real Estate Board of Greater Toronto. For information on this listing, please contact the listing agent.

BACK

MARKETING PIECE

FEATURE SHEET

RELEASE DATE

Aug 17, 2017

DELIVERY METHOD

In House

DELIVERY CT

25

Sotheby's | Canada  
 INTERNATIONAL REALTY

Anna Oliver  
 Sales Representative  
 c 416.206.9957  
 f 416.960.3222  
 aoliver@sothebyrealealty.ca

Robert Nelson  
 Sales Representative  
 c 416.848.8413  
 f 416.960.3222  
 rnelson@sothebyrealealty.ca

Sotheby's International Realty Canada, Toronto, ON  
 1567 Yonge Street, Suite 100, Toronto, ON  
 M4W 2M2  
 Tel: 416.960.9995

Developed by government staff  
 Toronto, ON  
 5-1  
 6 buildings

Refined and stately, this perfect family home offers 5 bedrooms, gourmet kitchen with stone and butcher block counters, custom centre island, floating cabinets, stainless steel appliances and breakfast bar seating. Double sided fieldstone fireplace, formal parlour, office with french doors, formal dining room and main floor laundry room with french doors, and main floor laundry room. Space to die for. Finished basement with games room, bedroom and studio, and sparkling inground pool on expansive lot.

**THE PERFECT FAMILY HOME**  
 2 Gordon Road, Toronto, ON

Sotheby's | Canada  
 INTERNATIONAL REALTY

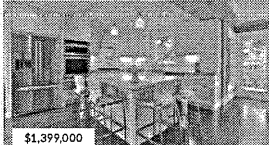
FRONT & BACK



INSIDE

# Sotheby's | Canada

INTERNATIONAL REALTY



\$1,399,000

**119 Burnhamthorpe Road, Toronto, ON**

BED: 3 BATH: 2

Completely renovated elegant centre hall residence in a wonderful neighbourhood. Stunning custom kitchen open to family area with granite counters, stainless steel chef's appliances and centre island with breakfast bar.

Lisa Robinson

416.960.9995



\$4,699,000

**2 Gordon Road, Toronto, ON**

BED: 5+1 BATH: 6

Refined and stately, this perfect family home offers gourmet kitchen with stone and butcher block counters, custom centre island and breakfast far seating. Double sided fieldstone fireplace and formal parlour.

Anna Oliver & Robert Nelson

416.960.9995



\$1,195,000

**PH 03 - 126 Simcoe Street, Toronto, ON**

BED: 1 BATH: 1.5 SQ.FT: 1,000

Creative style and outstanding design are fused with rich materials providing a sense of comfort and luxury in this loft like penthouse. Open-concept layout with walk-outs to 2 incredible terraces.

Christian Vermaat, Paul Maranger & Fran Bennett

416.960.9995



\$659,000

**2 Dunsany Crescent, Toronto, ON**

BED: 4 BATH: 1

Great opportunity for first time buyers or downsizers. Extremely well cared for - 4 bedrooms, semi located in easy proximity to shopping, transit and highway. Private, well manicured rear yard, nice curb appeal.

Robert Nelson

416.960.9995



\$1,900,000

**153 Welland Avenue, Toronto, ON**

BED: 3 BATH: 2

Cozy centre hall plan, 3 bedrooms, master with 3 piece ensuite, across from Moorevale Park, enjoy tennis and lawn bowling at your door-step. Legal front pad parking.

Nigel Denham

416.960.9995



\$2,900,000

**292 Mcgibbon Lake Road, Bancroft, ON**

BED: 2 BATH: 5 SQ.FT: 6,314

Ideal family property with unparalleled privacy. Main lake house and post-and-beam guest house stand on this unbelievable back-to-nature 306 acre paradise with private, crystal clear lake.

Christian Vermaat, Paul Maranger & Fran Bennett

416.960.9995



\$2,695,000

**6 Thorncrest Road, Toronto, ON**

BED: 4 BATH: 5 SQ.FT: 6,583

Enter, party and live in this light filled masterpiece. Grandly scaled living + dining rooms. Backyard oasis, with dining patio, will take your breath away. Stone patios and mature plantings.

Christian Vermaat, Paul Maranger & Fran Bennett

416.960.9995



\$3,950,000

**1423 / 1425 Rutledge Road, South Frontenac, ON**

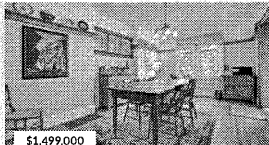
BED: 2 BATH: 0

681 acres of land with 2.4 Km of private water front along Loughborough Lake. An incredible tranquil family compound consisting of a lakefront lodge house, 1840's stone farmhouse and guest house.

Christian Vermaat, Paul Maranger & Fran Bennett

416.960.9995

CONDO CONNOISSEURS | THE ART OF URBAN LIVING



\$1,499,000

**40 Snowdon Avenue, Toronto, ON**

BED: 3 BATH: 3

Rarely offered 3 storey brick residence is located on a 30 by 125 foot lot in highly sought after Wanless Park and Bedford Park School district. Spacious living and dining area, eat-in kitchen with walk out to lush gardens.

Lindsay Wallace

416.960.9995



\$1,500,000

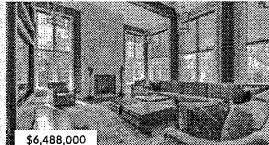
**11 - 50 Bartlett Avenue, Toronto, ON**

BED: 2 BATH: 3

Lanehouse on Bartlett - prestigious 3-storey condo/ townhouse in Bloorcourt; bold, stylish interiors: exposed brick and steel beam accents; kitchen with eat-in island and 18 ft. ceiling. Private rooftop terrace.

Nissan Michael

416.960.9995



\$6,488,000

**142 Hedgerow Lane, Vaughan, ON**

BED: 4+1 BATH: 4

Built in 2015, this home presents a striking and sophisticated sanctuary nestled gracefully upon almost one acre. A masterpiece of contemporary/traditional design unmatched in its setting and extraordinary detail.

Janice Williams & Amalia Bekerman

416.960.9995



\$478,000

**302 - 225 Wellesley Street East, Toronto, ON**

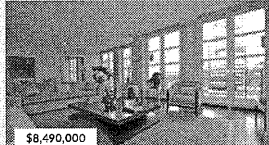
BED: 2 BATH: 2

Split floor plan with 2 bedrooms, south facing unit with over 900 sq.ft. of livable space is offered within a well run boutique building. Gorgeous kitchen and baths. Abundant storage space, owners locker and 1 car parking.

Kimberley Ezeard

416.960.9995

CONDO CONNOISSEURS | THE ART OF URBAN LIVING



\$8,490,000

**801 - 118 Yorkville Avenue, Toronto, ON**

BED: 2 BATH: 3

One of a kind custom designed suite at the Hazelton Private Residences offering upscale contemporary finishes throughout and great flow for entertaining. Unparalleled luxury in the heart of Yorkville.

Alex Pino & Veronica Lord

416.960.9995



\$1,995,000

**709 - 650 Mt. Pleasant Road, Toronto, ON**

BED: 2+ BATH: 5 SQ.FT: 1,190

Rare offering, boutique building. Sophisticated style, custom design, chef's kitchen + family room, large terrace, 4 walk-outs, BBQ and magnificent unobstructed west-south views! Super amenities, walk to shops, bistro's and subway.

Jennifer Stanley & Gordon Nye

416.960.9995



\$549,000

**611 - 17 Anndale Drive, Toronto, ON**

BED: 1+1 BATH: 1

This luxury Savvy Condo building was built by Menkes! The unit includes 1 bedroom plus den with large balcony right in the heart of North York with great views from the unobstructed balcony, 1 parking space and 1 storage locker.

Amalia Bekerman

416.960.9995



SOLD

**1504 - 914 Yonge Street**

BED: 1 BATH: 1

Lovely suite, sunny and bright with a south facing view. Featuring a modern kitchen with ensuite laundry, and a locker that is on the same floor. Steps to shops, Yorkville, subway, restaurants, schools and entertainment.

Josephine Lennon

416.960.9995

TORONTO 416.960.9995 NEW YORK 905.845.0024 OAKVILLE 905.845.0024 FLORIDA 905.468.0001 NIAGARA ON THE LAKE 905.468.0001 BAHAMAS 877.960.9995 MUSKOKA 877.960.9995 HONG KONG 705.446.2683 CREEMORE 705.446.2683

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MARKETING PIECE

Globe and Mail Ad

RELEASE DATE

FEB 2018

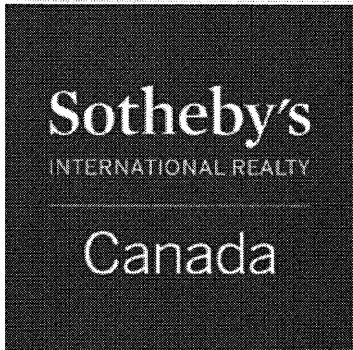
164

DELIVERY METHOD

Print

DELIVERY CT

FRIDAY / SAT & SUN RUN



SOTHEBYSREALTY.CA

Your best life begins with a home that inspires you.

OPEN HOUSE »

« OPEN HOUSE

SATURDAY / SUNDAY SHOWCASE 2 - 4

\$4,495,000

99 Elm Avenue, Toronto, ON  
BED: 5 BATH: 4.5 SQ.FT. 6,210

Copy

Christian Vermast\* 416.960.9995  
Paul Maranger\* Fran Bennett\* Trilogys.com



72 Alcina Avenue, Toronto, ON  
BED: BATH: SQ.FT.

Your dream custom home awaits! City approved drawings and permits. Visionary design by Reowned Richard Wengle Architect expresses

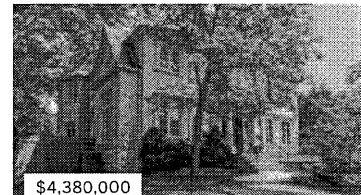
Tracy An\* 416.960.9995  
Richard Silver\* Torontoism.com



82 Wychwood Park, Toronto, ON  
BED: 8+1 BATH: 9 SQ.FT. 12,000+

Spectacular Wychwood Park Estate with views of Lake Ontario. 12,000+ of total sq.ft. 8+1 beds. 9 baths, theatre, high ceilings and inground pool

Tracy An\* 416.960.9995  
Richard Silver\* Torontoism.com



2 Gordon Road, Toronto, ON  
BED: 5+1 BATH: 6 SQ.FT. 6,000

Elegant detached residence in one of Toronto's most prestigious neighbourhoods. Gourmet kitchen, main floor study, finished basement with

Anna Oliver\* 416.960.9995  
Robert Nelson\*

\$4,698,000

27 Dunbar Road, Toronto, ON  
BED: 4 BATH: 7 SQ.FT. 6,136

Bring your architect and designer to view this coveted address. A rare unrated home in a heritage district. Impressive in depth with a privat

Christian Vermast\* 416.960.9995  
Paul Maranger\* Fran Bennett\* Trilogys.com



7610 - 388 Yonge Street, Toronto, ON  
BED: 2+1 BATH: 2.5 SQ.FT. 3,055

View is everything! The vistas will take your breath away. Luxurious finishes throughout the unit in Canada's tallest condominium. 2 parking spots.

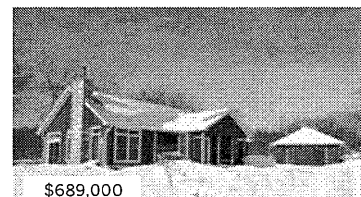
Christian Vermast\* 416.960.9995  
Paul Maranger\* Fran Bennett\* Trilogys.com



1 Ranstone Gardens, Toronto, ON

Accomplished and unparalleled investment residence on an over-sized (tree) green space. turn-key 6-plex - dotingly maintained.

Kendra Connelly\* 416.960.9995



96 Smiths Bay Ave. Prince Edward County, ON  
BED: 2+1 BATH: 2 SQ.FT. 1,785

Inspired "Modern Farmhouse". Floor to ceiling windows wrap the 4-seasons house in sunshine. Splendid garden and seasonal water views.

Christian Vermast\* 416.960.9995  
Paul Maranger\* Fran Bennett\* Trilogys.com

TORONTO  
416.960.9995

OAKVILLE  
905.845.0024

MISSISSAUGA  
289.334.3431

COLLINGWOOD  
705.416.1499

NIAGARA ON THE LAKE  
905.468.0001

GANANOQUE  
877.960.9995

MUSKOKA  
877.960.9995

PRINCE EDWARD COUNTY  
613.969.2044

CREEMORE  
705.466.2683

OWEN SOUND  
877.960.9995

Canadian Owned and Operated. E.&O.E.: This information is from sources which we deem reliable, but must be verified by prospective Purchasers and may be subject to change or withdrawal.

MARKETING PIECE

FLOORPLAN INSERT

RELEASE DATE

SEPT 22, 2017

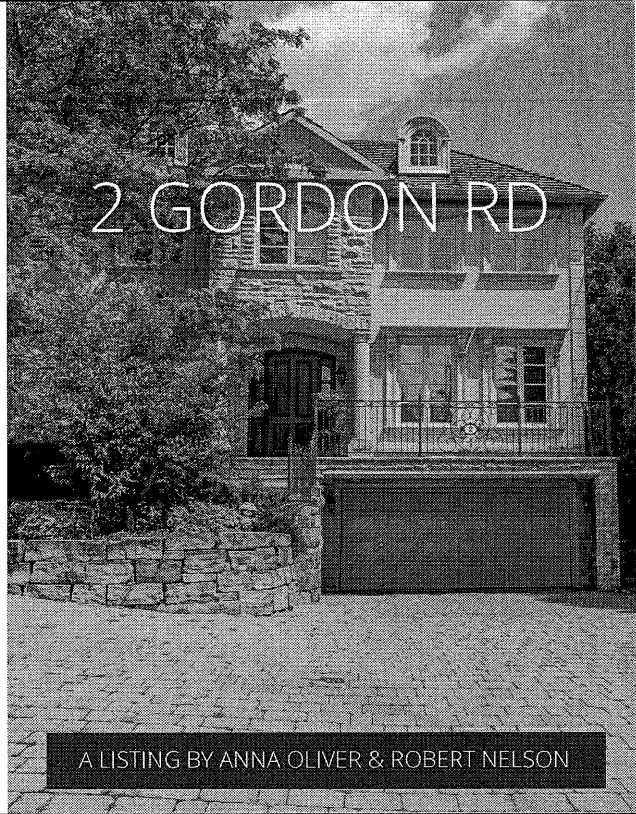
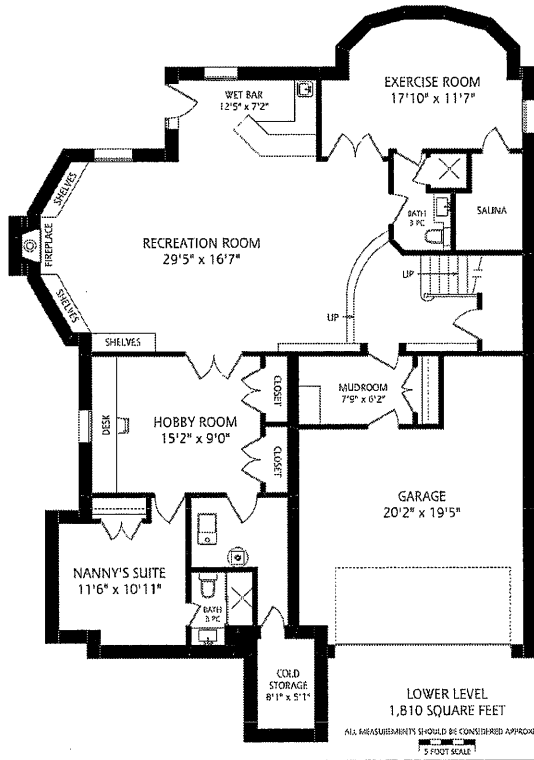
DELIVERY METHOD

In House

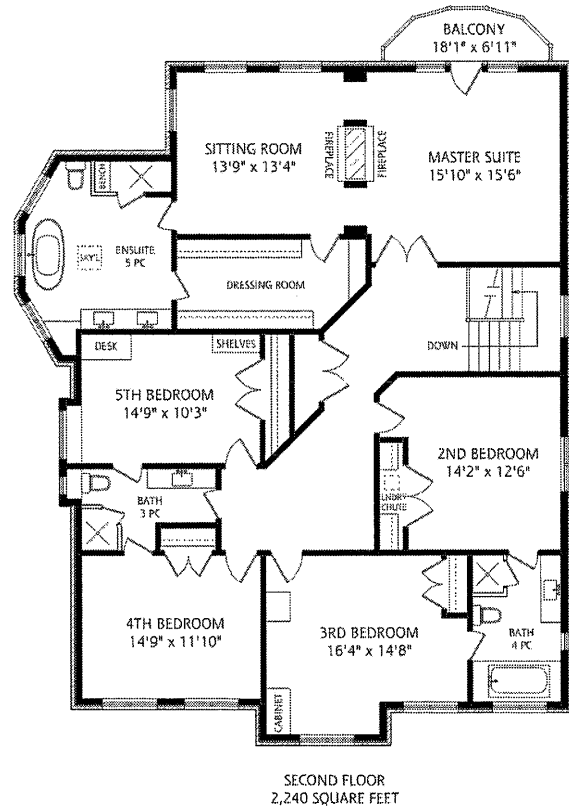
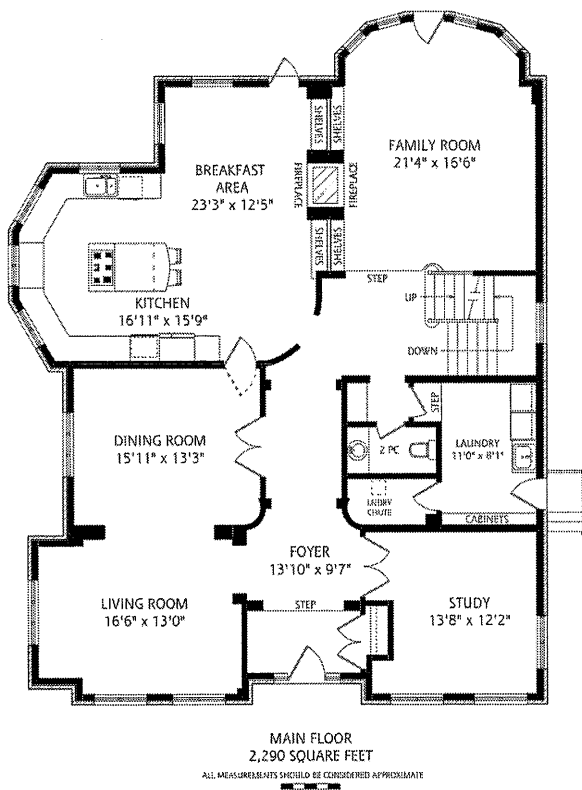
DELIVERY CT

30

2 GORDON ROAD



2 GORDON ROAD




MARKETING PIECE	FACEBOOK CAMPAIGNS	RELEASE DATE	ASSORTED
DELIVERY METHOD	ONLINE	DELIVERY CT	N/A

**Anna Oliver**  
September 28, 2017 · Toronto · 🌐

A stunning 6- bedroom custom home for less? Yes, please! 2 Gordon Rd., is now exclusively for sale for \$4,488,000!

A backyard oasis with an Inground pool to the double sided stone fireplace in an ideal entertaining space - this home offers a luxurious lifestyle like no other.

Don't hesitate to contact me or visit my website for more details!  
<https://www.annaolivercompany2gordon>



👍 You and 14 others      1 Comment 4 Shares 368 Views

👍 Like    💬 Comment    ➦ Share

**Anna Oliver is with Sara Balle.**  
September 5, 2017 · 🌐

Poolside or fireplace to hear a fireplace to escape the chilly weather? 2 Gordon Rd. has you covered with its double sided Inground fireplace you prefer poolside or fireplace, this 6 bedroom detached custom Toronto home has everything you could want - and more to boot!

Offered exclusively for sale for \$4,380,000! Set on tour today!  
<https://www.annaolivercompany2gordon>



👍 You, Lynda Wilson, Lynda Bernard-Wray and 7 others      1 Share


👍 Love    💬 Comment    ➦ Share

**Anna Oliver is with Sara Balle in Toronto, Ontario.**  
May 9 · 🌐

2 Gordon Rd. - enjoy city living with the space of a country home! Now offered exclusively for sale for \$3,985,000!

This 6 bedroom home is located on an expansive lot with a beautiful inground pool. Located in a fantastic, family friendly Toronto neighbourhood, this home offers the vibrancy of the city with the benefit of escaping the hustle and bustle.

<http://www.annaliver.ca/.../toronto-c12/st-andre.../2-gordon-rd>  
#annoyyz #annaliveryz #realestate #toronto #torontorealtor #torontohouse



👍 You, Lynda Bernard-Wray and 12 others      3 Comments 1 Share


👍 Love    💬 Comment    ➦ Share

**Anna Oliver**  
August 10, 2017 · 🌐

Poolside or fireplace - whatever you desire! Whether you prefer getting creative in your gourmet kitchen, smuggling up near your double sided fireplace, relaxing by your In ground pool or on your master suite patio, having fun in your games room - this 5 bedroom detached custom home has everything you could want!

On top of it all, 2 Gordon Rd. is also in a fantastic neighborhood!

Offered exclusively for sale for \$4,680,000! Don't hesitate - contact me or visit my website to set up a tour!  
<https://www.annalivercompany2gordon>

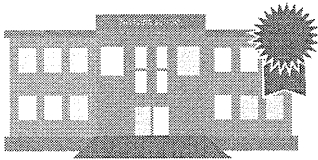


👍 You, Lynda Bernard-Wray and 20 others      2 Comments 3 Shares

👍 Like    💬 Comment    ➦ Share

**SCHOOLS**

With good assigned and local public schools near this home, your kids can thrive in the neighbourhood. There are also 3 Catholic schools and 2 private schools within 2.29km of this address.



**Owen Public School**

Grades PK to 6 (Assigned)  
111 Owen Blvd  
0.6 KM

**St. Andrew's Junior High School**

Grades 4 to 8 (Assigned)  
131 Fenn Ave  
0.87 KM

**York Mills Collegiate Institute**

Grades 10 to 12 (Assigned)  
490 York Mills Rd  
2.01 KM

**Avondale School**

Grades PK to 8  
171 Avondale Ave  
1.35 KM

**PARKS & REC.**

This home is located in park heaven, with 12 parks and a long list of recreation facilities within a 20 minute walk from this address.



**Tournament Park**

40 Tournament Dr  
0.34 KM



**Brookfield Parkette**

27 Brookfield Rd  
0.72 KM



**Owen Park & School Grounds**

150 Gordon Rd  
0.74 KM



**FACILITIES WITHIN A 20 MINUTE WALK**

- |                 |                     |
|-----------------|---------------------|
| 7 Playgrounds   | 1 Sports Field      |
| 9 Tennis Courts | 2 Basketball Courts |
| 1 Splash Pad    | 3 Ball Diamonds     |
| 3 Rinks         | 2 Golf Courses      |
| 5 Trails        | 4 Picnic Facilities |
| 1 Multi-Use Pad | 2 Clubhouses        |

**TRANSIT**

Public transit is at this home's doorstep for easy travel around the city. The nearest street transit stop is only a 3 minute walk away and the nearest rail transit stop is a 8 minute walk away.

**Nearest Street Level Transit Stop**

Upper Highland Cres At Owen Blvd



**Nearest Rail Transit Stop**

York Mills Station



**SAFETY**

With safety facilities in the area, help is always close by. Facilities near this home include a fire station, a police station, and a hospital within 3.52km.

**Fire Station**

10 William Carson Cres  
0.5 KM

**Police Station**

30 Ellerslie Ave  
2.92 KM

**Sunnybrook Health Sciences Centre**

2075 Bayview Ave  
3.52 KM

**CONVENIENCE**

This home is located near everyday amenities to make your daily errands easier.

**Pharmacy**

0.4 KM

**Gym**

0.6 KM

**Coffee**

0.6 KM

**Gas Station**

0.6 KM

**Grocery**

0.8 KM

**Cleaner**

1.3 KM



Agreement of Purchase and Sale



Form 100 for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 23 day of August 2017

BUYER, GONGCHEN FAN, agrees to purchase from (Full legal names of all Buyers)

SELLER, Wencke Gutierrez & Juan Guillermo Gutierrez, the following (Full legal names of all Sellers)

REAL PROPERTY:

Address 2 GORDON RD

fronting on the East side of GORDON RD

In the City of Toronto

and having a frontage of 64.98 Feet more or less by a depth of 180 Feet more or less

and legally described as Plan 3517 Lot 187

(Legal description of land including easements not described elsewhere) [the "property"]

PURCHASE PRICE: Dollars (CDN\$) 3,988,000.00

Three Million Nine Hundred Eighty-Eight Thousand Dollars

DEPOSIT: Buyer submits Upon acceptance (Herein/Upon Acceptance/as otherwise described in this Agreement)

Two Hundred Thousand Dollars (CDN\$) 200,000.00

by negotiable cheque payable to SOTHEBY'S INTERNATIONAL REALTY CANADA "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11 p.m. on the 25 day of August 2017, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 18 day of October 2017. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.



# REGISTERED OFFER



## Agreement of Purchase and Sale



### Form 100

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 14 day of September 2017

**BUYER**, Frederick Dzineku & Chloe Roumain, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER**, Wencke Gutierrez & Juan Guillermo Gutierrez, the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 2 GORDON RD

fronting on the East side of Gordon Road

in the City of Toronto

and having a frontage of 64.98 feet more or less by a depth of 180 feet more or less

and legally described as Plan 3517 Lot 187

(Legal description of land including easements not described elsewhere) (the "property")

**PURCHASE PRICE:** Dollars (CDN\$) 4,200,000.00

Four Million Two Hundred Thousand Dollars

**DEPOSIT:** Buyer submits Upon the waiving of all conditions in this agreement  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Hundred Thousand Dollars (CDN\$) 100,000.00

by negotiable cheque payable to SOTHEBY'S INTERNATIONAL REALTY CANADA "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A & B** attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by BUYER until 11:59 PM on the 16 day of September 2017, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 4 day of December 2017. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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Agreement of Purchase and Sale



Form 100 for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 28th day of January 2018

BUYER Jason Burns in Trust agrees to purchase from

SELLER Wencke Gutierrez And Juan Guillermo Gutierrez the following

REAL PROPERTY:

Address 2 GORDON RD

fronting on the east side of Gordon Road

in the City of Toronto

and having a frontage of 64.08' more or less by a depth of 186' more or less

and legally described as Plan 3517 Lot 187

Legal description of land including easements of described elsewhere (the "property")

PURCHASE PRICE: Dollars (CAD\$) 4,000,000.00

Four Million Dollars

DEPOSIT: Buyer submits Upon acceptance

Two Hundred Twenty-Five Thousand Dollars (CAD\$) 225,000.00

by negotiable cheque payable to Sotheby's International Realty Canada Brokerage. "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A & B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:00 a.m. on the 29th day of January 2018 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 28th day of May 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

[Handwritten initials]

INITIALS OF SELLER(S):

[Handwritten initials]

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REGISTERED OFFER



Agreement of Purchase and Sale



Form 100 for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 13th day of February 2018

BUYER, Jason Berns in Trust, agrees to purchase from

SELLER, Wencke Gutierrez And Juan Guillermo Gutierrez, the following

REAL PROPERTY:

Address 2 GORDON RD fronting on the east side of Gordon Road in the City of Toronto and having a frontage of 64.98' more or less by a depth of 180' more or less and legally described as Plan 3517 Lot 187

PURCHASE PRICE: Dollars (CDN\$) 4,100,000.00 Four Million One Hundred Thousand Dollars

DEPOSIT: Buyer submits Upon acceptance Two Hundred Twenty-Five Thousand Dollars (CDN\$) 225,000.00

by negotiable cheque payable to Sotheby's International Realty Canada, Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A & B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 8:00 p.m. on the 14th day of February 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 28th day of June 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Signature]

INITIALS OF SELLER(S): [Signature]

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OREA Ontario Real Estate Association Agreement of Purchase and Sale

Toronto Real Estate Board

Form 100 for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 11 day of May 2018

BUYER, Alexei Prokoudine and Alexandra Aranovsky, agrees to purchase from

SELLER, Wencke Gutierrez and Juan Guillermo Gutierrez, the following

REAL PROPERTY:

Address 2 GORDON RD

fronting on the East side of GORDON RD

in the City of Toronto

and having a frontage of 64.98 more or less by a depth of 180 more or less

and legally described as Plan 3517 Lot 187

(Legal description of land including easements not described elsewhere) (the "property")

PURCHASE PRICE: Dollars (CDN\$) 3,500,000.00

Three Million Five Hundred Thousand Dollars

DEPOSIT: Buyer submits Upon acceptance

One Hundred Fifty Thousand two hundred thousand Dollars (CDN\$) 200,000.00

by negotiable cheque payable to SOTHEBY'S INTERNATIONAL REALTY CANADA "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:59 p.m. on the 12 day of May 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 24 day of July 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Handwritten initials]

INITIALS OF SELLER(S): [Empty oval]

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REGISTERED OFFER



Agreement of Purchase and Sale



Form 100 for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 13th day of February 2018

BUYER, Jason Berns in Trust, agrees to purchase from (Full legal names of all Buyers)

SELLER, Wencke Gutierrez And Juan Guillermo Gutierrez, the following (Full legal names of all Sellers)

REAL PROPERTY:

Address 2 GORDON RD

fronting on the east side of Gordon Road

in the City of Toronto

and having a frontage of 64.98' more or less by a depth of 180' more or less

and legally described as Plan 3517 Lot 187

(Legal description of land including easements not described elsewhere) (the "property")

PURCHASE PRICE: Dollars (CDN\$) 4,100,000.00

Four Million One Hundred Thousand Dollars

DEPOSIT: Buyer submits Upon acceptance (Herewith/Upon Acceptance/as otherwise described in this Agreement)

Two Hundred Twenty-Five Thousand Dollars (CDN\$) 225,000.00

by negotiable cheque payable to Sotheby's International Realty Canada, Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A & B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 8:00 p.m. on the 14th day of February 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 28th day of June 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Signature]

INITIALS OF SELLER(S): [Signature]

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SOLD CONDITIONAL - BUYERS DID NOT WAIVE CONDITIONS & SALE FELL THROUGH

OREA Ontario Real Estate Association
Form 100
for use in the Province of Ontario

Agreement of Purchase and Sale

Toronto Real Estate Board

This Agreement of Purchase and Sale dated this 14 day of May 2018

BUYER, Pratibhasri A. Vardhana and Surinder Sharma, agrees to purchase from

SELLER, Wencke Gutierrez and Juan Guillermo Gutierrez, the following

REAL PROPERTY:

Address 2 GORDON RD
fronting on the East side of Gordon Road
in the City of Toronto
and having a frontage of 64.98 more or less by a depth of 180 more or less
and legally described as Plan 3517 Lot 187
(the "property")

PURCHASE PRICE: Dollars (CDN\$) 3,700,000.00
Three Million Seven Hundred Thousand Dollars

DEPOSIT: Buyer submits Upon acceptance
One Hundred Seventy-Five Thousand Dollars (CDN\$) 175,000.00

by negotiable cheque payable to Sotheby's International Realty Canada, Brokerage "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:59 p.m. on the 14 day of May 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 14 day of November 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): [Handwritten initials SS and PV]

INITIALS OF SELLER(S): [Empty oval]

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LISTING STATS - LAST 90 DAYS

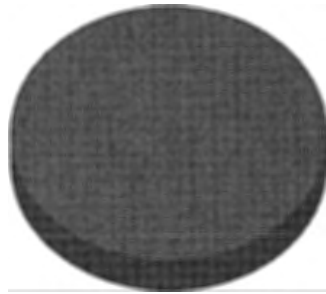


2 GORDON RD  
Toronto, Ontario  
M2P1E1

Listing ID: C4118352 Last Updated: 2018/05/22

Views by Websites & Apps

Last 7 Days

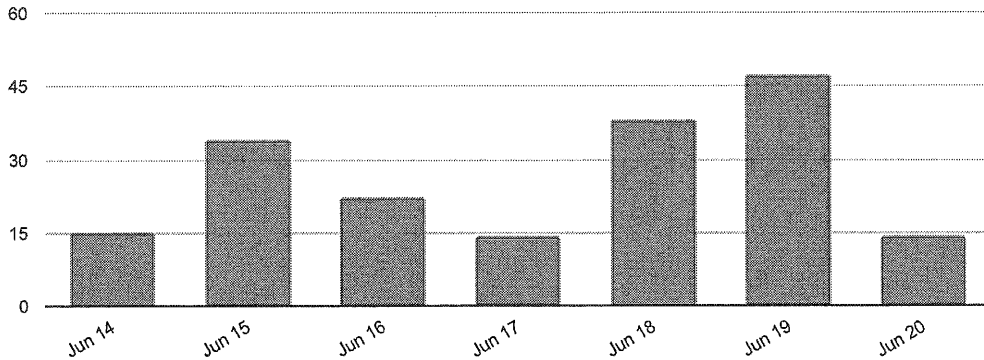


REALTOR.ca Websites & Apps - [184 view(s)]

184 Views on 4 Sites

Views Compared Over Time

Last 7 Days



REALTOR.ca Websites & Apps (Last 7 Days: 184 Views on 4 Sites)

All information displayed is believed to be accurate but is not guaranteed and should be independently verified. No warranties or representations are made of any kind.

# PROPERTY REPORT CARD

**176**

This is your property report card. While you are listed, you will receive one of these reports every month in addition to the regular updates from Folio and from Anna and Rob.

This report is an objective factual overview of your listing as it compares and competes with other listings, recent sales and information about your volume of showings and what it all means. It is intended to analyze the attention your property is receiving in order to isolate changes that would be most profitable, with real time information in hand.

PROPERTY ADDRESS: 2 Gordon Rd, Toronto

ANALYSIS PERIOD: Sept 19, 2017 - Feb 28, 2018      CAL. DAYS: 162      BUS. DAYS: 116

SHOWINGS			
Registered Showings (all):	48		
Refused/ Unable Showings:	13	Target (1 every 2 bus days) :	81
Cancelled Appointments:	5	Actual:	30

OPEN HOUSE		
None		
	Target Showings:	Min 1 open house per 3 weekends
	Actual:	Residence by appointment only.

FEEDBACK	
<p><u>Positive</u></p> <ul style="list-style-type: none"> <li>* Great lot</li> <li>* Size is good</li> <li>* Neighbourhood is wonderful</li> <li>* Corner lot +</li> <li>* Great natural light</li> </ul>	<p><u>Negative</u></p> <ul style="list-style-type: none"> <li>* Other houses for same price have more updates</li> <li>* Basement layout is awkward</li> <li>* Need something more move-in ready. This is a project</li> <li>* Wants something newer</li> <li>* Price too high compared to others in better condition.</li> <li>* Kitchen, fireplace, painting and fixtures are main focus of indicated changes</li> </ul>

ANALYSIS
<p><b>Showings:</b> Deficit 51 showings or 63%</p> <p>A property in this price range generally needs approximately 20 showings to get a good quality offer on the table. At an average of 1 showing every two business days, which is our target for this type of market and price point, we should expect to have had at least 81 showings by now. This percentage of deficit showings usually indicates that the price is too high for the product being offered.</p> <p><small>* Showing deficit of 35%+ : Indicates price is too high and the property is being ruled out at the point of the price online with no further investigation of logic of value. Buyers immediately dismiss it as an option.                      * Showings on target (+/- 15%): Indicates fair market value compared to other available inventory and buyers will consider it seriously along with other comparable options.                      * Showings in excess of target (+/-) 115% - 145%: Indicates that property pricing is quite appealing to buyers, either just slightly lower than average or offering better value for the same price as something else. The house and price are enticing to them enough that they feel they have to get out to see it before they can make any decisions.                      * Showings in excess of target 145%+ : Indicates that the price is considered low for the area and buyers will scramble to see it before someone else "steals" their "good deal" out from under them. Most likely to receive multiple offers but comes at the cost of risking listing substantially under market value.</small></p>



Open House: N/A

Offers: 4 - (rating: On target)  
 \* Based on target showings and estimated market time, we are receiving an offer approximately every 38 days.  
 \* Price on offers have not exceeded \$2.1m

**Other difficulty indicators:**

- \* Showings must be attended by a listing agent & no lockbox
  - Why this is a difficulty:
    - \* Buyers are incapable of being honest and objective with supervision from an outside person.
    - \* Can make Buyers feel like they are intruding as opposed to touring
    - \* Buyers cannot discuss concerns or thoughts with their agent and must rely on their memory later
    - \* Agents are territorial about clients and don't like exposing their buyers to other realtors (sad but true)
    - \* Stringent rules from sellers creates the impression that they will also be difficult during a negotiation, making buyers and agents less enthusiastic about dealing with this property in an offer.
    - \* Buyers in the \$1.5m + market are often executives and other professionals that require longer business hours and free time is limited. Further showing restrictions can frustrate a buyer if they cannot access in the short windows they have available.

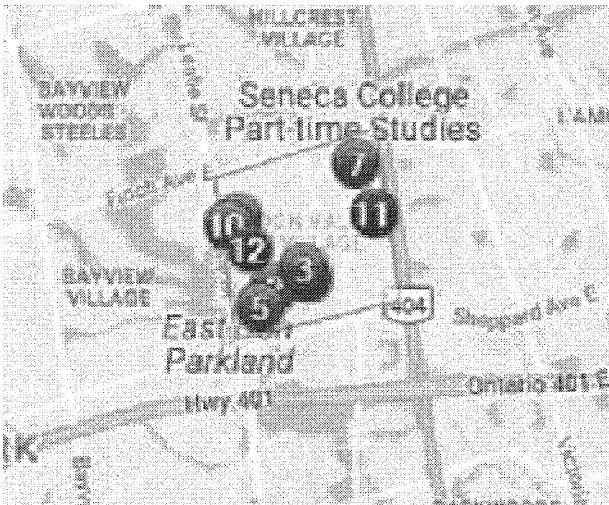
Recommendation: \* Consider allowing more access for agents and their buyers without a sitter. A lot of owners, especially in more prestigious neighbourhoods, are concerned about safety and privacy with showings, and you should be. But it is also important to note that no buyer is ever provided with the information to access your home, nor are they ever unsupervised. Their agent is duly licensed with the Ontario Real Estate Association and must follow the same code of conduct as your agents do. They are legally required and obligated to ensure that your home and privacy are respected. Historically speaking, the incidents of thefts in showings is almost non-existent in reality. Additionally all showings are registered and logged with our brokerage and confirmed directly through theirs so we maintain a record of access including time. In the extremely unlikely event of something occurring, we would be able to narrow the incident down to the agent very quickly.

- \* Time taken for offer negotiations - In excess of 48 hours.
  - Why this is a difficulty:
    - \* Negotiations on properties should be completed same business day where possible, and last no more than 48 hours total unless there is a physical restriction for review.
    - \* Once the decision to purchase is made, the Buyer is excited and encouraged. Lack of response, or time taken too long to respond leads to a loss of focus and interest for the buyer.
    - \* Buyers who experience long sign back periods from Sellers traditionally respond in kind with their own excessive timeline, increasing the chances that one or both parties will have a change of mind or heart.
    - \* Buyers may feel a sense of rejection at not getting a sign back in the expected timeline. Feelings of rejection lead to negative emotional connection to the property and to a seller and will encourage their inclination to back away.

Recommendation: \* Consider choosing a day or two a week where you feel you could be comfortable to be able to receive and review offers as opposed to just "jumping" when one comes in. DocuSign is an excellent resource for efficient signbacks, however, notes indicate that Seller's employment is stringent regarding security and software and cannot be accessed from work. In this case, it is recommended that DocuSign be used when available on smart phone instead of through a corporate network.

- \* Feedback indicating priced too high
  - Why this is a difficulty
    - \* Buyers will immediately dismiss the house as an option at the information stage and not book to see (generally indicated by a lower percentage of showings and response to feedback.
    - \* Other listings in the area will use your home as an example of why THEIR listing is better value than yours for buyers and make their properties look like a good deal compared to yours.
    - \* In the event that a property does sell for your desired price, you will find the buyer unable to get financing to close when an appraisal doesn't back up the value. Appraisals are based on market value within 90 days using direct comparable properties if possible. Additionally in just about every situation where a home has sold for so much more than market value is indicating, there is a substantial chance that the buyer is relatively financially illiterate and does not understand what they can afford. The turn-down rate for these buyers is excessive.
    - \* Homes priced over \$1m are not eligible for CMHC coverage. Buyers must possess a minimum of 25% of the value of the property in this case. Banks are extra stringent about qualifications on mortgages that cannot be insured, especially in cases of self employed buyers.

Comparable neighbourhood activity :



Field	Count	Mean (Average)	Median	Min	Low	High
List Price	36	\$4,263,378	\$3,494,000	\$3,880,000	\$1,995,800	\$72,000,000
Original Price	36	\$4,263,939	\$3,494,000	\$3,880,000	\$1,995,800	\$72,000,000
Cold Price	7	\$2,999,445	\$3,350,000	n/a	\$2,204,000	\$3,450,000
% Difference	7	97	94	n/a	93	105
Taxes	37	\$14,748	\$11,000	\$ 0,393	\$4,870	\$40,458.11
Bathrooms	16	5	5	5	4	6
Washrooms	16	5	6	4	4	12
Days on Market	16	53	21		1	163

\* Calculations are per listed excluding ocean and rail values

Field	Value	Count
Area	Toronto	36
Community	Etobicoke	1
	St. Andrew-Windfields	35
Municip	Toronto	36
LSC	Exp	3
	Est	1
	New	19
	Pc	3
	Sc	2
	Sid	3
	Sus	1
Ter	4	
Type	Detached	36
Style	2-Storey	35
	3-Storey	1

#	STATUS	S#	Street Name	Abbr	Dir	List Price	Sold Price	Type	Style	Br	+ Wr	Fam	Gar	Type	Sold Date	MLS#
1	Pc	23	Aldershot	Cres		\$3,450,000		Detached 2-Storey	4	3	5	Y	Built-			C4031350
2	Est	6	Baytree	Cres		\$4,995,000		Detached 2-Storey	4	1	8	Y	Attach			C3988111
3	New	12	Baytree	Cres		\$12,000,000		Detached 2-Storey	6	1	12	Y	Attach			C3960804
4	Exp	28	Carluka	Cres		\$4,350,000		Detached 2-Storey	5	2	5	Y	Built-			C3931108
5	New	47	Cotswold	Cres		\$3,880,000		Detached 2-Storey	4	2	6	Y	Detach			C4046058
6	Exp	50	Cotswold	Cres		\$5,425,000		Detached 2-Storey	4	1	6	Y	Built-			C4008730
7	New	50	Cotswold	Cres		\$5,425,000		Detached 2-Storey	4	1	6	Y	Built-			C4048247
8	New	27	Didrickson	Dr		\$2,495,000		Detached 2-Storey	4	4	4	Y	Attach			C4018892
9	New	12	Fifeshire	Rd		\$7,880,000		Detached 2-Storey	5	2	10	Y	Built-			C4016380
10	New	32	Foursome	Cres		\$1,995,000		Detached 2-Storey	5	1	4	Y	Built-			C4081916
11	Sid	42	Foursome	Cres		\$2,185,000	\$2,288,000	Detached 2-Storey	5	4	4	Y	Attach		2/23/2018	C4044194
12	New	189	Gordon	Rd		\$3,950,000		Detached 2-Storey	5	1	6	Y	Built-			C4038425
13	New	2	Gordon	Rd		\$4,380,000		Detached 2-Storey	5	1	6	Y	Attach			C3996589
14	New	23	Gordon	Rd		\$4,998,800		Detached 2-Storey	4	1	6	Y	Built-			C4038128
15	Ter	23	Gordon	Rd		\$5,188,000		Detached 2-Storey	4	1	6	Y	Built-			C3970555
16	New	91	Gordon	Rd		\$5,998,000		Detached 2-Storey	5	1	7	Y	Attach			C4023511
17	Sc	120	Lord Seato	Rd		\$2,750,000		Detached 2-Storey	5	4	4	Y	Built-			C4037605
18	New	72	Lord Seato	Rd		\$3,498,000		Detached 2-Storey	5	2	8	Y	Built-			C4035745
19	Exp	77	Munro	Bld		\$4,280,000		Detached 2-Storey	4	2	6	Y	Built-			C3949522
20	Pc	2	Normandale	Cres		\$4,280,000		Detached 2-Storey	5	2	8	Y	Attach			C4019162
21	New	5	Oakley	Pl		\$4,750,000		Detached 2-Storey	4	1	7	Y	Attach			C4023533
22	New	18	Owen	Bld		\$3,500,000		Detached 2-Storey	4	1	4	Y	Attach			C4043638
23	Sid	228	Owen	Bld		\$3,688,000	\$3,460,338	Detached 2-Storey	5	1	6	Y	Attach		2/23/2018	C4036795
24	New	91	Upper Cans	Dr		\$2,498,000		Detached 2-Storey	4	1	5	Y	Built-			C4052042
25	Sid	116	Upper Cans	Dr		\$3,498,900	\$3,250,000	Detached 2-Storey	4	1	6	Y	Built-		1/29/2018	C3919552
26	New	160	Upper Cans	Dr		\$3,579,100		Detached 2-Storey	5	4	4	Y	Built-			C4042571
27	New	103	Upper Cans	Dr		\$3,599,000		Detached 2-Storey	5	1	5	Y	Attach			C4029523
28	Ter	160	Upper Cans	Dr		\$3,799,000		Detached 2-Storey	5	4	4	Y	Built-			C4024312
29	New	92	Upper Cans	Dr		\$3,880,000		Detached 2-Storey	5	3	8	Y	Built-			C4043900
30	Sc	120	Upper Cans	Dr		\$3,988,000		Detached 2-Storey	4	2	7	Y	Built-			C4039487
31	Ter	120	Upper Cans	Dr		\$4,388,000		Detached 2-Storey	4	2	7	Y	Built-			C3920229
32	Sus	92	Upper Cans	Dr		\$4,388,000		Detached 3-Storey	5	3	8	Y	Built-			C3951836
33	New	218	York Mills	Rd		\$2,995,000		Detached 2-Storey	5	6	4	Y	Built-			C4044619
34	Ter	218	York Mills	Rd		\$3,000,000		Detached 2-Storey	5	6	4	Y	Built-			C4016904
35	New	184	York Mills	Rd		\$3,995,000		Detached 2-Storey	4	1	6	Y	Attach			C4024302
36	Pc	75	Yorkminster	Rd		\$4,700,000		Detached 2-Storey	4	1	9	Y	Attach			C3930286

## Summary & Recommendation:

Pricing adjustment \$3,999,000 to \$2,195,000 - Cancel and re-list at 0 days.

Have property reappraised in current market to verify fair value \* Market down 4% from same time last year as per TREB. Report available on request.

Staging recommended (est 1% of property value for staging and improvements)

Showing schedule with less supervision required.

No recommendation for open houses at this time

The market has substantially changed since last year, and we know it's disappointing, but it is important that we are proactive while everyone else is still struggling to come to terms with the new price points.

At your direction, your Realtor will forward you the documentation to execute the changes.

Date of Issue: Feb 28, 2018

THE ANNA OLIVER GROUP | SOTHEBY'S INTERNATIONAL REALTY CANADA, Brokerage | 1867 Yonge St, Suite 100 . Toronto  
The information contained herein is obtained from sources deemed to be reliable but is not guaranteed. Any recommendations are made based on our opinion and professional experience and may not be relied upon as any warranty or guarantee of value. E & OE | 416.960.9995

Statistics & Counts

Field	Count	Mean (Average)	Median	Mode	Low	High
List Price	178	\$4,993,241	\$4,406,500	\$3,880,000	\$3,500,000	\$17,800,000
Original Price	178	\$5,251,371	\$4,388,000	\$3,880,000	\$3,500,000	\$49,888,800
Sold Price	28	\$4,600,584	\$4,252,500	n/a	\$3,225,000	\$7,233,000
%Difference	28	94	94	94	87	104
Taxes	152	\$16,679	\$15,182	\$17,905	\$1	\$58,784.25
Bedrooms	178	5	5	5	2	7
Washrooms	178	6	6	6	1	13
Days on Market	177	63	60	8	1	415

\* Calculations are performed excluding zero and null values

Field	Value	Count
Area	Toronto	178
Community	St. Andrew-Windfields	178
Municip	Toronto	178
LSC	Exp	25
	Ext	1
	New	37
	Pc	1
	Sld	28
	Sus	9
	Ter	77
Type	Detached	178
Style	2-Storey	157
	3-Storey	1
	Backsplit 3	1
	Bungalow	13
	Other	2
	Sidesplit 3	2
	Sidesplit 4	1
	Sidesplit 5	1

## Appointment Summary

Jun 20, 2018

Address: 2 Gordon Rd  
 Owners: Juan Rodrigues

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
Bobrova, Julia	RIGHT AT HOME REALTY INC.	416-391-3232 416-837-5082	6/16/2018 11:00:00 AM-11:30 AM	S	B	Y
Bobrova, Julia	RIGHT AT HOME REALTY INC.	416-391-3232 416-837-5082	6/15/2018 12:30:00 PM-01:30 PM	S	B	R
Ji, Johnson	East Side Realty	905-477-1818 647-229-8666	6/9/2018 3:00:00 PM-03:30 PM	S	B	Y
Kerbel, Tamara	ROYAL LEPAGE YOUR COMMUNITY	905-889-9330 647-919-9748	6/6/2018 12:00:00 PM-12:30 PM	S	B	Y
Shi, Aaron	ROYAL LEPAGE PEACELAND REALTY	905-707-0188 847-405-1746	6/6/2018 10:30:00 AM-11:00 AM	S	B	R
Cho, Wilson	Red House Realty	905-850-4611 416-618-9815	6/2/2018 3:00:00 PM-03:30 PM	S	B	C
Cohen, Barry	REMAX REALTRON	416-222-8600 416-223-1818	6/2/2018 3:00:00 PM-03:30 PM	S	B	Y
Sun, Susan	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 647-961-7987	5/31/2018 1:30:00 PM-02:00 PM	S	B	Y
Wang, Shelly	HOMELIFE NEW WORLD	416-490-1177 647-867-6283	5/31/2018 11:30:00 AM-12:00 PM	S	B	Y
Kinnear, Colin	ROYAL LEPAGE/J & D DIVISION	416-489-2121 416-565-3304	5/29/2018 10:30:00 AM-11:00 AM	S	B	Y
Maddah, Farnaz	RE/MAX REALTRON REALTY INC.	416-222-8600 416-857-2892	5/28/2018 12:00:00 PM-12:30 PM	S	B	Y
Maddah, Farnaz	RE/MAX REALTRON REALTY INC.	416-222-8600 416-857-2892	5/28/2018 10:00:00 AM-10:30 AM	S	B	C
Lu, Irene Ailin	HOMELIFE LANDMARK REALTY INC.	905-305-1600 416-823-4322	5/25/2018 3:30:00 PM-04:00 PM	S	B	C
Topcu, Beril	ROYAL LEPAGE SIGNATURE REALTY	416-443-0300	5/22/2018 5:30:00 PM-06:30 PM	S		R
Maddah, Farnaz	RE/MAX REALTRON REALTY INC.	416-222-8600 416-857-2892	5/18/2018 2:30:00 PM-03:00 PM	S	B	Y
Dong, Jenny	HOMELIFE NEW WORLD	416-490-1177 647-927-8888	5/17/2018 11:45:00 AM-12:15 PM	S	B	R
NI, ERIC	BAY STREET GROUP INC.	905-909-0101 647-962-9789	5/15/2018 2:00:00 PM-02:30 PM	S	B	R
Cohen, Barry	REMAX REALTRON	416-222-8600 416-223-1818	5/14/2018 4:15:00 PM-04:45 PM	S	B	Y
Wang, Fei	MASTER'S CHOICE REALTY INC.	905-940-8999 416-826-6128	5/14/2018 11:00:00 AM-11:30 AM	S	B	R
LI, ROY	AIMHOME REALTY INC.	416-490-0880	5/12/2018 4:00:00 PM-04:15 PM	S	B	Y
CHOW, CATHERINE	CENTURY 21 LEADING EDGE REALTY INC.	416-494-5955	5/12/2018 4:00:00 PM-04:30 PM	S	B	C
Graham, Lisa	ROYAL LEPAGE/J & D DIVISION	416-489-2121	5/12/2018 4:00:00 PM-04:15 PM	S		Y

**Appointment Summary**

Jun 20, 2018

**182**

Address: **2 Gordon Rd**

Owners: **Juan Rodrigues**

Nelson, Robert Liam	Sotheby's International Realty Canada	416-960-9995 416-844-8413	5/10/2018 12:30:00 PM-01:00 PM	S	D	Y
Winberg, Jackie	RIGHT AT HOME REALTY INC.	416-391-3232 416-356-7226	5/10/2018 12:00:00 PM-12:30 PM	S	B	Y
Shaw, Jason	RE/MAX ULTIMATE REALTY INC.	416-487-5131 647-999-2470	5/10/2018 11:30:00 AM-12:00 PM	S	B	Y
Kuang, Mary	REAO REALTY INC.	905-771-1555 647-881-9133	5/10/2018 10:30:00 AM-10:45 AM	S	B	Y
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 416-206-9867	5/8/2018 5:00:00 PM-05:30 PM	S	D	Y
Yin, Tom	REAL ONE REALTY INC.	905-281-2888 647-822-6666	5/8/2018 1:00:00 PM-01:30 PM	S	B	Y
Vashkevich, Olga	ATV REALTY INC.	416-503-2373 416-854-0567	5/8/2018 12:30:00 PM-01:00 PM	S	B	Y
Wang, Jenny	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 416-897-1663	5/8/2018 12:30:00 PM-01:00 PM	S	B	Y
Brienza, Tina	RE/MAX ALL-STARS THE PB TEAM REALTY	905-887-9000 416-827-8805	5/7/2018 12:30:00 PM-01:00 PM	S	B	Y

Total Appointments: 31

\*\*Appointment report does not include appointments booked if "Offer" option was selected from Show/Insp <Edit Pop up>\*\*

## Appointment Summary

Jun 20, 2018

Address: 2 Gordon Rd

Owners: Juan Rodrigues, Wencke Rodrigues

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
Delzotto, Geraldine	harvey kalles	416-441-2888 416-816-0899	5/5/2018 9:15:00 AM-09:45 AM	S	B	Y
Sun, Min Catherine	golden life	647-242-2553 647-242-2553	4/29/2018 5:30:00 PM-06:00 PM	S	B	Y
Wang, Shelly	HOMELIFE REAL WORLD	416-490-1177 647-867-6283	4/16/2018 1:15:00 PM-01:45 PM	S	B	C
Mak, Stanley S J	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 416-801-2155	4/3/2018 11:15:00 AM-11:45 PM	S	B	Y
Mak, Stanley S J	HOMELIFE NEW WORLD REALTY INC.	416-490-1177	4/1/2018 11:00:00 AM-11:30 AM	S	B	R

Total Appointments: 5

\*\*Appointment report does not include appointments booked if "Offer" option was selected from Show/Insp &lt;Edit Pop up&gt;\*\*

# Sotheby's International Realty Canada

## Appointment Summary

Jun 20, 2018 **184**

Address: **2 Gordon Rd**

Owners: **Juan Rodrigues, Wencke Rodrigues**

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
Shirazi, Mehrdad	ROYAL LEPAGE YOUR COMMUNITY REALTY	905-731-2000 416-838-7653	3/28/2018 5:00:00 PM-05:30 PM	S	B	Y
Priestman, Kenneth B	CENTURY 21 LEADING EDGE REALTY INC.	905-471-2121 647-990-8107	3/25/2018 2:30:00 PM-03:00 PM	S	B	Y
LIU, DAVID XUE DONG	HOMELIFE LANDMARK REALTY INC.	905-305-1600 647-238-9518	3/20/2018 12:30:00 PM-01:00 PM	S		Y
Majdoubi, Valdemar Mohamed	YOUR CHOICE REALTY CORP.	416-479-3891 416-807-1079	3/14/2018 11:30:00 AM-12:00 PM	S	B	Y
McCann, Cheri	McCann Realty Group	416-481-2355 416-402-6739	3/9/2018 9:00:00 AM-09:30 AM	S	B	Y
Yin, Tom	REAL ONE REALTY INC.	905-281-2888 647-822-6666	3/7/2018 2:30:00 PM-03:00 PM	S	B	R
Jiang, Jasmine	Homelife Landmark	905-305-1600 416-902-7760	3/6/2018 11:00:00 AM-11:30 AM	S	B	R
Ping, Ping	BAY STREET REALTY POINT	416-668-6600 647-388-3537	3/4/2018 10:45:00 AM-11:15 AM	S	B	Y
Yin, Tom	REAL ONE REALTY INC.	905-281-2888 647-822-6666	3/3/2018 5:00:00 PM-05:30 PM	S	B	Y
Wei, Ryan	REAL ONE REALTY INC.	905-597-8511	3/2/2018 10:30:00 AM-11:30 AM	S		Y
Nikrou, Taha	HOMELIFE/BAYVIEW REALTY INC.	905-889-2200 416-846-8242	3/1/2018 5:30:00 PM-06:00 PM	S	B	Y
NIKROU, TAHA	HOMELIFE/BAYVIEW REALTY INC.	905-889-2200 416-846-8242	2/28/2018 7:45:00 PM-08:15 PM	S	B	C
Wu, Alexander	HOMELIFE GOLD TRADE REALTY LTD.	905-415-3800 416-804-0823	2/27/2018 11:30:00 AM-12:00 PM	S	B	Y
Shi, Franklin	Masters Trust	905-940-8996 416-318-8046	2/26/2018 9:30:00 AM-10:00 AM	S	B	R
McCann, Cheri	McCann Realty Group	416-481-2355 416-402-6739	2/25/2018 2:30:00 PM-03:00 PM	S	B	Y
Wu, Alex	HOMELIFE/GOLD TRADE REALTY LTD.	905-415-3800	2/24/2018 12:00:00 PM-12:30 PM	S	B	R
Aquillina, Charles Anthony	RIGHT AT HOME REALTY INC.	416-391-3232 416-822-7463	2/22/2018 3:00:00 PM-03:30 PM	S	B	Y
Cheng, Louis	RE/MAX GOLDENWAY REALTY INC.	416-299-8199 416-712-8844	2/19/2018 1:30:00 PM-02:00 PM	S	B	Y
Huang, Duncan Duncheng	HOMELIFE LANDMARK REALTY INC.	905-305-1600 416-627-5618	2/17/2018 1:45:00 PM-02:15 PM	S	B	R
Wang, Kulhan	RE/MAX IMPERIAL REALTY INC.	905-305-0033 647-986-6193	2/6/2018 4:00:00 PM-04:30 PM	S	B	R
Tan, Tom	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 647-502-7718	1/29/2018 10:30:00 AM-11:00 AM	S		U
Way, Michelle	ROYAL LEPAGE REAL ESTATE SERVICES HEAPS ESTRIN	416-424-4910 647-298-2944	1/28/2018 11:30:00 AM-12:00 PM	S	B	R



## Appointment Summary

Jun 20, 2018

Address: 2 Gordon Rd

Owners: txtOwners

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
LO, CHENG-YU IAN	LIVING REALTY INC.	905-896-0002 647-406-2804	11/26/2017 1:30:00 PM-02:00 PM	S	B	Y
Naimian, Fara	RE/MAX REALTRON BARRY COHEN HOMES INC.	416-222-8600 416-319-2245	11/23/2017 2:30:00 PM-03:00 PM	S	B	Y
Zhang, Michael	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 647-787-8879	11/10/2017 3:30:00 PM-04:00 PM	S	B	Y
Zhang, Shannon	JDL REALTY INC.	905-731-2266 647-997-3398	11/8/2017 12:00:00 PM-12:30 PM	S	B	U
Zhang, Shannon	JDL REALTY INC.	905-731-2266 647-997-3398	11/1/2017 3:30:00 PM-04:30 PM	S	B	R

Total Appointments: 5

\*\*Appointment report does not include appointments booked if "Offer" option was selected from Show/Insp &lt;Edit Pop up&gt;\*\*

# Sotheby's International Realty Canada

## Appointment Summary

Jun 20, 2018 **186**

Address: **2 Gordon Rd**

Owners: **Juan Rodrigues, Wencke Rodrigues**

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
YARMAND, RAMIN	RIGHT AT HOME REALTY INC.	905-695-7888 416-998-1901	10/28/2017 2:00:00 PM-02:30 PM	S	B	Y
Sun, Steven	ROYAL LEPAGE PEACELAND REALTY	905-707-0188 416-823-0168	10/21/2017 3:00:00 PM-03:30 PM	S	B	Y
Klaiman, Leon	FOREST HILL REAL ESTATE	905-695-6195 416-274-2675	10/21/2017 2:30:00 PM-03:00 PM	S	B	C
Sun, Steven	ROYAL LEPAGE PEACELAND REALTY	905-707-0188	10/21/2017 2:30:00 PM-03:00 PM	S		C
Saedi, Nancy	ROYAL LEPAGE REAL ESTATE SERVICES	416-487-4311 416-873-5785	10/18/2017 5:30:00 PM-06:00 PM	S	B	Y
Wong, James	MASTER'S TRUST	905-940-8996 416-897-6139	10/12/2017 5:15:00 PM-05:45 PM	S	B	Y
Kozak, Marie	KELLER WILLIAMS NEIGHBOURHOOD REALTY	416-236-1392 647-404-5691	10/10/2017 3:00:00 PM-03:30 PM	S	B	C
Wong, James	MASTER'S CHOICE REALTY INC.	905-940-8999 416-897-6139	10/8/2017 2:00:00 PM-03:00 PM	S	B	R
Zheng, Jason	LANDPOWER REAL ESTATE LTD.	905-305-9669 647-991-1586	10/5/2017 5:00:00 PM-05:30 PM	S	B	Y
Zheng, Jason	LANDPOWER REAL ESTATE LTD.	905-305-9669 647-991-1586	10/4/2017 10:15:00 AM-10:45 AM	S	B	R
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	10/2/2017 5:00:00 PM-05:30 PM	S	D	Y
Vukasovic, Doug	zooCasa Realty	416-703-0244 416-629-4510	9/30/2017 1:45:00 PM-02:15 PM	S	B	Y
YAO, ALAN	LANDPOWER ALAN YAO REAL ESTATE LTD.	905-305-9669 416-822-6395	9/28/2017 1:00:00 PM-01:30 PM	S	B	Y
Wang, Martina	JDL REALTY INC.	905-731-2266 647-885-5986	9/29/2017 1:00:00 PM-01:30 PM	S	B	Y
Wang, Brad	REALONE REALTY	905-480-1011 416-560-5618	9/23/2017 2:00:00 PM-03:00 PM	S	B	Y
Yoo, Terence	ROYAL LEPAGE NEW CONCEPT LTD.	416-449-7600 647-680-8678	9/22/2017 12:15:00 PM-12:45 PM	S	B	Y
Saedi, Nancy	RE/MAX REALTRON NANCY SAEDI REALTY INC.	416-873-5785 416-873-5785	9/21/2017 1:30:00 PM-02:00 PM	S	B	R
KELLIE, JAMES FRANKLIN	RIGHT AT HOME REALTY INC.	416-391-3232 647-505-6770	9/20/2017 10:15:00 AM-10:45 AM	S		Y
Talalaie, Farah	RE/MAX REALTRON REALTY INC.	416-222-8600 416-317-9090	9/19/2017 11:00:00 AM-12:00 PM	S	B	R

Total Appointments: 19

\*\*Appointment report does not include appointments booked if "Offer" option was selected from Show/Insp <Edit Pop up>\*\*

## Appointment Summary

Jun 20, 2018

Address: 2 Gordon Rd

Owners: Juan RODRIGUES, Wencke Rodrigues

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
Xu, Manni	SAN STAR REALTY INC.	416-410-3232 416-418-7628	9/14/2017 4:00:00 PM-04:30 PM	S	B	Y
Zhang, Karen	HOMELIFE NEW WORLD REALTY INC.	416-480-1177 647-886-8677	9/14/2017 11:30:00 AM-12:00 PM	S	B	Y
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	9/9/2017 6:00:00 PM-06:30 PM	S	D	Y
BAI, STACEY XIANGWEN	ROYAL LEPAGE GOLDEN RIDGE REALTY	905-513-8878 416-818-0607	9/9/2017 11:30:00 AM-12:00 PM	S	B	Y
Quin, Elaine	CENTURY 21 QUEENS QUAY	905-940-3428 416-473-1801	8/26/2017 4:00:00 PM-04:30 PM	S	B	R
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	8/24/2017 5:30:00 PM-06:30 PM	S	D	Y
Meng, Linda	HOMELIFE NEW WORLD REALTY INC.	416-480-1177 416-275-2907	8/24/2017 1:00:00 PM-01:30 PM	S	B	Y
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	8/23/2017 6:00:00 PM-07:00 PM	S	D	Y
WANG, WILLIAM XIANGYANG	BAY STREET REALTY POINT	416-688-6600 416-557-0288	8/23/2017 3:15:00 PM-03:45 PM	S	B	Y
Mazaheri, Habib	RE/MAX REALTRON REALTY INC.	416-222-8800 416-770-0321	8/21/2017 2:00:00 PM-02:30 PM	S	B	Y
Ji, Johnson	Eastside Realty	905-477-1818 647-229-8666	8/19/2017 4:00:00 PM-04:30 PM	S	B	Y
Qian, Wendy	EASTIDE REALTY INC.	905-477-1818 647-716-1199	8/19/2017 4:00:00 PM-04:30 PM	S	B	C
Jin, Jerry	CENTURY 21 ATRIA REALTY INC.	416-218-8880 416-666-9000	8/18/2017 5:30:00 PM-06:00 PM	S	B	Y
Lu, Yujuan	BAY STREEET REALTY POINT	416-668-6600 647-638-8635	8/18/2017 10:00:00 AM-10:30 AM	S	B	Y
Tavakoli, Neda	Right at Home Realty	416-391-3232 647-400-1616	8/18/2017 9:30:00 AM-10:00 AM	S	B	Y
Liu, Halfeng	RE/MAX IMPERIAL REALTY INC.	905-305-0033 416-953-2981	8/17/2017 2:30:00 PM-03:00 PM	S	B	Y
Tavakoli, Neda	Right at Home Realty	416-391-3232 647-400-1616	8/16/2017 7:30:00 PM-08:00 PM	S	B	R
Li, Lily	RE/MAX HALLMARK REALTY LTD.	416-494-7653 416-968-0228	8/16/2017 2:30:00 PM-03:00 PM	S	B	Y
Liu, Halfeng	RE/MAX IMPERIAL REALTY INC.	905-305-0033 416-953-2981	8/15/2017 2:30:00 PM-03:00 PM	S	B	R

Total Appointments: 19

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# Sotheby's International Realty Canada

## Appointment Summary

188  
Jun 20, 2018

Address: 2 Gordon Rd

Owners: Juan RODRIGUES, Wencke Rodrigues

<u>Salesperson</u>	<u>Broker Office</u>	<u>Phone#</u>	<u>Date/Time</u>	<u>S/I</u>	<u>BT</u>	<u>Conf</u>
Xu, Manni	SAN STAR REALTY INC.	416-410-3232 416-418-7628	9/14/2017 4:00:00 PM-04:30 PM	S	B	Y
Zhang, Karen	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 647-886-8677	9/14/2017 11:30:00 AM-12:00 PM	S	B	Y
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	9/9/2017 6:00:00 PM-06:30 PM	S	D	Y
BAI, STACEY XIANGWEN	ROYAL LEPAGE GOLDEN RIDGE REALTY	905-613-8878 416-818-0607	9/9/2017 11:30:00 AM-12:00 PM	S	B	Y
Quin, Elaine	CENTURY 21 QUEENS QUAY	905-940-3428 416-478-1801	8/26/2017 4:00:00 PM-04:30 PM	S	B	R
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	8/24/2017 5:30:00 PM-06:30 PM	S	D	Y
Meng, Linda	HOMELIFE NEW WORLD REALTY INC.	416-490-1177 416-275-2907	8/24/2017 1:00:00 PM-01:30 PM	S	B	Y
Oliver, Anna	Sotheby's International Realty Canada	416-960-9995 1-877-960-9995	8/23/2017 6:00:00 PM-07:00 PM	S	D	Y
WANG, WILLIAM XIANGYANG	BAY STREET REALTY POINT	416-668-6600 416-557-0288	8/23/2017 3:15:00 PM-03:45 PM	S	B	Y
Mazaheri, Habib	RE/MAX REALTRON REALTY INC.	416-222-8600 416-770-0321	8/21/2017 2:00:00 PM-02:30 PM	S	B	Y
Ji, Johnson	Eastside Realty	905-477-1818 647-229-8666	8/19/2017 4:00:00 PM-04:30 PM	S	B	Y
Qian, Wendy	EASTIDE REALTY INC.	905-477-1818 647-716-1199	8/19/2017 4:00:00 PM-04:30 PM	S	B	C
Jin, Jerry	CENTURY 21 ATRIA REALTY INC.	416-218-8880 416-666-9000	8/18/2017 5:30:00 PM-06:00 PM	S	B	Y
Lu, Yujuan	BAY STREEET REALTY POINT	416-668-6600 647-638-8635	8/18/2017 10:00:00 AM-10:30 AM	S	B	Y
Tavakoli, Neda	Right at Home Realty	416-391-3232 647-400-1616	8/18/2017 9:30:00 AM-10:00 AM	S	B	Y
Liu, Halfeng	RE/MAX IMPERIAL REALTY INC.	905-305-0033 416-953-2981	8/17/2017 2:30:00 PM-03:00 PM	S	B	Y
Tavakoli, Neda	Right at Home Realty	416-391-3232 647-400-1616	8/16/2017 7:30:00 PM-08:00 PM	S	B	R
Li, Lily	RE/MAX HALLMARK REALTY LTD.	416-494-7653 416-968-0228	8/16/2017 2:30:00 PM-03:00 PM	S	B	Y
Liu, Halfeng	RE/MAX IMPERIAL REALTY INC.	905-305-0033 416-953-2981	8/15/2017 2:30:00 PM-03:00 PM	S	B	R

Total Appointments: 19

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INTRODUCING



LOCAL, NATIONAL & GLOBAL COVERAGE.

# Toronto-area home prices were down again in May

By TESS KALINOWSKI Real Estate Reporter  
Mon., June 4, 2018

The competition among homebuyers is increasing in the Toronto region even though year-over-year prices fell 6.6 per cent on average to \$805,320 last month, from \$862,149 in May 2017.

The number of resale home transactions declined 22.2 per cent in the same period.



Detached and semi-detached houses continued to see the steepest decline in sales compared to condos and townhouses. (ANDREW FRANCIS WALLACE / TORONTO STAR FILE PHOTO)

Still, there are indications that the competition to buy a home is on the rise, supporting higher prices in the second half of the year and into early 2019, said Jason Mercer, director of market analysis for the Toronto Real Estate Board (TREB).

## Share your thoughts

Will you buy a home this year?

- Yes, there's no time like the present.
- No, now is not the time.
- I might given the right situation.
- I'll never buy a home.

[Vote](#)

[View Results](#)

“Average selling prices were at or above average listing prices for all major home types in May,” he said in a press release.

New listings of homes were down 26.2 per cent year over year in May, said TREB. There were 19,022 new listings of resale homes in May compared to 25,764 in May 2017.

Seasonally adjusted figures show the average selling price was actually up 1.1 per cent in May compared to April.

### Read more:

[New-home sales in GTA hit 20-year low in April](#)

[Why priced-out city-dwellers are eyeing cottage country instead](#)

[Higher interest rates add to home buyer struggles](#)

[Detached and semi-detached houses continued to see the steepest decline in sales compared to condos and townhouses.](#)

[The average detached house price fell 8.2 per cent in the Toronto region to \\$1.05 million, with the biggest drop in the communities surrounding Toronto, where there was a 9 per cent price drop](#)

**191**

compared to the same month last year. In the city of Toronto, detached house prices fell only 5.6 per cent.

The condo market continued to register an increase in prices, with the average unit costing \$562,892, 5.7 per cent more than May last year. The city of Toronto saw the biggest condo price increase of 6.5 per cent, to an average cost of \$602,804.

York Region is still suffering disproportionate price declines compared to the rest of the GTA. While the benchmark Home Price Index was down 5.4 per cent overall, the same indicator showed a 15.6 per cent drop in York. Detached house prices were down 17.5 per cent on the index.

Twenty-five per cent of respondents to an online Ipsos poll last month put housing affordability among their top two concerns in the upcoming provincial election. The poll that included 500 city of Toronto residents and 700 from 905-area communities also found that 35 per cent of respondents said their vote would take into account parties' stances on housing.

Seventy-seven per cent of respondents supported reducing the provincial land transfer tax and 68 per cent wanted to see the tax repealed.

TREB and the Ontario Real Estate Association are lobbying provincial candidates against allowing municipalities outside the city of Toronto to levy their own land transfer taxes. Toronto got the power to issue its tax in 2008, essentially doubling the provincial levy for homebuyers moving in the city.

This year to date, the home price index shows the average price of a detached home has fallen 13.8 per cent in the Toronto region, while the average condo price is up 7 per cent.

The average GTA home price in 2017 was \$822,622, including houses and condos.

TREB is also pushing for the province to increase the supply of housing in the Toronto area, particularly the type known as the "missing middle" — stacked townhouses and midrise apartments that can accommodate families and are more affordable than detached houses.



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INTRODUCING

Star **BUSINESS  
JOURNAL**

LOCAL, NATIONAL & GLOBAL COVERAGE.

# New-home sales in GTA hit 20-year low in April

By **TESS KALINOWSKI** Real Estate Reporter  
Wed., May 23, 2018

New construction home sales hit the lowest number for April in over 20 years, says the association that represents home builders.

Newly built single-family home prices dropped 5 per cent year over year to \$1.15 million, down from about \$1.2 million in March. But the benchmark price for condos continued to rise — 29.8 per cent year over year to \$739,965, but down month over month from \$742,801.



In April, sales of single-family homes — detached, semi-detached and townhouses — 70 per cent below the 10-year average. (ANDREW FRANCIS WALLACE / TORONTO STAR FILE PHOTO) **194**

There were 65 per cent fewer houses and condos sold last month compared to April 2017. That put the sales of single-family homes — detached, semi-detached and townhouses — 70 per cent below the 10-year average. Condos were 38 per cent below that average, according to the Building and Land Development Association (BILD).

Although new home data by Altus Group goes back only as far as 2000, BILD said previous data shows 1995-1996 was the last time April sales were as low as the 1,727 last month.

The new construction home industry is being affected by many of the same factors that have led to a sluggish 2018 in re-sale real estate in the Toronto area, said BILD CEO David Wilkes.

Part of the slowdown is seasonal, he said. There is a lull in the housing market compounded by interventions from government and new mortgage stress test rules introduced by Canada's banking regulator.

### Read more:

[CRA finds nearly \\$600 million in unpaid taxes in B.C. and Ontario real estate sector](#)

[OREA isn't backing down from its lack of affordability message in Toronto and Hamilton](#)

[Toronto-area millennials want their own backyards, report says](#)

## Have your say

If you were to buy a home this year, what would you look for?

- I would prefer a newly constructed home.
- I would prefer to buy a resale home.
- Other:

[Vote](#)

[View Results](#)

“Part of it is cyclical. We often see a slowdown in late winter or early spring before the spring market picks up ... As you're seeing in other components of the housing market, we're in a bit of a

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pause right now,” said Wilkes. “People are reassessing and part of that reassessment, no doubt, stems from the affordability issue we need to address within the GTA.”

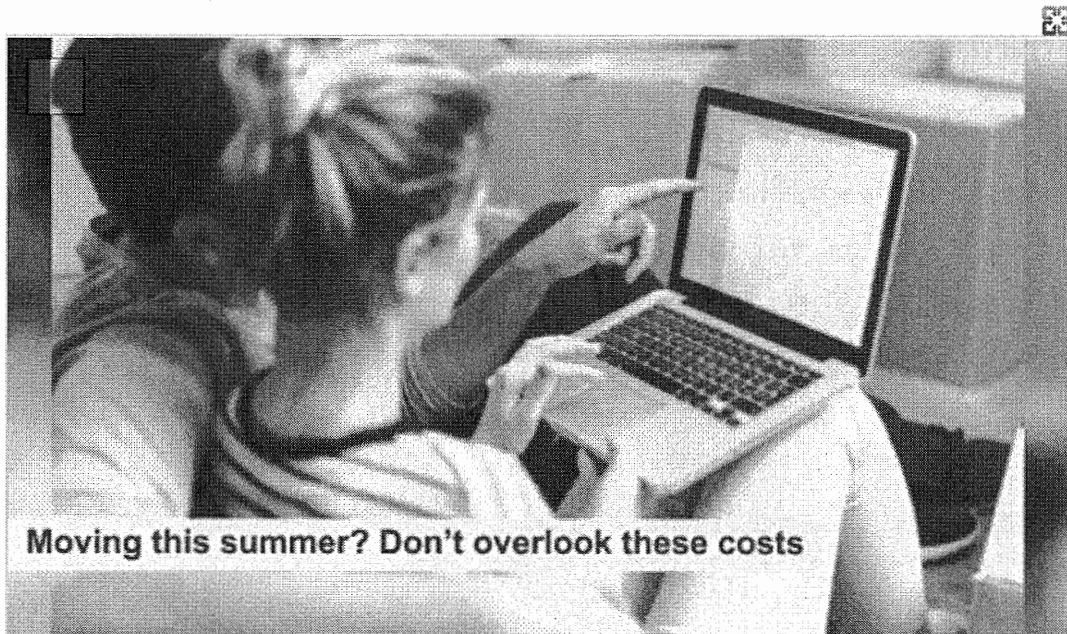
But the fundamentals of the market haven’t changed, he said. The Toronto region needs 55,000 new homes a year to meet the demand over the next 20 years, he said.

The lower number of home sales in April, combined with the release of new housing projects meant there were 15 per cent more new construction homes available in April compared to March. But the five-month inventory is still below the nine to 12 months’ supply that would indicate a healthy market, said BILD.

The association is recommending governments help put more houses on the market by streamlining the approval process.

“It often takes 10 years to get a new project online,” said Wilkes. “In some cases you need to have 52 different studies, reports, check lists or plans approved before you can get approval for a project to begin. There really is a lot of work that can be done to ensure new product is brought on the market in the most efficient, effective manner.”

BILD says all housing projects must meet six provincial requirements, in addition to specific municipal and regional approvals.



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**TAB P**

THIS IS EXHIBIT "P" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



# Agreement of Purchase and Sale



**Form 100**  
for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 9 day of JULY 2018

**BUYER**, ELLIOTT SUD, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER**, JUAN GUTIERREZ AND WENCKE GUTIERREZ, the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 2 GORDON ROAD, TORONTO

fronting on the EAST side of GORDON ROAD

in the CITY OF TORONTO

and having a frontage of 64.98 FEET more or less by a depth of 180 FEET more or less

and legally described as PLAN 3517 LOT 187

(the "property")  
(legal description of land including easements not described elsewhere)

**PURCHASE PRICE:** Dollars (CDN\$) 3,025,000.00

Three Million Twenty-Five Thousand Dollars

**DEPOSIT:** Buyer submits UPON ACCEPTANCE  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Hundred Thousand Dollars (CDN\$) 100,000.00

by negotiable cheque payable to SOTHEBY'S INTERNATIONAL REALTY CANADA "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A** attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by BUYER until 11:59 PM on the 11 day of July 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 31 day of July 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): ES

INITIALS OF SELLER(S): [Signature]

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3. NOTICES: The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... (For delivery of Documents to Seller) FAX No.: ..... (For delivery of Documents to Buyer)

Email Address: ..... (For delivery of Documents to Seller) Email Address: ..... (For delivery of Documents to Buyer)

4. CHATELS INCLUDED: EXISTING FRIDGE, STOVE, DISHWASHER, WASHER, DRYER, ALL LIGHT FIXTURES, POOL HEATER & EQUIPMENT, GARAGE DOOR OPENERS AND REMOTES, CENTRAL VAC & EQUIPMENT, GAS BURNER AND EQUIPMENT, ALARM SYSTEM, AND ALL OTHER PERMANENT CHATELS AND FIXTURES BELONGING TO THE PROPERTY AND BEING FREE OF ENCUMBRANCE.

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. FIXTURES EXCLUDED: N/A

6. RENTAL ITEMS (Including Lease, Lease to Own): The following equipment is rented and not included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

HOT WATER TANK

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be INCLUDED IN ..... the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

ES

INITIALS OF SELLER(S):

[Handwritten signature]

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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 27 day of July, 2018, (Requisition Date) to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding

work orders or deficiency notices affecting the property, and that its present use (SINGLE FAMILY RESIDENTIAL) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.


12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

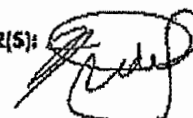
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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 20. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

DS  
ES

INITIALS OF SELLER(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Witness lines for the first signature block, including a signature for Elliott Sud and a date of 7/10/2018 at 7:08.

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Witness lines for the second signature block, including a signature for the seller and a date of 10 July 2018.

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

Witness lines for the spousal consent section, including a date line.

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 9:45 a.m./p.m. this 10th day of July, 2018. Includes a star icon and a signature.

INFORMATION ON BROKERAGE(S) section containing listing and co-op/buyer brokerage details for SOTHEBY'S INTERNATIONAL REALTY CANADA, SARA HAMILTON / ANNA OLIVER.

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer. Includes signature lines for Seller and Buyer.

FOR OFFICE USE ONLY COMMISSION TRUST AGREEMENT section with text regarding the trust agreement and signature lines for the listing and co-operating brokerages.



# Schedule A Agreement of Purchase and Sale



**Form 100**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** ELLIOTT SUD....., and

**SELLER,** JUAN GUTIERREZ AND WENCKE GUTIERREZ.....

for the purchase and sale of 2 GORDON ROAD, TORONTO..... TORONTO.....

..... dated the 9..... day of JULY....., 2018.....

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, by bank draft or certified cheque, to the Seller on the completion of this transaction.

The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage or Salesperson, for any changes in property tax as a result of a re-assessment of the property.

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in good working order and free from all liens and encumbrances on completion. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property at completion of this transaction.

~~THIS OFFER IS CONDITIONAL upon the Buyer arranging satisfactory financing within FIVE (5) banking days after acceptance of this offer, failing which, this Agreement of Purchase and Sale shall be null and void and the deposit shall be returned to the buyer in full without interest or deduction. This condition is included for the benefit of the Buyer and may be waived at his absolute and sole option, but notice in writing to the Seller, or his agent, within the time period stated herein.~~

DS  
ES  
WCK

~~THIS OFFER IS CONDITIONAL upon the Buyer obtaining an inspection of the subject property by a qualified home inspector, at his own expense, within FIVE (5) business days after acceptance of this Offer. In the event that this inspection reveals MAJOR structural, plumbing, electrical or mechanical deficiencies which the Buyer is unwilling to accept, and which the Seller is unwilling or unable to remedy, then this Offer shall be null and void, and the deposit shall be returned to the Buyer in full without interest or deduction. The Seller agrees to provide access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived by notice in writing to the Seller, or his agent, within the time period stated herein.~~

DS  
ES  
WCK

THE BUYER ACKNOWLEDGES and accepts that the property is being purchased in as-is condition.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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# Schedule A Agreement of Purchase and Sale



**Form 100**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER, ELLIOTT SUD** ....., and

**SELLER, JUAN GUTIERREZ AND WENCKE GUTIERREZ** .....

for the purchase and sale of **2 GORDON ROAD, TORONTO** ..... **TORONTO** .....

..... dated the **9** ..... day of **JULY** ....., **20 18** .....

The Seller shall be permitted the right to remain upon and continue the Seller's use of the real property, in accordance with the Residential Tenancy Agreement attached to this document as "Schedule C" for a period of 24 months after the date of completion, provided that the Seller agrees to vacate the property at the end of the period if the tenancy is not renewed, and provided that the Seller shall, during the period, maintain the lands and buildings in good repair and not permit waste upon the property. The Seller shall pay taxes, insurance and utilities during this period. The Buyer shall have free access to the lands during this period and reasonable access to the buildings. The Seller shall be permitted to remove all personal property from the said property either during this period or upon vacating the property. These provisions, where applicable, shall not lapse or merge on completion of this transaction.

"The parties hereto consent and agree to the use of electronic signature pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction."

The Seller represents and warrants that during the time the Seller has owned the property, the use of the property and the buildings and structures thereon has not been for the growth or manufacture of any illegal substances, and that to the best of the Seller's knowledge and belief, the use of the property and the buildings and structures thereon has never been for the growth or manufacture of illegal substances. This warranty shall survive and not merge on the completion of this transaction.

This Offer is conditional upon the approval of the terms hereof by the Seller's Solicitor. Unless the Seller gives notice in writing delivered to the Buyer or to the Buyer's address as hereinafter indicated personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 11:59 p.m. on July 13, 2018, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of Seller and may be waived at the Seller's sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

The Seller represents and warrants that the swimming pool and equipment are now, and on the completion date shall be, in good working order. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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# Schedule A Agreement of Purchase and Sale



**Form 100**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** ELLIOTT SUD....., and

**SELLER,** JUAN GUTIERREZ AND WENCKE GUTIERREZ.....

for the purchase and sale of 2 GORDON ROAD, TORONTO..... TORONTO.....

..... dated the 9..... day of JULY....., 2018.....

The Buyer and Seller agree that the Seller's solicitor shall hold back the amount of \$10,000 as a property security deposit for the Residential Tenancy Agreement that is attached to this document as "Schedule C" .


The Seller hereby acknowledges that the real property is subject to registered encumbrances that may, given the Seller's obligation to pay commissions and other related closing costs, exceed the available proceeds of sale from this transaction. This Offer shall, therefore, be conditional upon the Seller obtaining the written approval of all Charges/Mortgages and other registered encumbrances as to the final acceptance of this Offer and their agreement to discharge their encumbrances without payment in the aggregate of more than the available proceeds from this transaction. Unless the Seller gives notice in writing delivered to the Buyer personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 11:59 p.m. on the 13th day of July, 2018, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Seller and may be waived at the Seller's sole option by notice in writing to the Buyer as aforesaid within the time period stated herein.

The Buyer agrees to provide proof of financing within 48 hours of acceptance of this offer, if required.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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Court File No. CV-17-583107

ONTARIO  
SUPERIOR COURT OF JUSTICE

HONOUR

*MR. JUSTICE  
LEADER*

) THURSDAY, the 31<sup>ST</sup>

) DAY of MAY, 2018.



THE BANK OF NOVA SCOTIA

Plaintiff

and

JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ

Defendant(s)

JUDGMENT

THIS MOTION, made by THE BANK OF NOVA SCOTIA for Summary Judgment for payment by the defendants to the plaintiff of the monies due and owing on the charge/mortgage plus interest thereon at the mortgage rates and for possession of the charged/mortgaged property as described in the Statement of Claim and for costs on a substantial indemnity basis plus HST was heard this 31<sup>st</sup> day of May, 2018 at Toronto.

ON READING the Motion Record and the Factum filed by the moving party, THE BANK OF NOVA SCOTIA, and no responding material having been filed on behalf of the respondents, JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ, and on hearing the submissions of the lawyer for the moving party, the lawyer for the responding parties not appearing

1. THIS COURT ORDERS AND ADJUDGES that the defendants, JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ, pay to the plaintiff the sum of \$1,725,700.90.

THIS JUDGMENT BEARS INTEREST on the sum of \$769,364.42 at the rate of 2.99% per cent per annum commencing on June 1, 2018

THIS JUDGMENT BEARS INTEREST interest on the sum of \$956,336.48 at the rate of 3.45% per cent per annum commencing June 1, 2018.

- 2. THIS COURT ORDERS AND ADJUDGES that the defendants, JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ, deliver to the plaintiff possession of the charged/mortgaged property as described in the Statement of Claim being:

Property Identifier Number: 10102-0198 LT

LT 187 PL 3517 NORTH YORK; TORONTO (N YORK), CITY OF TORONTO

Property municipally known as 2 Gordon Road, Toronto, Ontario, M2P 1E1

As set out in paragraph 15 of the Statement of Claim

- 3. THIS COURT ORDERS AND ADJUDGES that the defendants, JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ, pay to the plaintiff the sum of \$13,897.52 for the costs of this motion and of the action together with interest thereon at the rate of 3.45% per annum commencing June 1, 2018.

*ARJ*

*13,897.52*

DATED at Toronto, this 31<sup>st</sup> day of May, 2018.

Signed by

*Leclerc J.*  
JUDGE

Address of  
Court office

393 University Avenue, 10th Floor  
TORONTO, Ontario  
M5G 1E6

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 07 2018

PER / PAR: *[Signature]*



THE BANK OF NOVA SCOTIA  
PLAINIFF

and

JUAN GUILLERMO GUTIERREZ and WENCKE GUTIERREZ  
DEFENDANT(S)  
Court File No. CV-17-583107

ONTARIO  
SUPERIOR COURT OF JUSTICE  
Proceeding commenced at Toronto

J U D G M E N T

SOLISH, FELLEN LLP  
Barristers & Solicitors  
Suite 206, 20 Holly Street  
Toronto, Ontario  
M4S 3B1

PHILIP A. FELLEN  
(416) 977-7345  
Fax: (416) 977-8177  
Solicitors for the Plaintiff  
Lawyer No. 11118Q

**TAB Q**

THIS IS EXHIBIT "Q" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

**Residential Tenancy Agreement  
(Standard Form of Lease)**
**Note**

This tenancy agreement (or lease) is required for tenancies entered into on **April 30, 2018 or later**. It does not apply to care homes, sites in mobile home parks and land lease communities, most social housing, certain other special tenancies or co-operative housing (see Part A of General Information).

Residential tenancies in Ontario are governed by the *Residential Tenancies Act, 2006*. This agreement cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

Under the Ontario *Human Rights Code*, everyone has the right to equal treatment in housing without discrimination or harassment.

All sections of this agreement are mandatory and cannot be changed.

**1. Parties to the Agreement**
**Residential Tenancy Agreement between:**
**Landlord(s)**

Landlord's Legal Name

ELLIOTT SUD

Landlord's Legal Name

**Note:**

See Part B in General Information

**and Tenant(s)**

Last Name

GUTIERREZ

First Name

JUAN GUILLERMO

Last Name

GUTIERREZ

First Name

WENCKE

Last Name

First Name

Last Name

First Name

Last Name

First Name

**2. Rental Unit**

The landlord will rent to the tenant the rental unit at:

Unit (e.g., unit 1 or basement unit)

Street Number

2

Street Name

GORDON

City/Town

TORONTO

Province

Ontario

Postal Code

Number of vehicle parking spaces and description (e.g., indoor/outdoor, location)

PRIVATE GARAGE AND DRIVE

The rental unit is a unit in a condominium.



Yes  No

If yes, the tenant agrees to comply with the condominium declaration, by-laws and rules, as provided by the landlord.

3. Contact Information

Address for Giving Notices or Documents to the Landlord

Unit	Street Number	Street Name	PO Box
City/Town		Province	Postal Code/ZIP Code

Both the landlord and tenant agree to receive notices and documents by email, where allowed by the Landlord and Tenant Board's Rules of Practice.

Yes  No

If yes, provide email addresses:

The landlord is providing phone and/or email contact information for emergencies or day-to-day communications:

Yes  No

If yes, provide information:

Note:

See Part B and E in General Information

4. Term of Tenancy Agreement

This tenancy starts on: 2018/08/01 Date (yyyy/mm/dd)

This tenancy agreement is for: (select an option below and fill in details as needed)

a fixed length of time ending on: 2020/07/31 Date (yyyy/mm/dd)

a monthly tenancy

other (such as daily, weekly, please specify): \_\_\_\_\_

DS  
ES

**Note:**

The tenant does not have to move out at the end of the term. See Parts C and D in General Information.

**5. Rent**

a) Rent is to be paid on the 1st (e.g., first, second, last) day of each (select one):

Month

Other (e.g., weekly)

b) The tenant will pay the following rent:

Base rent for the rental unit 10,000.00

Parking (if applicable) \_\_\_\_\_

Other services and utilities (specify if applicable):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Total Rent (Lawful Rent)** 10,000.00

This is the lawful rent for the unit, subject to any rent increases allowed under the *Residential Tenancies Act, 2006*. For example, the landlord and tenant may agree to a seasonal rent increase for additional services of air conditioning or a block heater plug-in. This amount does not include any rent discounts (see Section 7 and Part G in General Information).

c) Rent is payable to: ELLIOTT SUD

d) Rent will be paid using the following methods:

**Note:**

The tenant cannot be required to pay rent by post-dated cheques or automatic payments, but can choose to do so.

e) If the first rental period (e.g., month) is a partial period, the tenant will pay a partial rent of \$ \*\*\*\*\* on \*\*\*\*\*. This partial rent covers the rental of the unit from \*\*\*\*\* to \*\*\*\*\*.  
Date (yyyy/mm/dd) Date (yyyy/mm/dd) Date (yyyy/mm/dd)

f) If the tenant's cheque is returned because of non-sufficient funds (NSF), the tenant will have to pay the landlord's administration charge of \$ 20.00 plus any NSF charges made by the landlord's bank.

**Note:**

The landlord's administration charge for an NSF cheque cannot be more than \$20.00

**6. Services and Utilities**

The following services are included in the lawful rent for the rental unit, as specified:

Gas  Yes  No

DS  
ES

# 213

- Air conditioning  Yes  No
- Additional storage space  Yes  No
- On-Site Laundry  Yes  No  No Charge  Pay Per use
- Guest Parking  Yes  No  No Charge  Pay Per use
- Other \_\_\_\_\_  Yes  No
- Other \_\_\_\_\_  Yes  No
- Other \_\_\_\_\_  Yes  No
- Other \_\_\_\_\_  Yes  No
- Other \_\_\_\_\_  Yes  No

Provide details about services or list any additional services if needed (if necessary add additional pages):

The Tenant shall be responsible for paying for and maintaining all maintenance contracts on property including but not limited to exterior landscaping, pool service, snow removal, furnace and a/c maintenance and shall provide the landlord with written confirmation that such accounts are active.

The tenant shall pay 50% of the property taxes during the first 12 months of the lease and 100% of the property taxes on the property during the second 12 months of the lease

The following utilities are the responsibility of:

- Electricity  Landlord  Tenant
- Heat  Landlord  Tenant
- Water  Landlord  Tenant

If the tenant is responsible for any utilities, provide details of the arrangement, e.g. tenant sets up account with and pays the utility provider, tenant pays a portion of the utility costs (if necessary add additional pages):

Utilities on property already registered in tenant's name.

**Note:**

If the tenant will be responsible for paying for electricity measured by a meter or suite meter, the landlord must give the prospective tenant available information about the electricity usage in the rental unit over the last twelve months using the appropriate Landlord and Tenant Board form.

## 7. Rent Discounts

Select one:

- There is no rent discount.
- or
- The lawful rent will be discounted as follows:

DS  
ES

Provide description of rent discount (if necessary add additional pages):

THE TENANT SHALL RECEIVE A RENT DISCOUNT OF \$10,000 PER MONTH FOR A PERIOD OF 24 MONTHS OF TENANCY BEGINNING AUGUST 1, 2018, PROVIDED THAT THE TENANT MAINTAINS THE PROPERTY AND GROUNDS AND THAT THE PROPERTY TAX AMOUNTS ARE IN GOOD STANDING.

**Note:**

See Part G in General Information for what types of discounts are allowed.

**8. Rent Deposit**

Select one:

A rent deposit is not required.

or

The tenant will pay a rent deposit of \$ \_\_\_\_\_. This can only be applied to the rent for the last rental period of the tenancy.

**Note:**

This amount cannot be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less. This cannot be used as a damage deposit. The landlord must pay the tenant interest on the rent deposit every year. See Part H in General Information.

**9. Key Deposit**

Select one:

A key deposit is not required.

or

The tenant will pay a refundable key deposit of \$ \_\_\_\_\_ to cover the cost of replacing the keys, remote entry devices or cards if they are not returned to the landlord at the end of the tenancy.

If a refundable key deposit is required, provide description and number of keys, access cards and remote entry devices:

**Note:**

The key deposit cannot be more than the expected replacement cost. See Part H in General information.

DS  
ES



10. Smoking

Under provincial law, smoking is not allowed in any indoor common areas of the building. The tenant agrees to these additional rules on smoking:

Select one:

None

or

Smoking rules

Provide description of smoking rules (if necessary add additional pages):

NON-SMOKING RULES CAN BE REFERENCED IN 'ADDITIONAL TERMS' ATTACHED TO THIS AGREEMENT.

Note:

In making and enforcing smoking rules, the landlord must follow the Ontario Human Rights Code. See Parts M and S in General Information.

11. Tenant's Insurance

Select one:

There are no tenant insurance requirements.

or

The tenant must have liability insurance at all times. If the landlord asks for proof of coverage, the tenant must provide it. It is up to the tenant to get contents insurance if they want it.

12. Changes to the Rental Unit

The tenant may install decorative items, such as pictures or window coverings. This is subject to any reasonable restrictions set out in the additional terms under Section 15.

The tenant cannot make other changes to the rental unit without the landlord's permission.

13. Maintenance and Repairs

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards.

The tenant must repair or pay for any undue damage to the rental unit or property caused by the wilful or negligent conduct of the tenant, the tenant's guest or another person who lives in the rental unit.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

Note:

See Part J in General Information.

14. Assignment and Subletting

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a sublet or potential assignee.

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ES

**Note:**

There are additional rules if the tenant wants to assign or sublet the rental unit. See Part P in General Information.

---

**15. Additional Terms**


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Landlords and tenants can agree to additional terms. Examples may include terms that:

- Require the landlord to make changes to the unit before the tenant moves in, and
- Provide rules for use of common spaces and/or amenities.

These additional terms should be written in plain language and clearly set out what the landlord or tenant must or must not do to comply with the term. If typed, the additional terms should be in a font size that is at least 10 points.

An additional term cannot take away a right or responsibility under the *Residential Tenancies Act, 2006*.

If a term conflicts with the *Residential Tenancies Act, 2006* or any other terms set out in this form, the term is void (not valid or legally binding) and it cannot be enforced. Some examples of void and unenforceable terms include those that:

- Do not allow pets (however, the landlord can require the tenant to comply with condominium rules, which may prohibit certain pets),
- Do not allow guests, roommates, any additional occupants,
- Require the tenant to pay deposits, fees or penalties that are not permitted under the *Residential Tenancies Act 2006* (e.g., damage or pet deposits, interest on rent arrears), and
- Require the tenant to pay for all or part of the repairs that are the responsibility of the landlord.

See General Information for more details.

The landlord and tenant may want to get legal advice before agreeing to any additional terms.

Select one:

There are no additional terms.

or

This tenancy agreement includes an attachment with additional terms that the landlord and tenant agreed to.

---

**16. Changes to this Agreement**


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After this agreement is signed, it can be changed only if the landlord and tenant agree to the changes in writing.

**Note:**

The *Residential Tenancies Act, 2006* allows some rent increases and requires some rent reductions without agreement between the landlord and tenant. See Part I in General Information.

17. Signatures

By signing this agreement, the landlord(s) and the tenant(s) agree to follow its terms.

Unless otherwise agreed in the additional terms under Section 15, if there is more than one tenant, each tenant is responsible for all tenant obligations under this agreement, including the full amount of rent.

Landlord(s):

Name Elliott Sud	Signature Signed by: <i>Elliott Sud</i>	Date (yyyy/mm/dd) 7/10/2018   7:08 AM PDT
Name	Signature E6ADB7608935446...	Date (yyyy/mm/dd)

Tenant(s):

Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)
Name	Signature	Date (yyyy/mm/dd)

Note:

All of the landlords and tenants listed on the first page in Section 1 (Parties to the Agreement) must sign here. The landlord must give a copy of this agreement to the tenant within 21 days after the tenant signs it.

THE LANDLORD SHALL BE ENTITLED TO 2 VISITS ANNUALLY TO INSPECT THE PROPERTY AND THAT 24 HOURS NOTICE SHALL BE PROVIDED FOR SUCH VISITS.

THE TENANT SHALL PERMIT THE LANDLORD OR THEIR WORKERS ACCESS TO THE PREMISES WITHIN THE FIRST 60 DAYS OF OCCUPANCY TO REPLACE THE ROOF AND THE VERANDAH OFF THE MASTER BEDROOM

BEGINNING JANUARY 1, 2020, THE TENANTS AGREE TO PROVIDE ACCESS TO THE LANDLORD'S CONTRACTORS A MINIMUM OF 2X PER MONTH FOR THE PURPOSE OF MEASUREMENTS, QUOTES, PHOTOS, ETC.

DS  
ES



## Appendix: General Information

This Appendix sets out basic information for landlords and tenants. It is not intended as legal advice, and it is not an official interpretation of the *Residential Tenancies Act, 2006* (the Act). Please refer to the Act for the specific rules.

The Landlord and Tenant Board also provides information about landlords' and tenants' rights and responsibilities under the Act.

### Landlord and Tenant Board:

Toll free: 1-888-332-3234

Toronto area: 416-645-8080

TTY: Bell Relay Service at 1-800-268-9242

Website: [www.sjto.ca/lrb](http://www.sjto.ca/lrb)

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### A. When to Use This Form

This form (standard form of lease) must be used for most residential tenancy agreements (leases).

This form should not be used for:

- care homes,
- sites in mobile home parks or land lease communities,
- social and supportive housing that is exempt from the rent increase guideline (see the regulation under the Act for specific exemptions),
- member units in co-operative housing, and
- any other accommodation that is exempt from the Act (see Section 5 of the Act).

---

### B. Change of Landlord

A new landlord has the same rights and duties as the previous landlord. A new landlord must follow all the terms of this agreement unless the tenant and new landlord agree to other terms. A new landlord should provide the tenant with their legal name and address.

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### C. Renewing a Tenancy Agreement (Part V of the Act)

If the landlord and tenant agree that the tenancy will last for a specific period of time, this is called a fixed term tenancy. This is because both the start and end date are set out in the tenancy agreement.

The end of an agreement does not mean the tenant has to move out or sign a renewal or new agreement in order to stay. The rules of the agreement will still apply and the tenant still has the right to stay:

- as a monthly tenant, if the agreement was for a fixed term or monthly tenancy,
- as a weekly tenant, if the agreement was for a weekly tenancy, or
- as a daily tenant, if the agreement was for a daily tenancy.

The landlord and tenant can also agree to renew the agreement for another fixed term or enter into a new agreement. In any case, changes to the rent must follow the rules under the Act (see Part I below for further information).

---

### D. Ending the Tenancy (Part V of the Act)

The landlord or tenant must follow the rules of the Act when ending a tenancy.

#### When the tenant can end the tenancy

The tenant may end a tenancy by giving the landlord proper notice using the appropriate Landlord and Tenant Board form. They must give:

DS  
ES

- at least 60 days' notice if they have a monthly or fixed term tenancy, or
- at least 28 days' notice if they have a daily or weekly tenancy.

For a fixed term tenancy, the notice cannot be effective before the last day of the fixed term. For a monthly or weekly tenancy, the notice must be effective on the last day of a rental period (e.g. month or week).

In certain situations, a tenant who has experienced sexual or domestic violence can give 28 days' notice to end the tenancy at any time, even if the tenant has a fixed term agreement (e.g., one year agreement). They must use the notice form approved by the Landlord and Tenant Board.

### When the landlord can end the tenancy

The landlord cannot evict the tenant unless the landlord follows the proper rules. In most cases, the landlord must give proper notice to end the tenancy using the right form. Forms are available on the Landlord and Tenant Board's website.

The landlord can only give the tenant notice to end the tenancy in certain situations. These situations are set out in the Act. A few examples include:

- tenant does not pay the full rent when it is due,
- tenant causes damage to the rental unit or building, and
- tenant substantially interferes with the reasonable enjoyment of other tenants or the landlord.

If the landlord gives a tenant notice to end the tenancy, the tenant does not have to move out.

If the tenant does not move out, the landlord must apply to the Landlord and Tenant Board in order to evict the tenant. The Landlord and Tenant Board will hold a hearing and decide if the tenancy should end. Both the landlord and the tenant can come to the hearing and explain their side to the Landlord and Tenant Board. If the Landlord and Tenant Board orders an eviction, the eviction order can only be enforced by the Sheriff (Court Enforcement Officer).

It is an offence for the landlord to evict a tenant without following this process. If convicted, the landlord could face a fine of up to \$25,000 (for an individual) or \$100,000 (for a corporation).

### If the Landlord and Tenant agree to end the tenancy

The tenant and landlord can agree to end a tenancy at any time by using the proper Landlord and Tenant Board form. Some landlords may ask the tenant to sign this form when signing the agreement. In most cases, an agreement to end a tenancy signed at the beginning of the tenancy agreement is unenforceable and the tenant does not have to move out.

There is more information on how to end a tenancy and reasons for eviction in the Act and in a brochure on the Landlord and Tenant Board website.

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## E. Giving Notices and Documents (Part XII of the Act)

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The landlord and tenant have to deliver some official notices and other documents in writing. These notices and documents can be:

- hand delivered,
- left in a mail box or a place where mail is ordinarily delivered, or
- mailed (this will count as delivered five days after mailing).

There are also other ways to serve notices and documents. For more information, contact the Landlord and Tenant Board or see the Rules of Practice on its website.

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## F. Rent and Rent Receipts (Part VII of the Act)

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Rent is the amount the tenant pays to the landlord to occupy the rental unit and receive services or facilities agreed to in this agreement.

The tenant must pay their rent on time. If they do not, the landlord can give them notice to end the tenancy.

If the tenant asks for a receipt for rent or any payment or deposit, the landlord must give them one for free. This also applies to a former tenant who asks for a receipt within 12 months after the end of their tenancy.



## G. Rent Discounts (Part VII of Act)

The landlord can offer the tenant a discount for paying rent on or before the date it is due. This discount can be up to two per cent of the lawful rent.

The landlord can also offer rent-free periods or discounts in one of three ways:

- Rent-free periods of up to three months within any 12-month period,
- A discount of up to one month's rent spread evenly over eight months, or
- A discount of up to two months' rent, with up to one month's rent spread evenly over the first seven months, and up to one month's rent discounted in one of the last five months.

These types of discounts must be agreed to in writing.

## H. Deposits (Part VII of the Act)

The landlord can only collect a deposit for the last month's rent and a refundable key deposit. The tenant does not have to provide any other form of deposit, such as pet or damage deposits. If the tenant pays anything more, the tenant can apply to the Landlord and Tenant Board to get the money back.

**Rent deposit (i.e. last month's rent):** The landlord can require a rent deposit on or before the tenant enters into the tenancy agreement. The landlord must apply this money to the rent for the last period of the tenancy. The rent deposit must not be more than one month's rent or the rent for one rental period (e.g., one week in a weekly tenancy), whichever is less.

The landlord must pay the tenant interest on the rent deposit every year. If the rent increases after the tenant has paid a rent deposit, the landlord can require the tenant to top-up the rent deposit so that it is the same as the new rent. The landlord can use the interest on the rent deposit to top-up the rent deposit.

If the landlord is unable to let the tenant move into the rental unit, the landlord must return the deposit, unless the tenant agrees to rent a different unit.

**Key deposit:** If the landlord collects a deposit for key(s), remote entry devices or cards, the landlord must return the deposit when the tenant gives back their key(s) at the end of the tenancy.

The landlord can charge the tenant for additional keys that the tenant requests (for example, if the tenant wants an extra key or if the tenant has lost their key), but the charge cannot be more than actual cost of the keys. This is not a key deposit.

## I. Rent Increases and Decreases (Part VII of the Act)

Most Ontario tenants are protected by rent controls that limit how much rent can increase year-over-year. The rent payable by tenants may also decrease in limited situations.

### Guideline Rent Increases

Normally, the landlord can increase the rent only once every 12 months. The landlord must use the proper Landlord and Tenant Board form and give the tenant at least 90 days' notice before the rent increase is to take effect. The rent can be increased by no more than the rent increase guideline unless the Landlord and Tenant Board approves a rent increase above the guideline. The guideline for each year can be found on the Landlord and Tenant Board's website.

### Rent Increases above the Guideline

The landlord can apply to the Landlord and Tenant Board for approval to raise the rent by more than the rent increase guideline. Affected tenants can oppose this application at the Landlord and Tenant Board.

This kind of rent increase is called an above-guideline rent increase. The Landlord and Tenant Board can allow this kind of rent increase if:

- the landlord's municipal taxes and charges have increased significantly,
- the landlord has done major repairs or renovations, or
- the costs of external security services (i.e. not performed by the landlord's employees) have increased, or external security services are being provided for the first time.

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The landlord and tenant can also agree to an above-guideline rent increase, if the landlord agrees to renovate or add a new service for the tenant. Certain rules apply.

### Rent Reductions:

The landlord **must** reduce the rent if:

- the municipal property tax goes down by more than 2.49 per cent, or
- the rent was increased above the guideline to pay for repairs or renovations and the costs have been fully paid for (this only applies to tenants who were living in the unit when the above guideline rent increase happened).

The tenant can apply to the Landlord and Tenant Board to reduce their rent if:

- municipal property taxes or charges on the rental property go down,
- the landlord reduced or removed a service without reducing the rent, or
- the landlord did not keep a promise they made in an agreement for a rent increase above the guideline.

---

## J. Maintenance and Repairs (Part III, IV, V and XIV of the Act)

The landlord must keep the rental unit and property in good repair and comply with all health, safety and maintenance standards. This includes the maintenance and repair of things that came with the unit, such as appliances, and of common areas, such as parking lots, elevators, and hallways.

The tenant must pay their rent, even if they have problems with the maintenance and repair of their unit or property. If the tenant is having a maintenance or repair problem, the tenant should let the landlord know. If needed, the tenant can apply to the Landlord and Tenant Board.

The tenant is responsible for any damage to the rental property caused by the tenant, the tenant's guest or another person who lives in the rental unit. This applies to any damage caused on purpose or by not being careful enough. This does not include damage that results from normal use of the rental unit over time ("wear and tear"). The landlord can apply to the Landlord and Tenant Board if the tenant has not repaired such damage.

The tenant is responsible for ordinary cleanliness of the rental unit, except for any cleaning the landlord agreed to do.

---

## K. Vital Services (Part I and III of the Act)

"Vital services" include hot or cold water, fuel, electricity, gas and heat.

The landlord must ensure that a rental unit has heating equipment capable of maintaining a minimum temperature of 20° Celsius from September 1 to June 15. Some municipal by-laws may have stricter requirements.

The landlord cannot withhold or shut off the reasonable supply of a vital service, care service or food that the landlord must supply under the tenancy agreement. If a vital service is cut-off because the landlord failed to pay their bill, the landlord is considered to have withheld that service. However, if a vital service is cut-off or disconnected because the tenant failed to pay their own utility bill, the tenant cannot claim that the landlord withheld a vital service.

The landlord cannot deliberately interfere with the reasonable supply of any vital service, care service or food, whether or not the landlord is obligated to supply it under the tenancy agreement.

---

## L. Harassment (Part III and IV of the Act)

It is against the law for the landlord (or anyone acting for the landlord, such as a superintendent or property manager) to harass the tenant, or for the tenant to harass the landlord. If the landlord or the tenant is experiencing harassment they can apply to the Landlord and Tenant Board.

---

## M. Discrimination

If the landlord (or anyone acting for the landlord) discriminates against the tenant based on prohibited grounds of discrimination under the Ontario *Human Rights Code* (the *Code*), they may be violating the tenant's rights under the *Code*. The Landlord and Tenant Board may be able to consider discrimination if it relates to an application under the *Residential Tenancies Act, 2006*. In other situations, the tenant may have to take their case to the Human Rights Tribunal of Ontario.

### N. Landlord's Entry into Rental Unit (Part III of the Act)

The tenant is entitled to reasonable enjoyment of the rental unit (e.g. quiet enjoyment, reasonable privacy, freedom from unreasonable disturbance and exclusive use of the rental unit).

The landlord can enter the rental unit with 24 hours' written notice only for the following reasons:

- make repairs,
- inspect the unit to see if repairs are needed, if the inspection is reasonable,
- show the rental unit to a possible buyer, insurer or mortgage lender,
- let a real estate agent show the unit to a possible buyer,
- have a property inspection done before converting the residential building into a condominium, or
- for any reasonable purpose listed in the tenancy agreement.

The written notice must include the reason for the entry and state the date and time (between 8 a.m. and 8 p.m.) that the landlord will enter the unit. With proper notice, the landlord can enter the unit when the tenant is not at home.

The landlord does not need to give a notice to enter:

- in case of emergency,
- if the tenant consents to entry,
- if the tenancy agreement requires the landlord to clean the unit, or
- if the tenancy is coming to an end and the landlord wants to show the unit to a potential new tenant – the landlord can only show the unit between 8:00 a.m. and 8:00 p.m. and must make a reasonable effort to let the tenant know when this will happen.

### O. Locks (Part III and IV of the Act)

The landlord cannot change the locks of the rental unit unless the landlord gives the new keys to the tenant. The tenant cannot change the locks of the rental unit without the consent of the landlord.

### P. Assign or Sublet (Part VI of the Act)

The tenant may assign or sublet the rental unit to another person only with the consent of the landlord. The landlord cannot arbitrarily or unreasonably withhold consent to a potential assignee or sublet of the rental unit.

1. **Assignment:** In an **assignment**, the tenant transfers their right to occupy the rental unit to someone else. The new person takes the place of the tenant, and the tenancy agreement stays the same.
2. **Sublet:** A **sublet** occurs when the tenant moves out of the rental unit, lets another person (the 'sub-tenant') live there until a specified date, and can return to live in the unit before the tenancy ends. The tenancy agreement and the landlord-tenant relationship do not change.

A tenant who sublets a rental unit cannot:

- charge a higher rent than the landlord does for the rental unit,
- collect any additional fees for subletting the rental unit, or
- charge the sub-tenant for additional goods or services.

### Q. Guests (Part III of the Act)

The landlord cannot stop tenants from having guests, require the tenant to notify the landlord or get the landlord's permission before having guests. The landlord cannot charge extra fees or raise the rent due to guests in the rental unit. However, the tenant is responsible for the behaviour of their guests.

The landlord cannot prevent the tenant from having a roommate, as long as municipal by-laws on occupancy standards are respected.

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**R. Pets (Part III of the Act)**

A tenancy agreement cannot prohibit animals in the rental unit or in or around the residential building.

There are some cases where the landlord can apply to the Landlord and Tenant Board to evict a tenant who has a pet. These are some common examples:

- the pet makes too much noise, damages the unit or causes other tenants to have allergic reactions,
- the breed or species is inherently dangerous, or
- the rules of the condominium corporation do not allow pets.

**S. Smoking (Part V of the Act)**

The Act does not discuss smoking in a rental unit. The landlord and tenant can use Section 10 of this lease to agree to either allow or prohibit smoking in the unit, and/or on the landlord's property.

Even if the lease doesn't prohibit smoking, the landlord may apply to the Landlord and Tenant Board to end the tenancy if the smoking:

- substantially interferes with reasonable enjoyment of the landlord or other tenants,
- causes undue damage,
- impairs safety, or
- substantially interferes with another lawful right, privilege or interest of the landlord.

If the tenant believes that other people smoking in their building affects their health or safety, contravenes maintenance standards, or substantially interferes with their reasonable enjoyment of the rental unit, they should discuss it with their landlord before contacting the Landlord and Tenant Board.

**T. Smoke and Carbon Monoxide Alarms**

The landlord must provide the rental unit with working smoke alarms and, where applicable, carbon monoxide alarms. The landlord is responsible for keeping smoke and carbon monoxide alarms in working condition, which includes replacing the batteries. The tenant must not disconnect or tamper with any smoke or carbon monoxide alarm and must notify the landlord immediately of any alarms not working properly.

**U. Resolving Disputes**

The landlord and tenant are required to follow the law. If they have problems or disagreements, the landlord and tenant should first discuss the issue and attempt to resolve it themselves. If the landlord or tenant feels that the other is not obeying the law, they may contact the Landlord and Tenant Board for information about their rights and responsibilities, including whether they may apply to the Landlord and Tenant Board to resolve the dispute.

Save Form

Print Form

Clear Form

**TAB R**

THIS IS EXHIBIT "R" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

**Form 801**

for use in the Province of Ontario

**For Brokerage submitting the offer on behalf of the Buyer:**

When sent to the Listing Brokerage this form can be used as evidence that you have a written signed offer from a Buyer to the Seller.


**REAL PROPERTY ADDRESS:** 2 Gordon Rd ..... (the "property")  
(municipal address and/or legal description)

**for an Agreement of Purchase and Sale dated:** the ..... day of ....., 20..... ("offer")

This offer was submitted by: **BROKERAGE:** Sotheby's International Realty Canada .....

**SALES REPRESENTATIVE/BROKER:** .....

I/We, Larry Mullins ....., have signed an offer for the property.

DocuSigned by:  Name of Buyer(s) 7/27/2018 | 11:49 AM PDT  
Buyer signature Dated Buyer signature Dated

This offer was submitted, ..... to the Listing Brokerage at 3PM a.m./p.m. on the 27 day of  
(by fax, by email or in person)  
JULY 18 Irrevocable until 4PM 28 a.m./p.m. on the 18 day of JULY 18  
....., 20..... Irrevocable until ..... a.m./p.m. on the ..... day of ..... 20.....

(For Buyer counter offer - complete the following)

I/We, ..... have signed an offer for the property.  
Name of Buyer(s)

Buyer signature Date Buyer signature Date

An offer was submitted, ..... to the Listing Brokerage at ..... a.m./p.m. on the ..... day of  
(by fax, by email or in person)  
....., 20..... Irrevocable until ..... a.m./p.m. on the ..... day of ..... 20.....

**For Listing Brokerage receiving the offer:**

**SELLER(S):** Larry Mullins Wencke Gutierrez & Juan Guillermo Gutierrez .....

**SELLER(S) CONTACT:** .....  
(i.e. phone / email / fax)

**LISTING BROKERAGE:** Sotheby's International Realty Canada .....

**SALES REPRESENTATIVE/BROKER:** .....

This offer was received, ..... by the Listing Brokerage at ..... a.m./p.m. on the ..... day of ..... 20.....  
(by fax, by email or in person)

This offer was presented, ..... to the Seller(s) at ..... a.m./p.m. on the ..... day of ..... 20.....  
(by fax, by email or in person)

Offer was:  Accepted  Signed Back/Countered  Expired/Declined

**Comments:** .....

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Sotheby's International Realty Canada

easyOFFER 2018 by

Form 801 Revised Sept 2015  
Reagency Systems Corp.  
www.Reagency.ca

Page 1 of 1  
329566

**Schedule C**  
**Agreement of Purchase and Sale**

**Form 105**

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER:** Larry Mullins....., and

**SELLER:** Wencke Gutierrez & Juan Guillermo Gutierrez.....

for the property known as 2 Gordon Rd.....

..... dated the 27th..... day of July....., 2018.....

**License to Occupy**

Between

Larry Mullins ("Licensor")

And

Wencke Gutierrez & Juan Guillermo Gutierrez ("Licensee")

The parties agree as follows:

1. The parties have entered into an Agreement of Purchase and Sale dated 27 July, 2018, whereby the Licensee as Vendor agreed to sell to the Licensor as Purchaser the property known as 2 Gordon Road. (the "Property"). The closing date of the transaction is August 20, 2018.
2. The Licensee requires temporary possession of the Property after closing and has requested the Licensor to permit the Licensee to remain on the Property until November 20, 2018..
3. The Licensee agrees to pay a License fee of \$7,500 and will also pay all utilities during the period of this License to Occupy. The Licence Fee of \$7,500 per month has been paid in advance by way of a reduction in purchase price on the Subject property from \$3,200,000 to \$3,174,596
4. The Licensee agrees to keep the Property in a good state of repair and to vacate the Property on or before November 30, 2018 and to leave the Property in a clean and broom swept condition. In this regard, the Licensee acknowledges that if they do not vacate on November 30, 2018, the Licensor may enter, change the locks on the Property and dispose of any of the Licensee's goods, with no liability whatsoever.
5. The Licensee will occupy the Property as a bare licensee and will have no rights as a tenant under the Residential Tenancies Act of Ontario.

Dated this 27 day of JULY, 2018

DocuSigned by:  
[Signature]  
9C916080C0001420

Licensor

[Signature]  
[Signature]  
Licensee

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S): [Signature]

INITIALS OF SELLER(S): [Signature]

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Sotheby's International Realty Canada

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Reagency Systems Corp.  
www.Reagency.ca

Form 105 Revised 2018

Page 1 of 1

329566

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER, Larry Mullins** ....., and

**SELLER, Wencke Gutierrez & Juan Guillermo Gutierrez** .....

for the property known as **2 Gordon Road, Toronto Ontario** .....

..... dated the **27** ..... day of **July 2018** ....., 20.....

The Parties to this Agreement hereby acknowledge and agree that Sotheby's International Realty Canada (the deposit holder) shall purchase a GIC on behalf of the Buyer provided that the Buyer provides his or her Social Insurance Number for use on the required Canada Revenue Agency T5 forms within seven (7) days of acceptance of this Offer and provided that an Interest Bearing Account Clause is inserted into the Offer.

Provided that said deposit is a minimum of Five Thousand Dollars (\$5,000) and the completion is a minimum of thirty (30) days, the said deposit will earn interest at the then posted rate and Sotheby's International Realty Canada shall pay any interest it earns or receives on said deposit to the Buyer provided that the amount of the interest Sotheby's International Realty Canada receives is equal or greater than Fifty Dollars (\$50) on the date of successful completion. The Parties to this Agreement acknowledge that Sotheby's International Realty Canada shall be entitled to retain any interest earned or retained on the deposit which is less than Fifty Dollars (\$50) on the date of successful completion.

For the purposes of this notice, the term "Banking Days" shall mean any day other than Saturday, Sunday or a Statutory Holiday in the Province of Ontario. Also all references made to times and dates will be deemed to reflect Toronto, Ontario, Canada times and dates.

The Parties to this transaction acknowledge that no information provided by Sotheby's International Realty Canada is to be construed as expert legal, tax or environmental advice.

Buyer/s would like Interest: NO ( ) YES ( )

If the said deposit qualifies and YES, a SIN# is required. (Unless YES is specifically selected, no interest will be paid) (SIN# is not required from Corporations).

Your initials acknowledge receipt of this disclosure and confirm your agreement and direction as to whether or not you would like to receive the interest earned on the deposit. The parties to this Agreement of Purchase and Sale, hereby acknowledge and agree, that the Brokerage shall be entitled to retain any interest earned or received on the deposit if the conditions precedent to payment of interest have not been satisfied. This agreement and direction for interest on deposit will supersede any existing disclosures found within this Agreement of Purchase and Sale.

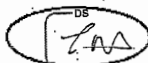
Initials of Buyer(s)

Initials of Seller(s)

Names(s) and Social Insurance Number(s) (to be submitted with deposit upon Offer Acceptance.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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**Form 105**  
for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Larry Mullins ..... and

**SELLER,** Wencke Gutierrez & Juan Guillermo Gutierrez .....

for the property known as 2 Gordon Road, Toronto Ontario .....

..... dated the 27 ..... day of July 2018, 20.....

The Seller agrees to allow access to an appraiser if required by the Buyer at a mutually agreed to time, recognizing that this appraisal must be done at the earliest possible time. The Seller acknowledges that this in no way constitutes a Buyers visit.

The parties hereto consent and agree to the use of electronic signature pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

The Buyer and Seller acknowledge having been advised that effective April 21, 2017, the Province of Ontario implemented a Non-Resident Speculation Tax, which is 15% tax on the purchase or Acquisition of an interest in residential property located in the Greater Toronto Area and the Greater Golden Horseshoe Region by individuals who are not citizens or permanent residents of Canada or by foreign corporations and taxable trustees.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

**INITIALS OF BUYER(S):**

**INITIALS OF SELLER(S):**



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**Form 100**

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 27th day of July, 2018.

**BUYER**, Larry Mullins, agrees to purchase from  
(Full legal names of all Buyers)

**SELLER**, Wencke Gutierrez & Juan Guillermo Gutierrez, the following  
(Full legal names of all Sellers)

**REAL PROPERTY:**

Address 2 Gordon Rd

fronting on the East side of Gordon Rd

in the City of Toronto

and having a frontage of 64.98 Feet more or less by a depth of 180 Feet more or less

and legally described as Plan 3517 Lot 187

(Legal description of land including easements not described elsewhere) (the "property")

**PURCHASE PRICE:** Dollars (CDN\$) 3,174,596.00

Three Million One Hundred Seventy-Four Thousand Five Hundred Ninety-Six Dollars  
UPON ACCEPTANCE

**DEPOSIT:** Buyer submits ~~XXXXXXX~~  
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Hundred Thousand Dollars (CDN\$) 100,000.00

by negotiable cheque payable to Sotheby's International Realty Canada "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

**Buyer agrees to pay the balance as more particularly set out in Schedule A attached.**

**SCHEDULE(S) A, B, C** attached hereto form(s) part of this Agreement.

**1. IRREVOCABILITY:** This offer shall be irrevocable by Buyer until 4:00 ~~am~~ p.m. on the 28th day of July, 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

**2. COMPLETION DATE:** This Agreement shall be completed by no later than 6:00 p.m. on the 20th day of August, 2018. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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Sotheby's International Realty Canada

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**NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: ..... FAX No.: (416) 960-3222 .....  
(For delivery of Documents to Seller) (For delivery of Documents to Buyer)  
Email Address: ..... Email Address: aoliver@sothebysrealty.ca .....  
(For delivery of Documents to Seller) (For delivery of Documents to Buyer)

**4. CHATELS INCLUDED:** Built-in Appliances - Stainless Steel Fridge, Stove, Microwave, Dishwasher, Easher, Dryer, Alarm, Hi-Eff Fag, Cvac, Sconces Halogen Lites, Built-in Speakers, All Electrical Light Fixtures, Window Coverings

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

**5. FIXTURES EXCLUDED:**

**6. RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

Hot Water Tank (if rental)

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

**7. HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be included in the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 7th day of August, 2018, (Requisition Date) to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding

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work orders or deficiency notices affecting the property, and that its present use (Residential) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. **The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.**

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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**15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.

**16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.

**17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.

**18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.

**19. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.

**20. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.

**21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

**22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.

**23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.

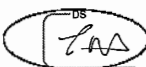
**24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.

**25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.

**26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.

**27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):



INITIALS OF SELLER(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

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SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

.....  
(Witness)

DocuSigned by:  
*[Signature]*  
[Buyer] BDCDD142D.....

● (Seal)

DATE 7/27/2018 | 11:49 AM PDT

.....  
(Witness)

.....  
(Buyer)

● (Seal)

DATE .....

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

.....  
(Witness)

*[Signature]*  
(Seller)

● (Seal)

DATE 27/July/2018

.....  
(Witness)

*[Signature]*  
(Seller)

● (Seal)

DATE 27/July/2018

**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

.....  
(Witness)

.....  
(Spouse)

● (Seal)

DATE .....

**CONFIRMATION OF ACCEPTANCE:** Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 5:53 a.m./p.m. this 27 day of July, 2018.

*[Signature]*  
(Signature of Seller or Buyer)

**INFORMATION ON BROKERAGE(S)**

Listing Brokerage Sotheby's International Realty Canada ..... Tel.No.(... 416 ...) 960-9995

.....  
(Salesperson / Broker Name)

Co-op/Buyer Brokerage ..... Tel.No.(.....)

.....  
(Salesperson / Broker Name)

**ACKNOWLEDGEMENT**

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE .....

..... DATE .....

..... DATE .....

..... DATE .....

Address for Service .....

Address for Service .....

..... Tel.No.(.....)

..... Tel.No.(.....)

Seller's Lawyer .....

Buyer's Lawyer .....

Address .....

Address .....

Email .....

Email .....

..... Tel.No. .... FAX No. ....

..... Tel.No. .... FAX No. ....

**FOR OFFICE USE ONLY**

**COMMISSION TRUST AGREEMENT**

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:  
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.

DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

.....  
(Authorized to bind the Listing Brokerage)

DocuSigned by:  
*[Signature]*  
.....  
(Authorized to bind the Co-operating Brokerage)

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# Schedule A

## Agreement of Purchase and Sale

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

**BUYER,** Larry Mullins....., and

**SELLER,** Wencke Gutierrez & Juan Guillermo Gutierrez.....

for the purchase and sale of 2 Gordon Rd in the City o Toronto.....

..... dated the 27th day of July....., 2018.....

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Seller agrees to provide the buyer with access to the subject property on two (2) occasions (not including an inspection by the Bank Appraiser) prior to closing, provided that the Buyer gives Seller at least twenty-four (24) hours notice.

The Seller represents and warrants that the chattels and fixtures as included in this Agreement of Purchase and Sale will be in working order at completion of this transaction.

The parties hereto consent and agree to the use of electronic signature pursuant to the Electronic Commerce Act 2000, S.O. 2000, c17 as amended from time to time with respect to this Agreement and any other documents respecting this transaction.

The Seller represents and warrants that the swimming pool and equipment are now, and on the completion date shall be, in good working order. The Parties agree that this representation and warranty shall survive and not merge on completion of this transaction, but apply only to the state of the property existing at completion of this transaction.

This form must be initialed by all parties to the Agreement of Purchase and Sale.


INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 

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Sotheby's International Realty Canada

easyOFFER 2018 by 

**TAB S**

THIS IS EXHIBIT "S" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

B E T W E E N :

MARGARITA CASTILLO

Plaintiff,

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO  
GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the  
Estate of Juan Arturo Gutierrez

Defendants.

-----  
This is the Examination in Aid of Execution of CARMEN S.  
ELFRIEDE GUTIERREZ, as Executor of the Estate of Juan  
Arturo Gutierrez herein, taken at the offices of Network  
Court Reporting, 1 First Canadian Place, 100 King St.  
West, Suite 3600, Toronto, Ontario, on July 26, 2017.  
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A P P E A R A N C E S :

Jason W.J. Woycheshyn for the Plaintiff

Martin Mendelzon for the Defendants,  
Xela Enterprises Ltd.,  
Tropic International  
Limited, Fresh Quest,  
Inc., Juan Guillermo  
Gutierrez and Carmen S.  
Gutierrez

ALSO APPEARING:  
Thomas Gutierrez  
Margarita Castillo



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7 INDEX OF UNDERTAKINGS

8

9 Undertakings are noted by U/T and are found on the

10 following pages: 11-13, 19, 20, 22-24, 26-30, 35, 36,

11 39, 52, 53, 55, 57, 59, 63-65, 71, 73-76.

12

13 INDEX OF REFUSALS

14 Refusals are noted by R/F and are found on the following

15 pages: 17, 31, 33, 34, 45-50, 60-62, 66-69.

16

17 INDEX OF UNDER ADVISEMENTS

18 Under advisements are noted by U/A and are found on the

19 following pages: 12, 13, 29, 30, 36, 48, 51, 52, 59,

20 65, 69, 72.

21

22 \*\*\* The list of undertakings, refusals and under

23 advisements is provided as a service to counsel and does

24 not purport to be complete or binding upon the parties.

25

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1 INDEX OF EXHIBITS (CONTINUED)

2

3 Exhibit No. Description Page No.

4 E Copy of a letter from the 9

5 Superior Court of Justice Deputy

6 Registrar to Gardiner Roberts

7 regarding the estate of

8 Gutierrez, J. Arturo dated

9 February 7, 2017

10 F Certificate of Appointment of 9

11 Estate Trustee with a will

12 limited to the assets referred

13 to in the will dated March 2,

14 2017

15 G Ministry of Finance for Ontario 9

16 Estate Information Return signed

17 by Mrs. Gutierrez on May 4, 2017

18

19

20

21

22

23

24

25

Page 3

1 INDEX OF EXHIBITS

2

3 Exhibit No. Description Page No.

4 A Letter from Bennett Jones dated 7

5 July 10, 2017

6 B Document entitled Estate of J. 8

7 Arturo Gutierrez Statement of

8 Liabilities as at September 19,

9 2016

10 C Application for Certificate of 8

11 Appointment of Estate Trustee

12 with a will limited to the

13 assets referred to in the will

14 signed by Mrs. Gutierrez on

15 December 19, 2016

16 D Document entitled Primary 9

17 Estate, Estate of J. Arturo

18 Gutierrez, Statement of Original

19 Assets Valued as at June 24,

20 2016, and signed by Mrs.

21 Gutierrez on December 19, 2016

22

23

24

25

Page 5

1 --- Upon commencing at 10:01 a.m.

2 CARMEN S. ELFRIEDE GUTIERREZ: SWORN

3 EXAMINATION BY MR. WOYCHESHYN:

4 1. Q. You are Carmen Elfriede Gutierrez?

5 A. Yes.

6 2. Q. Is that how you pronounce the middle

7 name?

8 A. Yes.

9 3. Q. May I call you Mrs. Gutierrez?

10 A. Yes, please.

11 4. Q. As I introduced myself before the

12 exam started, my name is Jason. I'm a lawyer for

13 Margarita Castillo, your daughter; do you

14 understand that?

15 A. I understand that.

16 5. Q. You are the executor of the estate of

17 your late husband Juan Arturo Gutierrez?

18 A. Yes.

19 6. Q. He was commonly known as Arturo,

20 right?

21 A. Correct.

22 7. Q. So when I ask you questions today,

23 I'll simply refer to him as Arturo as opposed to

24 Juan Arturo; is that okay?

25 A. That's okay.

Page 6

1 8. Q. I'm here to ask you some questions  
 2 about his estate; do you understand that?  
 3 A. Hmm-hmm.  
 4 9. Q. For the reporter, she's going to need  
 5 you to say yes or no as opposed to hmm-hmm or --  
 6 A. Okay.  
 7 10. Q. Okay? It just makes it easier for  
 8 her.  
 9 A. Sure. Yes.  
 10 11. Q. If you don't understand one of my  
 11 questions, please let me know and I will do my  
 12 best to rephrase it.  
 13 A. Okay. Yes.  
 14 12. Q. And if at any point you need to take  
 15 a break, please don't be shy, take a break at any  
 16 time, okay?  
 17 A. Thank you.  
 18 13. Q. You're welcome. You live at 207-1  
 19 Post Road?  
 20 A. Yes, correct.  
 21 14. Q. And that's in Toronto?  
 22 A. Yes.  
 23 15. Q. That is your primary residence? Yes?  
 24 A. And only one, yes.  
 25 16. Q. That has been your primary residence

Page 7

1 since 2002?  
 2 A. Yes.  
 3 17. Q. I'm showing you a letter from my  
 4 office dated July 10th, 2017. Did you get served  
 5 with a copy of a document that looked like that?  
 6 A. Yes, I think so.  
 7 18. Q. Okay. Can we mark that as Exhibit A,  
 8 please.  
 9 EXHIBIT A: Letter from Bennett Jones  
 10 dated July 10, 2017.  
 11 BY MR. WOYCHESHYN:  
 12 19. Q. Did you bring any documents with you  
 13 today, Mrs. Gutierrez?  
 14 MR. MENDELZON: Yes, she did. I'll hand  
 15 you those documents now. We have copies here.  
 16 MR. WOYCHESHYN: You are fine if I mark  
 17 these as exhibits?  
 18 MR. MENDELZON: Yes.  
 19 MR. WOYCHESHYN: So Exhibit B will be the  
 20 estate -- the document entitled Estate of J.  
 21 Arturo Gutierrez Statement of Liabilities as at  
 22 September 19th, 2016.  
 23 Exhibit C will be the application for  
 24 Certificate of Appointment of Estate Trustee with  
 25 a will limited to the assets referred to in the

Page 8

1 will signed by Mrs. Gutierrez on December 19th,  
 2 2016.  
 3 Exhibit D will be the document entitled  
 4 Primary Estate, Estate of J. Arturo Gutierrez,  
 5 Statement of Original Assets Valued as at June  
 6 24th, 2016, and signed by Mrs. Gutierrez on  
 7 December 19th, 2016.  
 8 Exhibit E will be a letter -- copy of a  
 9 letter from the Superior Court of Justice Deputy  
 10 Registrar to Gardiner Roberts regarding the  
 11 estate of Gutierrez, J. Arturo dated February  
 12 7th, 2017.  
 13 Exhibit F will be the Certificate of  
 14 Appointment of Estate Trustee with a will limited  
 15 to the assets referred to in the will dated March  
 16 2nd, 2017.  
 17 And Exhibit G will be the Ministry of  
 18 Finance for Ontario Estate Information Return  
 19 signed by Mrs. Gutierrez on May 4th, 2017.  
 20 Thank you for bringing in those documents.  
 21 EXHIBIT B: Document entitled Estate of J.  
 22 Arturo Gutierrez Statement of Liabilities  
 23 as at September 19, 2016.  
 24 EXHIBIT C: Application for Certificate of  
 25 Appointment of Estate Trustee with a will

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1 limited to the assets referred to in the  
 2 will signed by Mrs. Gutierrez on December  
 3 19, 2016.  
 4 EXHIBIT D: Document entitled Primary  
 5 Estate, Estate of J. Arturo Gutierrez,  
 6 Statement of Original Assets Valued as at  
 7 June 24, 2016, and signed by Mrs.  
 8 Gutierrez on December 19, 2016.  
 9 EXHIBIT E: Copy of a letter from the  
 10 Superior Court of Justice Deputy Registrar  
 11 to Gardiner Roberts regarding the estate  
 12 of Gutierrez, J. Arturo dated February 7,  
 13 2017.  
 14 EXHIBIT F: Certificate of Appointment of  
 15 Estate Trustee with a will limited to the  
 16 assets referred to in the will dated March  
 17 2, 2017.  
 18 EXHIBIT G: Ministry of Finance for  
 19 Ontario Estate Information Return signed  
 20 by Mrs. Gutierrez on May 4, 2017.  
 21 BY MR. WOYCHESHYN:  
 22 20. Q. I take it that each of the documents  
 23 at Exhibits B through G, that you reviewed them?  
 24 A. Yes.  
 25 21. Q. And you completed them to the best of

Page 10

1 your ability.  
 2 A. Yes.  
 3 22. Q. And I take it that they were accurate  
 4 at the time that you prepared them?  
 5 A. Yes.  
 6 23. Q. And have you reviewed them recently?  
 7 A. Yes.  
 8 24. Q. And has there been anything that you  
 9 saw that needed correction?  
 10 A. I think with the cars there was a  
 11 correction.  
 12 25. Q. Okay.  
 13 A. We have a boat. My husband has a  
 14 boat which at the time we asked our son if he  
 15 could keep it in his boathouse.  
 16 26. Q. Okay.  
 17 A. And that's where it is.  
 18 27. Q. Okay. So the boat, it's not listed  
 19 on the --  
 20 A. No.  
 21 28. Q. -- assets which is Exhibit D.  
 22 Anything else?  
 23 A. No.  
 24 29. Q. There's nothing with the cars?  
 25 A. No.

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1 30. Q. And nothing with the other documents  
 2 that you noted.  
 3 A. No. That was the only thing.  
 4 31. Q. For some of the questions, I'm not  
 5 being rude, I'm going to point to your lawyer and  
 6 let him answer them because they are -- your  
 7 lawyer should be answering them. Can I get an  
 8 undertaking that if she ever renounces or resigns  
 9 her appointment as executor, that you will let me  
 10 know?  
 11 U/T MR. MENDELZON: Yes, we can do that.  
 12 BY MR. WOYCHESHYN:  
 13 32. Q. Other than the documents that you  
 14 have brought today and that we've marked as  
 15 exhibits, have you filed any additional documents  
 16 with the court as an executor of Arturo's estate?  
 17 MR. MENDELZON: Do you know the answer to  
 18 that?  
 19 THE DEPONENT: No.  
 20 MR. WOYCHESHYN: Okay. If I can get an  
 21 undertaking to produce any documents that she has  
 22 filed in her capacity as executor for the estate.  
 23 MR. MENDELZON: In addition to what we  
 24 provided today?  
 25 MR. WOYCHESHYN: Yes.

Page 12

1 U/T MR. MENDELZON: Yes, we can do that.  
 2 MR. WOYCHESHYN: And outside what we  
 3 already have, which is in our motion record on  
 4 the motion. It's in there. It's in one of the  
 5 exhibits on the recent affidavit, but that's the  
 6 initial application. And then if I can get an  
 7 ongoing undertaking, to the extent that any  
 8 additional documents are filed by her as an  
 9 executor for the estate, that we get copies of  
 10 those as well.  
 11 U/A MR. MENDELZON: I'll take that one under  
 12 advisement, the ones that have been filed with  
 13 the court, we can take a look and anything that  
 14 you haven't already produced in a motion record,  
 15 we can provide you with a copy of it.  
 16 BY MR. WOYCHESHYN:  
 17 33. Q. Okay. Arturo appointed you as an  
 18 executor of his wills?  
 19 A. Yes.  
 20 34. Q. And his wills, and feel free to have  
 21 a look at it, I think they were both dated  
 22 September 17th, 2013. Does that sound about  
 23 right? If you look at Exhibit F, the penultimate  
 24 page, page 40 of his primary will.  
 25 A. Yes, yes, September 17, 2013.

Page 13

1 35. Q. 2013. And he also had a secondary  
 2 will, right?  
 3 A. Yes.  
 4 36. Q. Can I get a copy of the secondary  
 5 will?  
 6 U/A MR. MENDELZON: I'll take that under  
 7 advisement.  
 8 BY MR. WOYCHESHYN:  
 9 37. Q. Okay. What is your telephone number,  
 10 Mrs. Gutierrez?  
 11 A. It is (416) 447-7694.  
 12 38. Q. Do you use e-mail?  
 13 A. Yes.  
 14 39. Q. And what is your e-mail address?  
 15 A. It is cgutierrez@arturos.com.  
 16 40. Q. Arturo's date of birth was May 6th,  
 17 1930?  
 18 A. Correct.  
 19 41. Q. Do you know what his Social Insurance  
 20 Number was?  
 21 A. No.  
 22 42. Q. I'm not sure it's in the documents.  
 23 I don't see it. Can you try to determine what  
 24 that was and let me know, please?  
 25 U/T MR. MENDELZON: Yes, we can do that.

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1 BY MR. WOYCHESHYN:  
 2 43. Q. I also, in looking at page 2 of  
 3 Exhibit G, there's an e-mail address listed as  
 4 cgutierrez@xela.com. Do you use that e-mail  
 5 address?  
 6 A. No, I don't use that anymore.  
 7 44. Q. Okay. So you just use the  
 8 cgutierrez@arturos.com.  
 9 A. Correct, yes.  
 10 45. Q. This examination relates to a  
 11 judgment that Margarita got from the courts in  
 12 Ontario in 2015 and that required Arturo, Juan  
 13 and Xela to jointly buy her shares in Tropic. Do  
 14 you understand that?  
 15 A. Hmm-hmm.  
 16 46. Q. Yes?  
 17 A. Yes. Sorry.  
 18 47. Q. And do you understand that the price  
 19 that the judge set for Juan, Arturo and Xela to  
 20 buy those shares was 4.25 million?  
 21 A. I am not sure. I don't know.  
 22 48. Q. Okay. If I told you that the amounts  
 23 owed to Margarita by Xela, Juan and Arturo were  
 24 approximately 5.2 million, would that sound  
 25 right?

Page 15

1 A. I'm not sure.  
 2 49. Q. Okay. Has the estate paid anything  
 3 to Margarita to your knowledge?  
 4 A. To my knowledge, no.  
 5 50. Q. And why is that?  
 6 A. I don't know. I don't know why it's  
 7 -- there are no funds.  
 8 51. Q. So the reason is there's not enough  
 9 money to pay?  
 10 A. I understand, yes.  
 11 52. Q. So you agree with me that there isn't  
 12 enough money in the estate to pay Margarita?  
 13 A. Yes.  
 14 53. Q. If there was enough money in the  
 15 estate, would your intention be to pay Margarita?  
 16 A. Yes.  
 17 54. Q. And does the estate expect to receive  
 18 any money in the next year or two years?  
 19 A. I don't know.  
 20 55. Q. You know that the estate, and because  
 21 you are the executor, you're named in it, is  
 22 involved in litigation with your nephews down in  
 23 Guatemala?  
 24 A. I know that, yes.  
 25 56. Q. And that litigation relates to the

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1 company known as Avicola?  
 2 A. Yes.  
 3 57. Q. The nephews, your nephews in  
 4 Guatemala that are involved in that litigation,  
 5 they are sometimes referred to as "the boys"?  
 6 A. Yes.  
 7 58. Q. And the boys would include Juan Luis,  
 8 Dionisio, Juan Jose and Felipe.  
 9 A. Yes.  
 10 59. Q. And you understand that Arturo, when  
 11 you and he moved to Canada, started a company  
 12 called Xela?  
 13 A. Yes.  
 14 60. Q. And now your son runs Xela, Juan?  
 15 A. I'm not sure.  
 16 61. Q. Do you know that Xela is the one --  
 17 is the company that indirectly owns the shares in  
 18 Avicola or do you not know anything about that?  
 19 A. I don't know anything about that.  
 20 62. Q. Do you recognize a company called  
 21 Lisa?  
 22 A. I have heard the name, yes.  
 23 63. Q. In looking at Exhibit B and Exhibit  
 24 D, am I correct, and please correct me if I'm  
 25 wrong, but that the -- even if you take out

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1 Margarita's judgment, the assets of the estate  
 2 are much lower than the liabilities of the  
 3 estate? Do you understand my question?  
 4 A. I understand your question. I don't  
 5 know.  
 6 64. Q. Okay. The one asset that's not  
 7 listed on the Exhibit D besides the boat, and  
 8 I'll ask you some questions about that, is your  
 9 condominium on Post Road?  
 10 A. Yes.  
 11 65. Q. And that is a condominium that you  
 12 now own solely in your own name?  
 13 A. Yes.  
 14 66. Q. And you owned that jointly with  
 15 Arturo before his death.  
 16 A. Yes.  
 17 67. Q. I note you have a lawyer present with  
 18 you today. He will likely want to answer this  
 19 question or not let you answer the question. How  
 20 are you -- how is the estate paying for your  
 21 lawyer today?  
 22 R/F MR. MENDELZON: Don't answer the question.  
 23 MR. WOYCHESHYN: On the grounds of  
 24 privilege?  
 25 MR. MENDELZON: Yes.

Page 18

1 BY MR. WOYCHESHYN:  
 2 68. Q. Arturo passed away on June 24th,  
 3 2016?  
 4 A. Yes.  
 5 69. Q. How long had you two been married?  
 6 A. Sixty-two years.  
 7 70. Q. At any point during your marriage,  
 8 did you work outside the house?  
 9 A. No.  
 10 71. Q. You were busy raising three children?  
 11 A. Yes.  
 12 72. Q. Is it fair that you depended on  
 13 Arturo's income throughout your marriage?  
 14 A. Yes.  
 15 73. Q. Did you have your own money saved  
 16 outside of the marriage?  
 17 A. No.  
 18 74. Q. And did that at any point change  
 19 before his death, that is, the only source of  
 20 income came from Arturo?  
 21 A. Yes.  
 22 75. Q. Yes, that's the situation. Let me  
 23 ask it a different way because she said yes but I  
 24 asked if it changed.  
 25 Before Arturo's death, the sole source of

Page 19

1 income or wealth that you and Arturo had was from  
 2 him, right?  
 3 A. Yes.  
 4 76. Q. At the time of his passing, was  
 5 anyone else besides you dependent on Arturo for  
 6 money to meet their day-to-day needs?  
 7 A. I'm not sure but I think not.  
 8 77. Q. You don't think so? I need you to --  
 9 A. I don't think so.  
 10 78. Q. Thank you. Again, you can let your  
 11 lawyer answer this. Has anyone made a  
 12 dependant's relief claim?  
 13 U/T MR. MENDELZON: I can undertake to find  
 14 out. I do not know at this time.  
 15 MR. WOYCHESHYN: Thank you. And if anyone  
 16 does, will you let me know?  
 17 U/T MR. MENDELZON: Yes.  
 18 BY MR. WOYCHESHYN:  
 19 79. Q. The Exhibit D which is the statement  
 20 of original assets, I take it that after Arturo's  
 21 death, one of the things you did was to try to  
 22 determine what all his assets were; is that  
 23 correct?  
 24 A. Yes.  
 25 80. Q. And other than the boat, this Exhibit

Page 20

1 D contains all the assets that you were able to  
 2 identify.  
 3 A. Yes.  
 4 81. Q. You have listed here an account -- a  
 5 TD Canada Trust on Bayview Avenue. Do you see  
 6 that?  
 7 A. Yes. That's right, yes.  
 8 82. Q. And that had -- was that a U.S.  
 9 account?  
 10 A. I don't know.  
 11 83. Q. Okay. Was that account solely in  
 12 Arturo's name or was that in Arturo's name and  
 13 your name?  
 14 A. I don't know that.  
 15 84. Q. Okay. Can you let me know that?  
 16 U/T MR. MENDELZON: Yes. We can find that  
 17 out.  
 18 BY MR. WOYCHESHYN:  
 19 85. Q. Was there any, outside of bank  
 20 accounts, was Arturo the type of man to carry  
 21 cash around? Was there any cash left in the  
 22 condominium anywhere?  
 23 A. No. No.  
 24 86. Q. And this was the only bank account  
 25 that you were able to find in Arturo's name.

Page 21

1 A. His own name?  
 2 87. Q. Yes. And when I say any bank account  
 3 that had his name on it, so whether it's your  
 4 joint account or whether it's his own --  
 5 A. Yeah, we had joint account.  
 6 88. Q. Okay. But do you know whether this  
 7 is that joint account or whether this is  
 8 separate?  
 9 A. No, that's not the joint account.  
 10 89. Q. Okay. So then --  
 11 A. I already said that I don't know  
 12 about that.  
 13 90. Q. You didn't know about this account,  
 14 correct?  
 15 A. No, I don't know about it.  
 16 91. Q. You don't know about it. Okay. But  
 17 there was a joint account at the time of his  
 18 death.  
 19 A. Yes.  
 20 92. Q. Okay. And that was an account that  
 21 you -- joint between you and Arturo.  
 22 A. Yes.  
 23 93. Q. And I take it that's an account that  
 24 you had for many years?  
 25 A. Yes. Yeah, that's correct. Yes.

Page 22

1 94. Q. I will get back to that. I just want  
 2 to ask about some of these assets on Exhibit D.  
 3 For any of the eight automobiles listed, did you  
 4 have a valuation done of them?  
 5 A. Not that I know.  
 6 95. Q. Okay. Now, when I mean valuation,  
 7 I'm also referring to an appraisal as well. Do  
 8 you know if there was an appraisal done on any  
 9 vehicles?  
 10 A. I don't know that.  
 11 96. Q. Who would know the answer to that?  
 12 A. No, I don't know.  
 13 MR. WOYCHESHYN: Okay. Can you make  
 14 inquiries and see if there was a valuation or  
 15 appraisal done of any of those vehicles and if  
 16 there was, to provide me a copy, please?  
 17 U/T MR. MENDELZON: Yes, we can do that.  
 18 BY MR. WOYCHESHYN:  
 19 97. Q. Since you became the executor for  
 20 Arturo's estate, have you sold any assets?  
 21 A. No.  
 22 98. Q. Have you transferred or gifted any  
 23 assets?  
 24 A. No.  
 25 MR. MENDELZON: Counsel, just to clarify

Page 23

1 those questions, you are asking whether the  
 2 estate has gifted any assets, not her in her  
 3 personal capacity.  
 4 MR. WOYCHESHYN: Her in her personal  
 5 capacity. Well, no, her capacity as executor  
 6 using estate assets. Has she as executor  
 7 transferred any estate assets or has she sold any  
 8 estate assets?  
 9 MR. MENDELZON: Okay.  
 10 MR. WOYCHESHYN: Understand?  
 11 MR. MENDELZON: Yes.  
 12 BY MR. WOYCHESHYN:  
 13 99. Q. Do you understand my question?  
 14 A. Yes.  
 15 100. Q. Okay. And your answers don't change.  
 16 A. No.  
 17 101. Q. Has the estate received any income?  
 18 A. No. Not to my knowledge, no.  
 19 102. Q. If you do find out that the estate  
 20 has received any income, will you let me know?  
 21 U/T MR. MENDELZON: Yes.  
 22 BY MR. WOYCHESHYN:  
 23 103. Q. Did Arturo contribute to Canada  
 24 Pension Plan during his working life?  
 25 A. I actually don't know that.

Page 24

1 104. Q. Do you know whether you made an  
 2 application for any death benefits?  
 3 A. I don't know.  
 4 MR. WOYCHESHYN: All right. Can you make  
 5 inquiries and let me know, please?  
 6 U/T MR. MENDELZON: Yes.  
 7 MR. WOYCHESHYN: And if there has been any  
 8 death benefit paid, to let me know the amount,  
 9 please.  
 10 U/T MR. MENDELZON: Yes.  
 11 BY MR. WOYCHESHYN:  
 12 105. Q. In looking at Exhibit B which is the  
 13 statement of liabilities, at the top -- in the  
 14 top right it says: Joint liability with Carmen  
 15 Gutierrez, but I'm not sure, does that mean that  
 16 all of the liabilities are joint? I can't see --  
 17 MR. MENDELZON: Counsel, if I can assist.  
 18 On my copy, it looks like that statement at the  
 19 top right, joint liability with Carmen Gutierrez,  
 20 is highlighted, and then if you look down line  
 21 number two --  
 22 MR. WOYCHESHYN: I see. Yes.  
 23 MR. MENDELZON: -- it's also highlighted.  
 24 So I think that's what it's indicating, that the  
 25 item listed at line number two is a joint

Page 25

1 liability.  
 2 BY MR. WOYCHESHYN:  
 3 106. Q. Okay. Thank you for that. Who was  
 4 it that prepared this document, this Exhibit B?  
 5 A. I don't know.  
 6 107. Q. As your lawyer may have told you  
 7 before, don't feel bad about saying I don't know.  
 8 If you don't know and it's the truth, then that's  
 9 a completely fine answer.  
 10 A. Yeah.  
 11 MR. MENDELZON: Nobody is asking you to  
 12 guess.  
 13 BY MR. WOYCHESHYN:  
 14 108. Q. Right. And there is no points for  
 15 right and wrong answers and knowing the answer  
 16 here. It's not a test in that sense. And I'm  
 17 not trying -- when I'm asking you questions, Mrs.  
 18 Gutierrez, I'm not trying to make you feel bad,  
 19 I'm actually just trying to get information.  
 20 A. I understand.  
 21 109. Q. Do you know whether there was any  
 22 advertisement made for creditors to see if there  
 23 was any unknown creditors of Arturo?  
 24 A. No.  
 25 110. Q. No, you don't know or --

Page 26

1 A. I don't know.  
 2 MR. WOYCHESHYN: Can you make inquiries to  
 3 see if there was one?  
 4 U/T MR. MENDELZON: Yes, we can do that.  
 5 BY MR. WOYCHESHYN:  
 6 111. Q. And other than what's listed in  
 7 Exhibit B, you are not aware of any other  
 8 creditors that Arturo had at the time of his  
 9 death, correct?  
 10 A. Correct. No, I don't know like I  
 11 said.  
 12 112. Q. And you are not aware of any other  
 13 debts that Arturo had at the time of his death.  
 14 A. No.  
 15 113. Q. You agree with me.  
 16 A. I don't know. I really don't know  
 17 that. No, I don't know.  
 18 114. Q. Has the estate paid any of Arturo's  
 19 debts, that is, since Arturo died, have you paid  
 20 any of Arturo's debts as the executor for his  
 21 estate?  
 22 A. No, I don't know.  
 23 MR. WOYCHESHYN: Can you let me know if it  
 24 has, please?  
 25 U/T MR. MENDELZON: Yes.

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1 BY MR. WOYCHESHYN:  
 2 115. Q. I note that on Exhibit B, there's  
 3 funeral expenses listed for \$24,389.90 for  
 4 Humphrey's Funeral Home.  
 5 MR. MENDELZON: What line are you at,  
 6 counsel?  
 7 MR. WOYCHESHYN: Line 7.  
 8 MR. MENDELZON: Seven? Okay.  
 9 BY MR. WOYCHESHYN:  
 10 116. Q. Is that debt still present, that the  
 11 funeral home still has not been paid?  
 12 A. I don't know.  
 13 MR. WOYCHESHYN: If I can get just an  
 14 undertaking to the extent that any of these  
 15 liabilities have changed between September 19th,  
 16 2016, to today, will you let me know, please?  
 17 U/T MR. MENDELZON: Yes, we can do that.  
 18 BY MR. WOYCHESHYN:  
 19 117. Q. The credit cards listed on Exhibit B,  
 20 there are three credit cards, two Visas and one  
 21 Amex, were those credit cards that were only in  
 22 Arturo's name or were you a secondary cardholder?  
 23 A. I had, I had a secondary card on two  
 24 of them.  
 25 118. Q. On which two?

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1 A. Visa and American Express.  
 2 119. Q. Do you know which Visa it was,  
 3 whether it was the First Class Travel Visa or the  
 4 Gold Elite Visa?  
 5 A. The Gold Elite.  
 6 120. Q. Okay. And do you still have either  
 7 the Gold Elite or the Amex card?  
 8 A. No, I don't use them anymore. No, I  
 9 don't.  
 10 121. Q. But you weren't a user of the First  
 11 Class Visa. It's a green TD Visa.  
 12 A. Yes, I have that.  
 13 122. Q. You have that. But is it --  
 14 A. That was only on my name.  
 15 123. Q. It was only in your name. Thank you.  
 16 MR. WOYCHESHYN: Mr. Mendelzon, if I can  
 17 get copies of credit card statements for the  
 18 credit cards over which Arturo had signing  
 19 authority over -- for five years before his  
 20 death, alternatively for 2015 and 2016.  
 21 U/T MR. MENDELZON: We can give the  
 22 undertaking to look to see if those statements  
 23 are available from October 2015 to the date of  
 24 his death and we'll produce those if they are  
 25 found.

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1 U/A Your other request we'll take under  
 2 advisement.  
 3 BY MR. WOYCHESHYN:  
 4 124. Q. Have you taken any compensation as an  
 5 executor?  
 6 A. No.  
 7 125. Q. I take it you haven't brought --  
 8 A. What do you mean with compensation?  
 9 126. Q. That is, to take money as payment for  
 10 your service as an executor.  
 11 A. No. No.  
 12 127. Q. You haven't taken any money.  
 13 A. No.  
 14 128. Q. If at any point you do bring an  
 15 application, it's called an application to pass  
 16 accounts, will you let me know?  
 17 U/T MR. MENDELZON: Yes.  
 18 MR. WOYCHESHYN: And just to be clear, I'd  
 19 like to have ten business days' notice of that  
 20 application.  
 21 MR. MENDELZON: Okay.  
 22 BY MR. WOYCHESHYN:  
 23 129. Q. Now, you have produced at Exhibit G  
 24 an Estate Information Form with the Ontario  
 25 Ministry of Finance. Do you know whether you

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1 filed any tax returns with the CRA on behalf of  
 2 the estate?  
 3 A. I don't know exactly.  
 4 130. Q. And when I say CRA, you know that's  
 5 the Canada Revenue Agency?  
 6 A. Canada Revenue, yes.  
 7 131. Q. Okay. If you have filed any tax  
 8 returns on behalf of the estate, I'd like to know  
 9 and receive a copy, please.  
 10 U/T MR. MENDELZON: We can let you know.  
 11 U/A I'll take the production of a copy under  
 12 advisement.  
 13 BY MR. WOYCHESHYN:  
 14 132. Q. Do you know whether Arturo's estate  
 15 owned -- pardon me -- owed any taxes to the CRA?  
 16 A. I don't know.  
 17 MR. WOYCHESHYN: I'll also ask for an  
 18 undertaking, Mr. Mendelzon, for any tax filings  
 19 provided to or received from the CRA on behalf of  
 20 the estate. And just so we are clear, including  
 21 but not limited to the terminal tax return, any  
 22 T1s, any T3s and the clearance certificate.  
 23 U/A MR. MENDELZON: Okay. We'll take that  
 24 under advisement.  
 25 BY MR. WOYCHESHYN:

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1 133. Q. Lindsay Histrop at Gardiner Roberts,  
 2 do you know that name?  
 3 A. Yes, I know and I know her.  
 4 134. Q. Is she the lawyer for you or is she  
 5 the lawyer for the estate?  
 6 A. For the estate.  
 7 135. Q. Are you using the estate's assets to  
 8 pay Ms. Histrop?  
 9 R/F MR. MENDELZON: Don't answer the question.  
 10 THE DEPONENT: I don't know.  
 11 MR. WOYCHESHYN: Grounds?  
 12 MR. MENDELZON: Don't answer the question.  
 13 THE DEPONENT: I don't --  
 14 MR. MENDELZON: Don't answer the question.  
 15 BY MR. WOYCHESHYN:  
 16 136. Q. When your lawyer says don't answer  
 17 the question, that means you should -- yes,  
 18 that's a good thing to do.  
 19 A. I'm sorry.  
 20 MR. WOYCHESHYN: On the grounds of  
 21 privilege?  
 22 MR. MENDELZON: Yes.  
 23 BY MR. WOYCHESHYN:  
 24 137. Q. Besides Margarita and her lawyers,  
 25 has anyone else, whether it be a collection

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1 agency or another law firm, made a demand for  
 2 payment against Arturo's estate?  
 3 A. I don't know. I don't know.  
 4 138. Q. You don't remember anything?  
 5 A. No. I don't remember anything.  
 6 139. Q. I take it that there's been no  
 7 distribution to any of the beneficiaries of  
 8 Arturo's will?  
 9 A. Not that I know, no. I don't know.  
 10 140. Q. You are the only executor though,  
 11 right? You understand that.  
 12 A. Yes.  
 13 141. Q. Yesterday I asked your son Juan some  
 14 questions and he said that since Arturo's  
 15 passing, that there had been some times when he  
 16 has helped you out by giving you some money?  
 17 MR. MENDELZON: Counsel, I think you are  
 18 asking her questions in her personal capacity  
 19 here, not as executor of the estate. So we are  
 20 not going to answer those types of questions  
 21 today.  
 22 BY MR. WOYCHESHYN:  
 23 142. Q. That's what I want to know. When  
 24 Juan has given you money, has that been to you  
 25 personally or has that been to help the estate?

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1 A. Personally.  
 2 143. Q. Personally. Since Arturo's death,  
 3 how much money has Juan given you?  
 4 R/F MR. MENDELZON: Don't answer the question.  
 5 Again, that's a question that's relating to her  
 6 in her personal capacity, not as executor of the  
 7 estate. She's already told you that she received  
 8 the money in her personal capacity.  
 9 MR. WOYCHESHYN: Except of course if he is  
 10 -- if he is taking assets that are subject to the  
 11 judgment and transferring them to her in his  
 12 personal capacity, that's a preference or a  
 13 fraudulent conveyance.  
 14 MR. MENDELZON: Whatever it may be, which  
 15 I disagree with your characterization of it, Ms.  
 16 Gutierrez is not here today to answer questions  
 17 in her personal capacity. Those questions you  
 18 asked were directed to her in her personal  
 19 capacity.  
 20 MR. WOYCHESHYN: So I'm going to ask a  
 21 bunch of questions and you can refuse them if you  
 22 so desire. I would like to know since Arturo's  
 23 death, how much money Juan has transferred to  
 24 Carmen, when he did those transfers, how those  
 25 transfers were done, whether by cheque or



1 electronic transfer or cash, and to what account  
 2 those funds were deposited.  
 3 R/F MR. MENDELZON: And those are all refused  
 4 for Mrs. Gutierrez.  
 5 MR. WOYCHESHYN: All right. On a similar  
 6 line, I'd like to know since Arturo's death, if  
 7 Juan or Xela has paid any of Carmen's bills, what  
 8 bills those were, when they were paid and how  
 9 they were paid.  
 10 R/F MR. MENDELZON: Same refusal.  
 11 BY MR. WOYCHESHYN:  
 12 144. Q. At the time of Arturo's passing, do  
 13 you know if he was receiving a salary from Xela?  
 14 A. I don't know.  
 15 145. Q. In the five years before his death,  
 16 do you know whether he received a salary during  
 17 that time from Xela?  
 18 A. I don't know that. I don't know.  
 19 146. Q. If he did receive a salary, will that  
 20 go into your joint account or to his separate  
 21 account?  
 22 A. I don't know that.  
 23 147. Q. Other than Xela, do you know whether  
 24 he had any other sources of income, he being  
 25 Arturo?

1 A. No, I don't know anything.  
 2 148. Q. You don't know.  
 3 A. I don't know.  
 4 149. Q. On Exhibit D, there are no shares  
 5 listed. Did you understand that Arturo owned  
 6 some shares in a numbered company in Alberta?  
 7 A. I don't know.  
 8 MR. WOYCHESHYN: Okay. Can you make  
 9 inquiries to see whether he is still the owner of  
 10 any shares in any of the Alberta holding  
 11 companies, that is, the estate is, in particular  
 12 696087 Alberta Ltd.?  
 13 U/T MR. MENDELZON: Yes, we can do that.  
 14 MR. WOYCHESHYN: And what the estimated  
 15 value, if he does have shares in any Alberta  
 16 holding company, what the estimated value of  
 17 those shares are?  
 18 U/T MR. MENDELZON: If that value has been or  
 19 can be determined, we will.  
 20 MR. WOYCHESHYN: I will ask for, by way of  
 21 undertaking, Arturo's personal tax returns for  
 22 the tax years 2011 through 2015, alternatively  
 23 for 2014, '15.  
 24 U/T MR. MENDELZON: We can give you an  
 25 undertaking to search for his tax returns for

1 2015 and produce those.  
 2 U/A Your other request we'll take under  
 3 advisement.  
 4 MR. WOYCHESHYN: And included with the  
 5 broader request is all schedules, T4 slips and T5  
 6 slips.  
 7 U/T MR. MENDELZON: Same answers for 2015.  
 8 U/A And under advisement for the other  
 9 requests.  
 10 MR. WOYCHESHYN: And request production of  
 11 any CRA Notices of Assessment for 2011 to 2015  
 12 and alternatively for 2014 and 2015.  
 13 U/T MR. MENDELZON: Same answer, we'll search  
 14 for those for 2015 and produce them if we find  
 15 them.  
 16 U/A The other ones we'll take under  
 17 advisement.  
 18 MR. WOYCHESHYN: And advise me whether in  
 19 2014 or 2015 any tax refunds were paid to Arturo.  
 20 U/T MR. MENDELZON: We will make inquiries  
 21 regarding 2015.  
 22 U/A We'll take 2014 under advisement.  
 23 BY MR. WOYCHESHYN:  
 24 150. Q. Do you know, Mrs. Gutierrez, whether  
 25 Arturo paid tax outside of Canada?

1 A. I don't know that.  
 2 151. Q. Do you remember about 21 years ago  
 3 Arturo doing an estate freeze, it was called the  
 4 Gutierrez Family Trust, in 1996?  
 5 A. I don't know.  
 6 152. Q. I understood that Arturo was a  
 7 trustee of that family trust. Do you know  
 8 anything about that?  
 9 A. No.  
 10 153. Q. I take it you don't know who the  
 11 trustee is now?  
 12 A. No.  
 13 154. Q. Do you know whether at the time of  
 14 his death, Arturo was a partner in any  
 15 partnership?  
 16 A. No.  
 17 155. Q. Do you know whether he was part of  
 18 any joint venture?  
 19 A. No. No.  
 20 156. Q. Do you know whether he had a  
 21 beneficial interest in any trust at the time of  
 22 his death?  
 23 A. No.  
 24 157. Q. Your home at 1 Post Road, that's  
 25 where you and Arturo lived before his death.

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1 A. Yes.  
 2 158. Q. That is a condominium?  
 3 A. Yes.  
 4 159. Q. How many square feet is it?  
 5 A. Around 3,000.  
 6 160. Q. How many bedrooms?  
 7 A. Two.  
 8 161. Q. You have two parking spots?  
 9 A. Three.  
 10 162. Q. Those are underground?  
 11 A. Yes.  
 12 163. Q. Do you have a storage locker?  
 13 A. Yes.  
 14 164. Q. One or two?  
 15 A. One.  
 16 165. Q. How many bathrooms are in the  
 17 condominium?  
 18 A. Two full and one...  
 19 166. Q. Half?  
 20 A. Half.  
 21 167. Q. Other than the two of you, did anyone  
 22 else ever live at the condominium?  
 23 A. No.  
 24 168. Q. And when I say the condominium, I'm  
 25 referring to the one at Post Road.

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1 A. Yes. No.  
 2 169. Q. You've only ever had one condominium  
 3 at that location, right?  
 4 A. Yes. Of course, yes.  
 5 MR. WOYCHESHYN: Do you know whether  
 6 there's been an application to sever the joint  
 7 tenancy to put it solely in her name?  
 8 MR. MENDELZON: I do not know that.  
 9 MR. WOYCHESHYN: Can you let me know?  
 10 U/T MR. MENDELZON: Yes.  
 11 BY MR. WOYCHESHYN:  
 12 170. Q. You moved in, in around 2002 in the  
 13 condo?  
 14 A. Yes.  
 15 171. Q. And you bought it for 1.8 million;  
 16 does that sound right?  
 17 A. I don't know. I never knew about  
 18 finances, so I don't know.  
 19 172. Q. I take it in your marriage, Arturo  
 20 took care of the money for the most part.  
 21 A. Yes.  
 22 173. Q. You did have a separate account  
 23 though.  
 24 A. Yes.  
 25 174. Q. But that would be -- and when I say

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1 separate account, that's a separate banking  
 2 account. I take it that that would be money that  
 3 Arturo would put into that account to help you  
 4 with the groceries and regular everyday expenses;  
 5 is that how it worked?  
 6 A. No. For that we -- no.  
 7 175. Q. Okay. So what was your separate  
 8 account for?  
 9 MR. MENDELZON: Counsel, again, I think  
 10 you are asking her questions in her personal  
 11 capacity. She is here as the executor of the  
 12 estate of Arturo and you can ask her questions  
 13 that she would have knowledge of as the executor  
 14 of the estate, not questions about her own  
 15 personal finances.  
 16 BY MR. WOYCHESHYN:  
 17 176. Q. All the money in your separate  
 18 account came from Arturo?  
 19 A. Yes. Well, yes.  
 20 177. Q. So what use would that money be for?  
 21 A. It was like a saving account to me.  
 22 178. Q. And was the amount, and I'll focus my  
 23 questions in the five years before his death, did  
 24 he still put money into that account?  
 25 A. No, he never put it directly.

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1 179. Q. How did the money get in there then?  
 2 A. I put it myself.  
 3 180. Q. From the joint account?  
 4 A. No, from what I didn't use sometimes,  
 5 that...  
 6 181. Q. Would he give you a cheque every  
 7 month?  
 8 A. Yes.  
 9 182. Q. I see. So just so I -- would he give  
 10 you a cheque including in the five -- per month  
 11 including the five years before his death?  
 12 A. Oh, I don't remember that.  
 13 183. Q. Do you remember when the last time he  
 14 gave you a cheque was?  
 15 A. That's a long time ago.  
 16 184. Q. And the way -- just so I understand,  
 17 he would give you a cheque and you would deposit  
 18 it into your personal account?  
 19 A. No, in the joint account.  
 20 185. Q. Okay. And then from the joint  
 21 account, you may transfer some money to your own  
 22 account.  
 23 A. I never transferred anything. It was  
 24 just when I had some left over from the amounts,  
 25 I tried to keep some emergency.

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1 186. Q. Okay.  
 2 A. And that's for what this account was  
 3 for.  
 4 187. Q. Okay. And that -- how would the  
 5 money go from the joint account to your personal  
 6 account? Would you take a cheque from the joint  
 7 account?  
 8 A. No, no.  
 9 188. Q. Okay. So how would the money go from  
 10 the joint account --  
 11 A. Left over from the one I had cash.  
 12 189. Q. I understand that but how physically  
 13 would the money move from one account to the  
 14 other?  
 15 A. I didn't move from one account to the  
 16 other.  
 17 190. Q. Okay. So anything left over, you  
 18 just kept in the joint account?  
 19 A. Not always. Just once in a while. I  
 20 used it for when I wanted to make him a gift.  
 21 191. Q. Okay. Then I still -- I'm sorry, I'm  
 22 not trying to be difficult. I still don't  
 23 understand how the money would go into your  
 24 personal account.  
 25 A. When I had some cash left from -- at

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1 the end of the month, I used it sometimes.  
 2 192. Q. Okay.  
 3 A. But they were always very small  
 4 numbers.  
 5 193. Q. Okay. So if I can just understand,  
 6 he would give you a cheque. It would go into the  
 7 joint account. You would take out physical cash  
 8 from that and then if there was any small amounts  
 9 left over, you would then take that cash and  
 10 deposit it into your personal account.  
 11 A. Not always. Very seldom. Just for  
 12 special occasions I used that to give him a gift  
 13 so I didn't have to ask for the money to pay for  
 14 the gift.  
 15 194. Q. Okay. So the money that went into  
 16 your personal account was used to buy Arturo  
 17 gifts.  
 18 A. Sometimes, yes.  
 19 195. Q. Okay. And other than to buy Arturo  
 20 gifts, was it used for your personal spending?  
 21 A. No. I didn't use that. It was for  
 22 gifts for him.  
 23 196. Q. When you bought the condominium with  
 24 Arturo, I take it that it was Arturo that --  
 25 Arturo's money that was used. That is, Arturo

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1 contributed money to the marriage and that was  
 2 the money that was used to buy the condominium.  
 3 A. Definitely, yes.  
 4 197. Q. And in 2013, do you remember taking  
 5 out a mortgage on the condominium?  
 6 MR. MENDELZON: Counsel, the condominium  
 7 is not an asset of the estate. I've let you ask  
 8 some questions about it but I think you are going  
 9 too far now. You are here to ask her questions  
 10 about the assets and liabilities of the estate in  
 11 her capacity as executor. The condo is not an  
 12 asset of the estate, so those questions are not  
 13 relevant.  
 14 MR. WOYCHESHYN: Well, it may well be an  
 15 asset of the estate by virtue of the transfer  
 16 occurring after the judgment was issued. So our  
 17 position in law will be that 50 percent of the  
 18 condominium is subject to execution.  
 19 MR. MENDELZON: Well, our position is that  
 20 it's not and it's not an asset of the estate. We  
 21 won't be answering further questions on it.  
 22 MR. WOYCHESHYN: Well, I will ask my  
 23 questions. You can refuse them if need be.  
 24 BY MR. WOYCHESHYN:  
 25 198. Q. So in 2013, do you remember taking

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1 out a mortgage with TD on the condominium?  
 2 R/F MR. MENDELZON: Don't answer the question.  
 3 BY MR. WOYCHESHYN:  
 4 199. Q. That mortgage is for \$2.4 million?  
 5 R/F MR. MENDELZON: Refused.  
 6 BY MR. WOYCHESHYN:  
 7 200. Q. The interest on that mortgage is  
 8 prime plus 10 percent?  
 9 R/F MR. MENDELZON: Refused.  
 10 BY MR. WOYCHESHYN:  
 11 201. Q. Between 2013 and June 2016, who made  
 12 the payments on the mortgage?  
 13 MR. MENDELZON: Sorry, what was the  
 14 timeframe?  
 15 MR. WOYCHESHYN: 2013 and June 2016. So  
 16 basically from the time the mortgage was put in  
 17 place until his passing.  
 18 R/F MR. MENDELZON: Refused.  
 19 BY MR. WOYCHESHYN:  
 20 202. Q. Between October 28th, 2015, and June  
 21 24th, 2016, who made the payments on the  
 22 condominium mortgage?  
 23 MR. MENDELZON: You can answer that if you  
 24 know the answer.  
 25 THE DEPONENT: I don't know.

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1 BY MR. WOYCHESHYN:  
 2 203. Q. I take it before Arturo passed away,  
 3 you don't remember making any payments on the  
 4 mortgage. You personally.  
 5 A. No.  
 6 204. Q. Back to your lawyer, what is the  
 7 current amount owing on that mortgage?  
 8 R/F MR. MENDELZON: Don't answer.  
 9 BY MR. WOYCHESHYN:  
 10 205. Q. Is the mortgage current or in  
 11 default?  
 12 R/F MR. MENDELZON: Refused.  
 13 BY MR. WOYCHESHYN:  
 14 206. Q. What are the monthly payments?  
 15 R/F MR. MENDELZON: Refused.  
 16 BY MR. WOYCHESHYN:  
 17 207. Q. When was the last mortgage payment  
 18 made?  
 19 R/F MR. MENDELZON: Refused.  
 20 BY MR. WOYCHESHYN:  
 21 208. Q. What are the property taxes on the  
 22 condominium?  
 23 R/F MR. MENDELZON: Refused.  
 24 BY MR. WOYCHESHYN:  
 25 209. Q. Are the property taxes current or in

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1 default?  
 2 R/F MR. MENDELZON: Refused.  
 3 BY MR. WOYCHESHYN:  
 4 210. Q. Between October 2015 and your  
 5 husband's passing, was there any work done to the  
 6 condominium, any renovations?  
 7 R/F MR. MENDELZON: That's refused as well.  
 8 BY MR. WOYCHESHYN:  
 9 211. Q. What is the approximate value of the  
 10 condominium?  
 11 R/F MR. MENDELZON: Refused.  
 12 BY MR. WOYCHESHYN:  
 13 212. Q. Has it been appraised since it was  
 14 purchased and if it has been appraised, I would  
 15 like a copy of those appraisals.  
 16 R/F MR. MENDELZON: Refused.  
 17 BY MR. WOYCHESHYN:  
 18 213. Q. Other than the condominium on Post  
 19 Road at the time of your husband's death, did he  
 20 own any other real estate?  
 21 MR. MENDELZON: Counsel, she's already  
 22 given evidence that the list of assets at Exhibit  
 23 D, with the exception of the boat that she  
 24 mentioned, were all the assets that he owned.  
 25 That he owned in his own name.

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1 BY MR. WOYCHESHYN:  
 2 214. Q. Yes. Does that include any partial  
 3 or joint ownership?  
 4 MR. MENDELZON: You are asking whether the  
 5 list at Exhibit D includes --  
 6 MR. WOYCHESHYN: Yes.  
 7 MR. MENDELZON: The list -- my  
 8 understanding is that the list at Exhibit D is  
 9 assets that were in his name solely, that  
 10 anything held jointly would have passed upon his  
 11 death to the other joint owner and not form part  
 12 of the estate.  
 13 MR. WOYCHESHYN: So I would like an  
 14 undertaking to the extent that there are any  
 15 other real estate owned jointly by Arturo at the  
 16 time of his death, I'd like to know what that  
 17 real estate is and where it's located.  
 18 R/F MR. MENDELZON: That's refused.  
 19 MR. WOYCHESHYN: And if there were any  
 20 assets owned, real estate assets owned as a  
 21 tenant in common, then I would like to know that  
 22 as well.  
 23 U/A MR. MENDELZON: I'll take that under  
 24 advisement.  
 25 BY MR. WOYCHESHYN:

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1 215. Q. If you look at Exhibit F, page 10 of  
 2 the will of Arturo, that is the primary will, he  
 3 refers to, at paragraph 3.4, a Florida residence.  
 4 In 2013 did Arturo have a Florida residence?  
 5 R/F MR. MENDELZON: In 2013 is the question,  
 6 whether he had a Florida residence? Well, that's  
 7 refused. It's irrelevant.  
 8 BY MR. WOYCHESHYN:  
 9 216. Q. In 2014, did he have a Florida  
 10 residence?  
 11 MR. MENDELZON: Do you know the answer to  
 12 that?  
 13 THE DEPONENT: No.  
 14 MR. MENDELZON: The question is do you  
 15 know if he had a Florida residence in 2014?  
 16 THE DEPONENT: No.  
 17 BY MR. WOYCHESHYN:  
 18 217. Q. No, you don't know?  
 19 A. I don't know.  
 20 218. Q. In 2014, did you travel with Arturo  
 21 to Florida?  
 22 R/F MR. MENDELZON: That's going to be refused  
 23 because that's a question in her personal  
 24 capacity, not as executor of the estate.  
 25 BY MR. WOYCHESHYN:

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1 219. Q. If you did travel with Arturo to  
 2 Florida in either 2014 and 2015 or 2016 before  
 3 his passing, where did you stay?  
 4 R/F MR. MENDELZON: That's refused.  
 5 BY MR. WOYCHESHYN:  
 6 220. Q. Besides the condominium, do you own  
 7 any other real estate?  
 8 MR. MENDELZON: Sorry, you are asking her  
 9 in her personal capacity?  
 10 MR. WOYCHESHYN: Yes.  
 11 R/F MR. MENDELZON: That's refused.  
 12 BY MR. WOYCHESHYN:  
 13 221. Q. If you do, I'd like to know what it  
 14 is, where it is located, when it was bought and  
 15 how it was paid for.  
 16 R/F MR. MENDELZON: That's refused.  
 17 MR. WOYCHESHYN: And then a similar  
 18 question, in the five years before Arturo's  
 19 passing, did Mrs. Gutierrez own any real estate  
 20 solely in her name?  
 21 R/F MR. MENDELZON: That's refused.  
 22 MR. WOYCHESHYN: And if she did, what was  
 23 the real estate, where was it located, when was  
 24 it bought and how was it paid for?  
 25 R/F MR. MENDELZON: Refused.

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1 BY MR. WOYCHESHYN:  
 2 222. Q. Exhibit D which is the statement of  
 3 assets, that includes assets that Arturo owned  
 4 anywhere in the world?  
 5 MR. MENDELZON: Do you know the answer to  
 6 that?  
 7 THE DEPONENT: Not exactly, no.  
 8 BY MR. WOYCHESHYN:  
 9 223. Q. What do you mean not exactly?  
 10 A. No. I don't. I don't know.  
 11 224. Q. If you are aware of any other assets  
 12 outside of those listed on Exhibit D, will you  
 13 let me know regardless of where they are in the  
 14 world?  
 15 U/A MR. MENDELZON: I'll take that under  
 16 advisement.  
 17 MR. WOYCHESHYN: Well, if he owned assets  
 18 anywhere in the world, how can that be --  
 19 MR. MENDELZON: Did we not give a previous  
 20 undertaking on the asset sheet if there's any  
 21 other assets?  
 22 MR. WOYCHESHYN: And I just want to be  
 23 clear because all the assets listed there are  
 24 Ontario assets. So just to the extent it's not  
 25 captured by my prior request, I want to make sure

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1 that that's a global request for any assets he  
 2 owned or had an interest in anywhere in the  
 3 world.  
 4 U/T MR. MENDELZON: Okay. We can do that.  
 5 And just to be clear, that would be assets that  
 6 he owned in his own name, not jointly owned.  
 7 MR. WOYCHESHYN: Which is fine, but I'd  
 8 also -- I mean, I don't accept that, but I  
 9 understand your position, but I'd also like to  
 10 know if he had a partial interest that wasn't  
 11 joint as well.  
 12 U/A MR. MENDELZON: I'll take that under  
 13 advisement.  
 14 BY MR. WOYCHESHYN:  
 15 225. Q. Do you know whether Arturo sold or  
 16 transferred any real estate in the five years  
 17 before his passing?  
 18 A. No.  
 19 226. Q. Do you drive, Mrs. Gutierrez?  
 20 A. Yes, I do.  
 21 227. Q. I take it you drive one of the cars  
 22 listed on Exhibit D?  
 23 A. Yes.  
 24 228. Q. Which car do you drive?  
 25 A. The first one.

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1 229. Q. That is the 2013 Mercedes-Benz  
 2 SL550R?  
 3 A. Yes.  
 4 230. Q. And so I'm clear, that is a leased  
 5 vehicle.  
 6 A. Yes.  
 7 231. Q. It's in the estate's name?  
 8 A. I don't know exactly. I don't know.  
 9 232. Q. Can you confirm that?  
 10 U/T MR. MENDELZON: Yes.  
 11 BY MR. WOYCHESHYN:  
 12 233. Q. All of the other vehicles listed on  
 13 Exhibit D, those are vehicles that were owned by  
 14 Arturo at the time of his death.  
 15 A. Yes.  
 16 234. Q. And the 2003 Mercedes-Benz SL500R  
 17 convertible, is that a vehicle that you drive as  
 18 well or you only drive the 2013?  
 19 A. No, I'm not driving it.  
 20 235. Q. Okay. Where are all the vehicles --  
 21 well, let me back up. I take it that the vehicle  
 22 that you drive, the 2013 Mercedes, you keep that  
 23 at the condominium?  
 24 A. Yes.  
 25 236. Q. Where are the other vehicles listed

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1 on Exhibit D, where are they stored?  
 2 A. The 2010, it's at the condominium.  
 3 237. Q. I'm sorry, I didn't hear that.  
 4 MR. MENDELZON: I think she said the 2010  
 5 is at the condominium.  
 6 BY MR. WOYCHESHYN:  
 7 238. Q. Okay.  
 8 A. The 2003 is at my son's house.  
 9 239. Q. Juan's house?  
 10 A. Yes.  
 11 240. Q. Okay.  
 12 A. And the other ones are in storage.  
 13 241. Q. Okay. And do you know where they are  
 14 stored?  
 15 A. Yes. At the leasing company.  
 16 242. Q. Is that MVL Leasing?  
 17 A. Correct, yes.  
 18 243. Q. And that's in Toronto.  
 19 A. Yeah, I think it's -- yeah.  
 20 244. Q. Or Oakville?  
 21 A. Yeah.  
 22 MR. WOYCHESHYN: Can I have an undertaking  
 23 for the licence numbers for each of the vehicles  
 24 listed on Exhibit D?  
 25 MR. MENDELZON: The licence numbers? You

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1 mean on the registration of the vehicles?  
 2 MR. WOYCHESHYN: The plates.  
 3 MR. MENDELZON: The licence plates?  
 4 MR. WOYCHESHYN: Yes.  
 5 U/T MR. MENDELZON: Yes, we can try and obtain  
 6 that information.  
 7 MR. WOYCHESHYN: So just for the record,  
 8 if you look at Exhibit B, MVL Leasing is listed  
 9 there and it does say that there is a lease  
 10 buy-out of the 2013 Mercedes-Benz SL550R  
 11 convertible and 16 months remaining in the lease.  
 12 So the liability is for the buy-out of that  
 13 lease. If I can get an undertaking to let me  
 14 know whether that buy-out actually has been done  
 15 or whether that is a prospect of -- that is, if  
 16 we continue to pay out the lease per monthly  
 17 basis, it will total 33,000. Do you understand  
 18 what I'm saying?  
 19 U/T MR. MENDELZON: Yes. We can provide that  
 20 information.  
 21 BY MR. WOYCHESHYN:  
 22 245. Q. Other than the vehicle that you  
 23 drive, does anyone drive the other vehicles?  
 24 A. No. The other vehicles are not being  
 25 driven.

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1 246. Q. Not being driven.  
 2 A. See, I'm not sure about this one.  
 3 MR. MENDELZON: She is pointing to the  
 4 2003.  
 5 BY MR. WOYCHESHYN:  
 6 247. Q. The 2003 Mercedes-Benz SL500R?  
 7 A. Yeah.  
 8 248. Q. You are not sure whether that's being  
 9 driven?  
 10 A. Yeah. I'm not sure about that. I  
 11 don't know that.  
 12 249. Q. Okay. But the other ones, other than  
 13 the vehicle you drive, to your knowledge they are  
 14 not being driven.  
 15 A. No.  
 16 250. Q. Fair?  
 17 A. No.  
 18 251. Q. And other than the vehicle that you  
 19 drive that is subject to a lease, as far as you  
 20 know, all the other vehicles are -- there's no  
 21 money owing on them?  
 22 A. No.  
 23 252. Q. You mentioned earlier that you and  
 24 Arturo -- well, actually, I should be specific.  
 25 You said that there was a boat that wasn't listed

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1 on the statement of assets, right? She is  
 2 nodding yes. You have to say yes.  
 3 A. Yes.  
 4 253. Q. Was that owned by -- at the time of  
 5 Arturo's death, was that owned by Arturo, you or  
 6 both of you?  
 7 A. By Arturo.  
 8 254. Q. And there was just one boat?  
 9 A. Yes.  
 10 255. Q. And it was -- is it a yacht or is it  
 11 a motorboat, sailboat?  
 12 A. No, it's a small boat.  
 13 256. Q. Okay. When was it bought?  
 14 A. I don't remember that. It's not new.  
 15 MR. WOYCHESHYN: If you can make inquiries  
 16 to try to determine when that boat was bought,  
 17 how much was paid for it, the make, year, model,  
 18 the value of it.  
 19 U/T MR. MENDELZON: Yes, we can make those  
 20 inquiries.  
 21 BY MR. WOYCHESHYN:  
 22 257. Q. This boat is up at Juan's cottage  
 23 now?  
 24 A. Yes.  
 25 258. Q. Is this the same boat that Arturo

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1 would use to go around Florida and the Bahamas or  
 2 is this a different boat?  
 3 A. No. That was only -- that's for the  
 4 lake.  
 5 259. Q. Okay. Was there a boat that Arturo  
 6 used before his death to sail around Bahamas and  
 7 Florida?  
 8 A. Yes.  
 9 260. Q. And was that owned by Arturo?  
 10 A. No.  
 11 261. Q. Was it leased by Arturo?  
 12 A. I don't know that.  
 13 262. Q. Do you know who owned that boat?  
 14 A. No.  
 15 263. Q. The boat that is at the lake, is  
 16 there any money owing on that boat?  
 17 A. No.  
 18 264. Q. Did you hear that?  
 19 A. No.  
 20 265. Q. Just making sure the reporter can  
 21 hear your answers. I take it at the time of his  
 22 passing, Arturo didn't have any private  
 23 airplanes?  
 24 A. No.  
 25 266. Q. Since becoming executor of your late

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1 husband's estate, have you opened a separate bank  
 2 account for the estate?  
 3 A. Yes.  
 4 267. Q. Where is that bank account? What  
 5 bank?  
 6 A. TD Bank.  
 7 268. Q. What branch?  
 8 A. Oh, I think it's at Bayview and York  
 9 Mills.  
 10 269. Q. So 2518 Bayview Avenue; does that  
 11 sound right?  
 12 A. Yeah.  
 13 270. Q. If the account number is something  
 14 other than 33727156174, will you let me know?  
 15 U/T MR. MENDELZON: Yes.  
 16 MR. WOYCHESHYN: And if the account  
 17 balance as of today is something other than  
 18 \$4,227.16, will you let me know?  
 19 U/T MR. MENDELZON: Yes.  
 20 MR. WOYCHESHYN: I would like the monthly  
 21 account statements for the estate's bank account  
 22 since it was opened until end of July.  
 23 U/A MR. MENDELZON: I'll take that under  
 24 advisement.  
 25 BY MR. WOYCHESHYN:

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1 271. Q. The joint bank account that you and  
 2 Arturo had before his death, that was also at the  
 3 Bayview TD location?  
 4 A. I think so, yes.  
 5 272. Q. And since Arturo's passing, I take it  
 6 that you now have sole control over that account.  
 7 A. Of which account?  
 8 273. Q. Of that joint account.  
 9 A. Yeah.  
 10 274. Q. Now it's just your account.  
 11 A. Yes.  
 12 MR. WOYCHESHYN: I would like the account  
 13 number of that account.  
 14 R/F MR. MENDELZON: That's refused.  
 15 MR. WOYCHESHYN: Current balance of that  
 16 account.  
 17 R/F MR. MENDELZON: That's refused.  
 18 MR. WOYCHESHYN: The monthly account  
 19 statements in that joint account since January  
 20 2011, alternatively since October of 2015.  
 21 R/F MR. MENDELZON: That's both refused.  
 22 MR. WOYCHESHYN: And I will ask the same  
 23 request of Mrs. Gutierrez's personal account,  
 24 that is, the account number, the current balance,  
 25 monthly account statements since January 2011 or

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1 in the alternative since October of 2015.  
 2 R/F MR. MENDELZON: That's refused.  
 3 BY MR. WOYCHESHYN:  
 4 275. Q. Do you know whether at the time of  
 5 his passing, Arturo had any bank accounts outside  
 6 of Canada?  
 7 A. I don't know.  
 8 276. Q. You weren't aware of any accounts  
 9 that he had in his name outside of Canada?  
 10 A. No.  
 11 277. Q. Are you familiar with a company  
 12 called Crystal Del Pacifico?  
 13 A. I'm not familiar, no.  
 14 278. Q. How about a company called  
 15 Conservation Tourism Ltd.?  
 16 A. No.  
 17 279. Q. No?  
 18 A. No. Sorry.  
 19 280. Q. Have you heard about the Panama  
 20 papers?  
 21 A. In the paper?  
 22 281. Q. Yes. If I say Panama papers, does  
 23 that --  
 24 A. What you read in the newspaper, but I  
 25 don't know. I don't know.

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1 282. Q. And if I said that Arturo's name was  
 2 listed in the Panama papers with Crystal Del  
 3 Pacifico and Conservation Tourism, I take it you  
 4 wouldn't know anything about that?  
 5 A. No, I don't know that.

6 283. Q. After Arturo's passing, were there  
 7 any cheques that he had signed before his passing  
 8 that didn't clear before his passing?  
 9 A. No.

10 MR. WOYCHESHYN: You may want to let your  
 11 lawyer address these questions. I'd like to know  
 12 when the last cheque drawn on the joint account  
 13 was, to whom that cheque was payable to, what was  
 14 the amount and to whom it was given.  
 15 R/F MR. MENDELZON: It's refused.

16 BY MR. WOYCHESHYN:

17 284. Q. Do you know if Arturo had access to  
 18 any safety deposit box?  
 19 A. I'm not sure. I don't know.

20 285. Q. Okay. In the course of being an  
 21 executor, you haven't found any safety deposit  
 22 box that was in Arturo's name?  
 23 A. No. Not that I know, no.

24 286. Q. The Exhibit D, which is the statement  
 25 of original assets -- I see. I note that it's

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1 marked primary estate at the top. Do you see  
 2 that?  
 3 A. Yes.

4 287. Q. Is there one for the secondary  
 5 estate?  
 6 A. I don't know.

7 288. Q. Okay. If there is, can you please  
 8 provide it to me?  
 9 U/T MR. MENDELZON: Yes. We'll make those  
 10 inquiries.  
 11 BY MR. WOYCHESHYN:

12 289. Q. And let me just run through a bunch  
 13 of questions here, most of which if there is a  
 14 listing like this on the secondary estate will be  
 15 -- will be answered on that document but in case  
 16 there isn't, I might as well ask them. Did  
 17 Arturo have any registered investments such as  
 18 what's called a RIF or a Registered Investment  
 19 Fund? And do you want me to just list them all  
 20 out?  
 21 MR. MENDELZON: Yes, you might as well.  
 22 MR. WOYCHESHYN: If he did, I'd like to  
 23 know with what bank and at what address he had  
 24 those registered accounts, what the balance was  
 25 at the time of his passing, where the money came

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1 from to contribute to those registered  
 2 investments, whether he had any mutual funds,  
 3 TFSAs, GICs or term deposits in his name and if  
 4 he did, what the balance was at the date of his  
 5 passing, whether he had an investment advisor, if  
 6 he did have an investment advisor, who that  
 7 individual was and where he worked.

8 U/T MR. MENDELZON: So I'll say that what we  
 9 can do is we can make inquiries to see if any of  
 10 those accounts or investments that you just  
 11 listed form part of Arturo's estate, and to the  
 12 extent that they do, we can make inquiries to see  
 13 if we can find and provide that additional  
 14 information you requested about each of those  
 15 accounts or investments.

16 MR. WOYCHESHYN: Okay. And if they were  
 17 listed in Arturo's name at the time of his death  
 18 but you take the position that they do not form  
 19 part of the estate, I'd like your position as to  
 20 why they do not form part of the estate.

21 U/T MR. MENDELZON: We can provide that  
 22 position.  
 23 MR. WOYCHESHYN: I'd also like, to the  
 24 extent that they exist, personal  
 25 investment/brokerage statements for the five

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1 years preceding Arturo's death and if I can't get  
 2 that, then I'll take for 2015 and 2016.

3 U/T MR. MENDELZON: For 2015 and '16, to the  
 4 extent that those form part of Arturo's estate,  
 5 we can make those inquiries and attempt to  
 6 provide them.

7 U/A For the other time period, I'll take it  
 8 under advisement. Do you need a break or  
 9 anything? Are you okay?  
 10 THE DEPONENT: I'm okay.  
 11 MR. MENDELZON: Okay.  
 12 THE DEPONENT: Thank you.  
 13 MR. WOYCHESHYN: And if it turns out that  
 14 there are any investments that do form part of  
 15 the estate and they are converted by Mrs.  
 16 Gutierrez, let's say from stocks to GICs or term  
 17 deposits or something -- a similar conversion,  
 18 I'd like an undertaking to let me know about that  
 19 conversion.  
 20 U/T MR. MENDELZON: Yes, we can do that.  
 21 BY MR. WOYCHESHYN:

22 290. Q. On Exhibit D there's no asset for any  
 23 loans, that is, money that was owed to Arturo.  
 24 Are you aware of any monies being owed personally  
 25 to Arturo at the time of his passing?



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1 A. No.  
 2 MR. MENDELZON: And I'll add that's  
 3 subject to the claims in the outstanding Ontario  
 4 proceeding.  
 5 BY MR. WOYCHESHYN:  
 6 291. Q. Between the time that you bought the  
 7 condominium with Arturo and his passing, other  
 8 than gifts that you may have received from other  
 9 people, I take it that the contents of the  
 10 condominium, that is everything inside the  
 11 condominium, was bought with Arturo's money, that  
 12 is, money that Arturo had earned and contributed  
 13 to the marriage?  
 14 A. Yes.  
 15 292. Q. I'll ask for an undertaking to let me  
 16 know if there were any appliances bought for more  
 17 than a thousand dollars since -- for the  
 18 condominium since 2011 and alternatively to 2011,  
 19 since 2015.  
 20 R/F MR. MENDELZON: So that will be a refusal  
 21 on the basis that all those appliances, it's our  
 22 position, were joint assets which passed to Mrs.  
 23 Gutierrez upon Arturo's death and do not form  
 24 part of the estate.  
 25 MR. WOYCHESHYN: I'll make the same

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1 request for an undertaking for any furniture  
 2 purchased for over a thousand dollars since 2011  
 3 and in the alternative to 2011, since 2015.  
 4 R/F MR. MENDELZON: Same refusal.  
 5 MR. WOYCHESHYN: Also I'd ask for an  
 6 undertaking for any art purchased for over a  
 7 thousand dollars since 2011 and if I can't get it  
 8 since 2011, since 2015.  
 9 R/F MR. MENDELZON: Same refusal.  
 10 MR. WOYCHESHYN: And for those three  
 11 undertakings, what I'm looking for is a listing  
 12 of those items if any of them do exist.  
 13 R/F MR. MENDELZON: Same refusal.  
 14 MR. WOYCHESHYN: And in addition to the  
 15 listing, when they were bought and how much they  
 16 were bought for.  
 17 R/F MR. MENDELZON: Same refusal.  
 18 BY MR. WOYCHESHYN:  
 19 293. Q. Did Arturo own any jewellery at the  
 20 time of his death?  
 21 R/F MR. MENDELZON: That's the same refusal.  
 22 As I said --  
 23 MR. WOYCHESHYN: His jewellery?  
 24 MR. MENDELZON: We are taking the position  
 25 that all -- okay. Sorry, you can ask the

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1 question again.  
 2 BY MR. WOYCHESHYN:  
 3 294. Q. Okay. Did Arturo own any jewellery  
 4 at the time of his passing? No?  
 5 A. He has his watch and that was it.  
 6 295. Q. What kind of watch was it?  
 7 R/F MR. MENDELZON: Again, sorry, we are going  
 8 to refuse again. Same position that all -- we  
 9 previously dealt with appliances and some other  
 10 household goods. We are taking the same position  
 11 with the -- any jewellery or any other assets  
 12 around the house were all jointly owned.  
 13 BY MR. WOYCHESHYN:  
 14 296. Q. Okay. I don't accept that  
 15 particularly if it's a man's watch, that that  
 16 would be a joint marital asset. Did Arturo have  
 17 any rings?  
 18 R/F MR. MENDELZON: Same refusal.  
 19 BY MR. WOYCHESHYN:  
 20 297. Q. Do you know if Arturo had any gold  
 21 bars at the time of his death?  
 22 R/F MR. MENDELZON: Same refusal.  
 23 BY MR. WOYCHESHYN:  
 24 298. Q. Did you and/or he have any  
 25 collections of silver?

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1 R/F MR. MENDELZON: Same refusal.  
 2 BY MR. WOYCHESHYN:  
 3 299. Q. Any chinaware collections?  
 4 R/F MR. MENDELZON: Same refusal.  
 5 BY MR. WOYCHESHYN:  
 6 300. Q. Any book collections?  
 7 R/F MR. MENDELZON: Same refusal.  
 8 BY MR. WOYCHESHYN:  
 9 301. Q. Did Arturo have any collection of  
 10 model cars?  
 11 R/F MR. MENDELZON: Same refusal.  
 12 BY MR. WOYCHESHYN:  
 13 302. Q. Did Arturo have any life insurance at  
 14 the time of his passing?  
 15 A. I don't know.  
 16 303. Q. Can you make inquiries and let me  
 17 know if he had any life insurance at the time of  
 18 his passing?  
 19 U/A MR. MENDELZON: I'll take that under  
 20 advisement.  
 21 MR. WOYCHESHYN: I'd like to know the name  
 22 of the insurance company, the policy number, the  
 23 amount of the policy, beneficiary of the policy.  
 24 U/A MR. MENDELZON: Again, under advisement.  
 25 BY MR. WOYCHESHYN:

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1 304. Q. At the time of his passing, did  
 2 Arturo have any memberships, any club  
 3 memberships?  
 4 A. Yes. Yes.  
 5 305. Q. I know there was one at the Granite  
 6 Club, right?  
 7 A. Yes.  
 8 306. Q. Anywhere else?  
 9 A. Yes.  
 10 307. Q. Where else?  
 11 A. It was in Florida.  
 12 308. Q. And where was that membership?  
 13 A. In Jupiter.  
 14 309. Q. Jupiter is the city?  
 15 A. Jupiter is the town, yes.  
 16 310. Q. Okay. And what was the membership  
 17 in?  
 18 A. It was a complete membership at the  
 19 club, a country club.  
 20 311. Q. Okay. Do you know the name of that  
 21 country club?  
 22 A. Yes.  
 23 312. Q. Can you tell me?  
 24 A. Admirals Cove.  
 25 313. Q. Admirals Cove?

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1 A. Yes.  
 2 314. Q. And how did that membership work?  
 3 Was there an upfront payment that needed to be  
 4 made to join the club?  
 5 A. Oh, I don't know that.  
 6 315. Q. Okay. And what is the current status  
 7 of that membership that Arturo had in Admirals  
 8 Cove?  
 9 A. We don't have it anymore. I have  
 10 only one there which is a legacy membership on my  
 11 name.  
 12 316. Q. At Admirals Cove?  
 13 A. Yes.  
 14 317. Q. Did Arturo have any Aeroplan or other  
 15 travel rewards?  
 16 A. I don't know that.  
 17 318. Q. Do you know whether in 2015 or 2016,  
 18 before his passing, Arturo submitted any personal  
 19 financial statement or personal net worth  
 20 statement to any bank or financial institution?  
 21 A. No. I don't know.  
 22 MR. WOYCHESHYN: Can I get an undertaking  
 23 to make inquiries to see if he did?  
 24 U/T MR. MENDELZON: Yes.  
 25 MR. WOYCHESHYN: And if he did, I'd like

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1 production of those, please.  
 2 U/A MR. MENDELZON: I'll take that under  
 3 advisement.  
 4 MR. WOYCHESHYN: And what I'm looking for  
 5 is production of any personal financial statement  
 6 or personal net worth statement prepared by  
 7 Arturo and submitted to a financial institution  
 8 or bank since October 28, 2015.  
 9 U/A MR. MENDELZON: Okay. Take that under  
 10 advisement.  
 11 BY MR. WOYCHESHYN:  
 12 319. Q. As the executor of Arturo's estate,  
 13 you understand that there is Margarita's court  
 14 proceeding that she started and then there's  
 15 another litigation against Margarita, Roberto,  
 16 Ricardo and the boys. Do you understand that  
 17 there's the two pieces of litigation in Ontario?  
 18 A. Yes.  
 19 320. Q. Okay. Other than those two pieces,  
 20 are you, as the executor of Arturo's estate,  
 21 named in any other litigation?  
 22 MR. MENDELZON: Are you asking in Ontario  
 23 or anywhere?  
 24 MR. WOYCHESHYN: Anywhere.  
 25 MR. MENDELZON: Do you know?

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1 THE DEPONENT: No, I don't know.  
 2 BY MR. WOYCHESHYN:  
 3 321. Q. If you are, can you just let me know?  
 4 U/T MR. MENDELZON: Yes.  
 5 MR. WOYCHESHYN: And leaving aside  
 6 Guatemala, if there are lawsuits anywhere else in  
 7 the world that she is now a named party in her  
 8 capacity as the executor of Arturo's estate, I'd  
 9 just like to have the title of proceedings and  
 10 court file number for those.  
 11 U/T MR. MENDELZON: Yes, we can do that.  
 12 BY MR. WOYCHESHYN:  
 13 322. Q. Since October 2015, so between  
 14 October 2015 and June of 2016, to your knowledge  
 15 did Arturo sell any assets that were worth more  
 16 than a thousand dollars?  
 17 A. No. I don't know.  
 18 323. Q. To your knowledge, between October  
 19 2015 and June 2016, did he transfer any assets  
 20 worth more than a thousand dollars?  
 21 A. I don't know.  
 22 324. Q. If you do find out that any of those  
 23 transfers or sales happened, will you let me  
 24 know, please?  
 25 U/T MR. MENDELZON: Yes.

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1 MR. WOYCHESHYN: Just give me three  
 2 minutes. I think I'm done.  
 3 MR. MENDELZON: Okay.  
 4 --- Short recess at 11:35 a.m.  
 5 --- Upon resuming at 11:43 a.m.  
 6 BY MR. WOYCHESHYN:  
 7 325. Q. Just a couple more questions, Mrs.  
 8 Gutierrez. If I look at Exhibit G and page 5 of  
 9 that -- pardon me, page 6 of that document, at  
 10 the top of the page, it looks like on this form  
 11 that it was listed that the 2013 Mercedes-Benz  
 12 was owned 100 percent by the estate as of May  
 13 4th, 2017. I just want -- it may be captured by  
 14 the prior undertaking but just to confirm that  
 15 the vehicle is owned outright as of today?  
 16 U/T MR. MENDELZON: Yes, we'll confirm the  
 17 ownership of that vehicle.  
 18 BY MR. WOYCHESHYN:  
 19 326. Q. And then if we can have a look at  
 20 Exhibit B again, please, this is the statement of  
 21 liabilities as at September 19th, 2016, there is  
 22 a -- at line number 8, for Sunnybrook Health  
 23 Sciences Centre --  
 24 A. Yes.  
 25 327. Q. -- for \$8,800, what is that?

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1 A. That must have been the time he was  
 2 hospitalized. He stays there.  
 3 MR. WOYCHESHYN: Okay. If I can get  
 4 confirmation of that. And then the particulars  
 5 provided are 828916A-1 which are meaningless to  
 6 me. If I can just get some sort of explanation  
 7 as to what that is.  
 8 U/T MR. MENDELZON: Yes. We'll make inquiries  
 9 and try and get you the details of that  
 10 liability.  
 11 BY MR. WOYCHESHYN:  
 12 328. Q. And then if we look at line 11, the  
 13 estate owes a debt to you for \$1,100 for payment  
 14 to Qualicare.  
 15 A. Yeah, we had some help at the last  
 16 time for him at home.  
 17 329. Q. I see. So that's a home care  
 18 service.  
 19 A. Yes.  
 20 330. Q. Okay. And then if we go down to item  
 21 16, Rogers Design Group, \$108,000 U.S.; do you  
 22 see that?  
 23 A. Yeah. I don't know exactly what that  
 24 is but...  
 25 331. Q. And the particular provided is

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1 capital G, capital U, capital T, 12, if I can get  
 2 particulars of what that debt is.  
 3 U/T MR. MENDELZON: Yes. We can make those  
 4 inquiries.  
 5 MR. WOYCHESHYN: And then if I can get an  
 6 undertaking to let me know whether any of the  
 7 liabilities other than liability number two is  
 8 subject to a security interest.  
 9 U/T MR. MENDELZON: Yes, we'll make those  
 10 inquiries.  
 11 MR. WOYCHESHYN: Subject to the answers to  
 12 undertakings, advisements, refusals and  
 13 objections and anything arising from these, those  
 14 are all my questions. Thank you very much, Mrs.  
 15 Gutierrez.  
 16 MR. MENDELZON: Thank you.  
 17  
 18 --- Whereupon examination adjourned at 11:50 a.m.  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 I HEREBY CERTIFY THE FOREGOING  
 2 to be a true and accurate  
 3 transcription of my shorthand notes  
 4 to the best of my skill and ability.  
 5  
 6 \_\_\_\_\_  
 7 Voula Kirkos, CSR  
 8 Computer-Aided Transcription  
 9  
 10 Reproductions of this transcript are in direct violation  
 11 of O.R. 587/91 of Administration of Justice Act  
 12 January 1, 1990 and are not certified without the  
 13 original signature of the Court Reporter  
 14  
 15  
 16  
 17  
 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

**TAB T**

THIS IS EXHIBIT "T" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

B E T W E E N :

MARGARITA CASTILLO

Plaintiff,

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO  
GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the  
Estate of Juan Arturo Gutierrez

Defendants.

-----  
This is the Examination In Aid of Execution of JUAN  
GUILLERMO GUTIERREZ, a Defendant herein, taken at the  
offices of Network Court Reporting, 1 First Canadian  
Place, 100 King St. West, Suite 3600, Toronto, Ontario,  
on July 25, 2017.  
-----

A P P E A R A N C E S :

Jason W.J. Woycheshyn  
Adam Zur, Summer Student

for the Plaintiff

Martin Mendelzon

for the Defendants,  
Xela Enterprises Ltd.,  
Tropic International  
Limited, Fresh Quest,  
Inc., Juan Guillermo  
Gutierrez and Carmen S.  
Gutierrez

ALSO APPEARING:  
Margarita Castillo

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1 TABLE OF CONTENTS

2

3 INDEX OF EXAMINATIONS:

4 JUAN GUILLERMO GUTIERREZ: SWORN 6

5 EXAMINATION BY MR. WOYCHESHYN 6

6

7 INDEX OF UNDERTAKINGS

8

9 Undertakings are noted by U/T and are found on the

10 following pages: 10, 16, 22, 26, 27, 29, 31, 32, 38,

11 42, 49, 50, 53, 61, 64, 65, 67, 72, 83-85, 92, 95,

12 102-106, 109, 114-118, 122.

13

14 INDEX OF REFUSALS

15 Refusals are noted by R/F and are found on the following

16 pages: 21, 82.

17

18 INDEX OF UNDER ADVISEMENTS

19 Under advisements are noted by U/A and are found on the

20 following pages: 31, 32, 52, 55, 68, 70, 88, 95-97,

21 104, 108.

22

23 \*\*\* The list of undertakings, refusals and under

24 advisements is provided as a service to counsel and does

25 not purport to be complete or binding upon the parties.

Page 3

1 INDEX OF EXHIBITS

2

3 Exhibit No. Description Page No.

4

5 A Letter from Bennett Jones dated 7

6 July 10, 2017, enclosing notices

7 of examination

8 B Share certificate in the name of 11

9 Juan G. Gutierrez for Xela

10 Enterprises Ltd. for 350.8884

11 Class C preference shares,

12 certificate number PC3

13 C Share certificate numbered A1 11

14 for 696093 Alberta Ltd. held by

15 Juan Arturo Gutierrez for 500

16 Class A preference shares

17 D Share certificate number C-1 for 11

18 696093 Alberta Ltd., in the name

19 of Juan G. Gutierrez for one

20 common share

21 E Share certificate number C-2 for 12

22 696093 Alberta Ltd. in the name

23 of Juan A. Gutierrez for 119

24 common shares

25

Page 4

1 INDEX OF EXHIBITS (CONTINUED)

2

3

4 Exhibit No. Description Page No.

5

6 F Ontario vehicle permit for 12

7 licence plate WZT 685, Porsche

8 928

9 G Ontario vehicle permit for 12

10 vehicle licence plate AKPE 688,

11 Z8 BMW

12 H Print-out account summary from 13

13 Scotiabank listing the balance

14 of various mortgages and lines

15 of credit totalling

16 \$2,628,554.72

17 I T1 General - Condensed for 2016 13

18 for Mr. Gutierrez's income tax

19 and benefit return

20 J Tax bill for the Township of 13

21 Seguin in the name of Juan

22 Guillermo Gutierrez and Wencke

23 Gutierrez for 2017, roll number

24 49-03-010-006-02100-0000

25

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1 INDEX OF EXHIBITS (CONTINUED)

2

3

4 Exhibit No. Description Page No.

5

6 K City of Toronto tax bill for 13

7 2017 for 2 Gordon Road dated May

8 5, 2017, roll number

9 19-08-08-2-490-01700-0000-00

10 L Xela Enterprises Ltd. corporate 36

11 diagram

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Page 6

1 --- Upon commencing at 10:09 a.m.  
 2 JUAN GUILLERMO GUTIERREZ: SWORN  
 3 EXAMINATION BY MR. WOYCHESHYN:  
 4 1. Q. You are Juan Guillermo Gutierrez?  
 5 A. Yes.  
 6 2. Q. You go by Juan Gutierrez?  
 7 A. Yes.  
 8 3. Q. Do you go by any other names, sir?  
 9 A. No.  
 10 4. Q. You acknowledge you are under oath  
 11 today?  
 12 A. Yes.  
 13 5. Q. You live at 2 Gordon Road in Toronto,  
 14 Ontario?  
 15 A. Yes.  
 16 6. Q. That's your primary residence?  
 17 A. Yes.  
 18 7. Q. Am I right that that's been your  
 19 primary residence since 1997?  
 20 A. Correct.  
 21 8. Q. I'm showing you and your counsel a  
 22 copy of a letter and a notice of examination sent  
 23 from my office dated July 10th, 2007. Did you  
 24 receive a copy of that, sir?  
 25 A. Yes.

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1 9. Q. Could we mark that as the first  
 2 exhibit. Just go off for a second.  
 3 --- Off the record at 10:10 a.m.  
 4 --- Upon resuming at 10:10 a.m.  
 5 MR. WOYCHESHYN: Mark as Exhibit A a  
 6 letter from my office dated July 10th, 2017,  
 7 enclosing notices of examination. Mr. Mendelzon,  
 8 I take it there's no issue with that.  
 9 MR. MENDELZON: Correct.  
 10 EXHIBIT A: Letter from Bennett Jones  
 11 dated July 10, 2017, enclosing notices of  
 12 examination.  
 13 BY MR. WOYCHESHYN:  
 14 10. Q. Did you bring any documents with you  
 15 today, sir?  
 16 A. I brought some.  
 17 11. Q. What did you bring?  
 18 A. A copy of my home tax bill, the  
 19 latest one.  
 20 12. Q. Okay. Sorry. Are these photocopies?  
 21 A. They are copies, yes.  
 22 MR. MENDELZON: Can we go off for a  
 23 second.  
 24 --- Off the record at 10:11 a.m.  
 25 --- Upon resuming at 10:11 a.m.

Page 8

1 BY MR. WOYCHESHYN:  
 2 13. Q. So in addition to your Toronto tax  
 3 bill for your residence, what else did you bring?  
 4 A. The tax bill for the cottage.  
 5 14. Q. Yes.  
 6 A. And then I have the condensed T1 for  
 7 2016.  
 8 15. Q. This is your personal income tax  
 9 return?  
 10 A. Yes, it is. And this is a summary of  
 11 the statement of the mortgages I have.  
 12 16. Q. Okay.  
 13 A. I owe. I have the ownership --  
 14 17. Q. And just so I'm clear, the document  
 15 you just handed me from Scotiabank, is that for  
 16 the mortgages on both the cottage and the  
 17 personal residence?  
 18 A. That's correct. And then I have the  
 19 ownerships of two cars that I own. There is a  
 20 third one that I don't have the ownership because  
 21 it's in the car and it's in store (sic). It's  
 22 not, it's not here. It's at the place of a  
 23 friend.  
 24 18. Q. Okay.  
 25 A. So I couldn't get a copy.

Page 9

1 19. Q. Okay.  
 2 A. And then I have the certificates of  
 3 the shares of the 696093 Alberta Limited which is  
 4 the Alberta company I own. These are the shares  
 5 that are in my name. And there is one  
 6 certificate that is in my father's name. So  
 7 that's what -- completes that company.  
 8 20. Q. Okay.  
 9 A. And I have here the certificate of  
 10 Class C shares. I can't read it. I think these  
 11 are Class C shares. Yeah, Class C preference  
 12 shares, of Xela Enterprises Limited which I got  
 13 in payment of the shares of Tropic International  
 14 I sold to Xela in 2010. So this is the -- and  
 15 that's all I have.  
 16 21. Q. All right. So --  
 17 A. I have two other shares, sorry,  
 18 because -- the pref shares in Xela but the  
 19 certificate I couldn't find them. I have them  
 20 but they are in storage so I couldn't find them,  
 21 but they are the identicals to the ones Margarita  
 22 owns.  
 23 22. Q. Those are the preference shares that  
 24 696093 Alberta Ltd. --  
 25 A. No, no.



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1 23. Q. -- holds in Xela.  
 2 A. Yes, in Xela. Those are the Class D  
 3 as in David and B as in Bob.  
 4 24. Q. Yes. And where are those shares?  
 5 A. Those are in a box in storage in my  
 6 house. So I had to -- I couldn't find it. It's  
 7 in one of my many boxes. I will have them but I  
 8 couldn't find them yesterday.  
 9 25. Q. If you can have an undertaking to  
 10 look for them and if you find them, to produce a  
 11 copy, please.  
 12 U/T MR. MENDELZON: Yes, we can do that.  
 13 BY MR. WOYCHESHYN:  
 14 26. Q. Okay. So I'm just going to -- you  
 15 don't have to say anything. I'm just going to go  
 16 through on the record and mark these as exhibits  
 17 and we won't stamp them now, we will stamp them  
 18 after we get an extra copy; is that fine?  
 19 MR. MENDELZON: Okay.  
 20 MR. WOYCHESHYN: So Exhibit B will be the  
 21 share certificate in the name of Juan G.  
 22 Gutierrez for Xela Enterprises Ltd. for 350.8884  
 23 Class C preference shares. And that is  
 24 certificate number PC3.  
 25 Exhibit C will be the share certificate

Page 11

1 numbered A1 for the company 696093 Alberta Ltd.,  
 2 which is held by Juan Arturo Gutierrez for 500  
 3 Class A preference shares.  
 4 Exhibit D will be share certificate number  
 5 C-1 for the company 696093 Alberta Ltd., in the  
 6 name of Juan G. Gutierrez who is the registered  
 7 holder of one common share.  
 8 Exhibit E will be share certificate number  
 9 C-2 for company 696093 Alberta Ltd., in the name  
 10 of Juan A. Gutierrez for 119 common shares.  
 11 Exhibit F will be the Ontario vehicle  
 12 permit for licence plate WZT 685 which is for, I  
 13 believe, the Porsche 928.  
 14 THE DEPONENT: 928 from the year 1982.  
 15 EXHIBIT B: Share certificate in the name  
 16 of Juan G. Gutierrez for Xela Enterprises  
 17 Ltd. for 350.8884 Class C preference  
 18 shares, certificate number PC3.  
 19 EXHIBIT C: Share certificate numbered A1  
 20 for 696093 Alberta Ltd. held by Juan  
 21 Arturo Gutierrez for 500 Class A  
 22 preference shares.  
 23 EXHIBIT D: Share certificate number C-1  
 24 for 696093 Alberta Ltd., in the name of  
 25 Juan G. Gutierrez for one common share.

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1 EXHIBIT E: Share certificate number C-2  
 2 for 696093 Alberta Ltd. in the name of  
 3 Juan A. Gutierrez for 119 common shares.  
 4 EXHIBIT F: Ontario vehicle permit for  
 5 licence plate WZT 685, Porsche 928.  
 6 BY MR. WOYCHESHYN:  
 7 27. Q. Exhibit G will be the permit for --  
 8 the Ontario vehicle permit for vehicle licence  
 9 plate AKPE 688 which is the BMW.  
 10 A. Yes.  
 11 28. Q. Is this the Z8?  
 12 A. Yes.  
 13 EXHIBIT G: Ontario vehicle permit for  
 14 vehicle licence plate AKPE 688, Z8 BMW.  
 15 BY MR. WOYCHESHYN:  
 16 29. Q. Exhibit H will be a print-out account  
 17 summary that Mr. Gutierrez provided to me from  
 18 Scotiabank which lists the balance of various  
 19 mortgages and lines of credit totalling  
 20 \$2,628,554.72.  
 21 Exhibit I will be the T1 General -  
 22 Condensed for 2016 for Mr. Gutierrez's income tax  
 23 and benefit return.  
 24 Exhibit J will be the tax bill for the  
 25 Township of Seguin in the name of Juan Guillermo

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1 Gutierrez and Wencke Gutierrez for 2017, and I'll  
 2 just read the roll number into the record,  
 3 49-03-010-006-02100-0000.  
 4 And finally Exhibit K will be the City of  
 5 Toronto tax bill for 2017 for 2 Gordon Road, and  
 6 again I'll just read in the roll number into the  
 7 record. The billing date is May 5th, 2017, and  
 8 the roll number is 19-08-08-2-490-01700-0000-00.  
 9 EXHIBIT H: Print-out account summary from  
 10 Scotiabank listing the balance of various  
 11 mortgages and lines of credit totalling  
 12 \$2,628,554.72.  
 13 EXHIBIT I: T1 General - Condensed for  
 14 2016 for Mr. Gutierrez's income tax and  
 15 benefit return.  
 16 EXHIBIT J: Tax bill for the Township of  
 17 Seguin in the name of Juan Guillermo  
 18 Gutierrez and Wencke Gutierrez for 2017,  
 19 roll number 49-03-010-006-02100-0000.  
 20 EXHIBIT K: City of Toronto tax bill for  
 21 2017 for 2 Gordon Road dated May 5, 2017,  
 22 roll number 19-08-08-2-490-01700-0000-00.  
 23 BY MR. WOYCHESHYN:  
 24 30. Q. What is your telephone number, sir?  
 25 A. (416) 222-9774.

1 31. Q. And your fax number?  
 2 A. No fax number.  
 3 32. Q. Your date of birth is March 1st,  
 4 1956?  
 5 A. Yes.  
 6 33. Q. And your Social Insurance Number is  
 7 487 192 445?  
 8 A. I believe so. I don't know it by  
 9 memory but if it's in my tax return, it must be  
 10 it.  
 11 34. Q. Do you know your Driver's Licence  
 12 number?  
 13 A. No, I don't know it but I have it  
 14 with me, so I can give it to you.  
 15 35. Q. If I can get a copy of it, please.  
 16 Mr. Mendelzon, it's fine if we take a copy of  
 17 that?  
 18 MR. MENDELZON: Yes.  
 19 THE DEPONENT: Just don't forget to give  
 20 it to me before we leave because I have to drive  
 21 home.  
 22 BY MR. WOYCHESHYN:  
 23 36. Q. This is an examination in aid of  
 24 execution arising from a judgment of Justice  
 25 Newbould dated October 28, 2015. Do you remember

1 that?  
 2 A. Yeah, I do remember.  
 3 37. Q. Okay. You recall that that judgment  
 4 jointly required you to pay Margarita \$4.25  
 5 million plus 2 percent interest. Does that sound  
 6 about right?  
 7 A. Probably, yeah.  
 8 MR. MENDELZON: And, counsel, just to be  
 9 clear, it required him to purchase Margarita's  
 10 shares for 4.25 million.  
 11 BY MR. WOYCHESHYN:  
 12 38. Q. Thank you. And jointly with  
 13 yourself, your father and Xela Enterprises,  
 14 right? You understood that?  
 15 A. I understand that for about the same  
 16 price as we offered her in 2010 and she rejected  
 17 then.  
 18 39. Q. And then you recall in about December  
 19 of 2015, Justice Newbould released his cost  
 20 endorsement for around \$890,000?  
 21 A. I remember hearing about that, yeah.  
 22 40. Q. And then there was an appeal to the  
 23 Divisional Court of Ontario and the Divisional  
 24 Court made an additional order of costs of  
 25 \$76,096.47; do you remember that?

1 A. I don't remember the exact numbers,  
 2 but yes.  
 3 41. Q. Okay. And then in March of this  
 4 year, the Court of Appeal dismissed a motion for  
 5 leave to appeal and awarded Margarita an  
 6 additional cost of \$1,500. Does that sound about  
 7 right?  
 8 A. Probably.  
 9 42. Q. And then most recently, there was a  
 10 motion for a stay of execution in front of  
 11 Justice McEwen and that motion was dismissed and  
 12 Justice McEwen ordered that Margarita receive an  
 13 additional approximately \$15,000; is that -- you  
 14 are aware of that, sir?  
 15 A. I don't remember hearing the number  
 16 but I guess it's right.  
 17 43. Q. You have not appealed the decision of  
 18 Justice McEwen?  
 19 MR. MENDELZON: As of now there's been no  
 20 appeal.  
 21 MR. WOYCHESHYN: Okay. And if that  
 22 changes, you'll let me know?  
 23 U/T MR. MENDELZON: We sure will.  
 24 BY MR. WOYCHESHYN:  
 25 44. Q. So the total court orders, and I

1 recognize that the orders against you, sir, are  
 2 joint as against you, your father's estate and  
 3 Xela, total about \$5.2 million. We are now at  
 4 the end of July 2017 and am I right that you  
 5 haven't paid Margarita any money towards that  
 6 judgment or those orders?  
 7 A. Can you ask the question again?  
 8 45. Q. Yes. You haven't paid any money --  
 9 A. No, we have not paid anything.  
 10 46. Q. Okay. And what is the reason for  
 11 non-payment?  
 12 A. Well, part is because we don't have  
 13 the funds to do that. As a matter of fact, we  
 14 intend to pay when we can but right now it's  
 15 impossible. It's impossible because of all the  
 16 actions of Margarita has taken in the last eight  
 17 years has made it impossible.  
 18 MR. MENDELZON: And, counsel, Juan, when  
 19 you are saying "we" in your answers --  
 20 THE DEPONENT: When I say "we", I refer  
 21 myself and my father and the company too, the  
 22 three of us, we would like to pay. Now,  
 23 obviously you are going to cross-examine my  
 24 mother as an executor of my dad's estate and  
 25 somebody else for Xela, so they will speak for

1 the companies, but I tend to say "we" all the  
2 time as my way of speaking.

3 BY MR. WOYCHESHYN:

4 47. Q. And I understand it's a family  
5 company and you, for a long time, have been the  
6 head of the company so I understand why you would  
7 use "we", but in terms of your personal finances,  
8 your evidence is that you personally do not have  
9 the resources or assets to pay any portion of  
10 Margarita's judgment or order?

11 A. At this particular time, I don't.

12 48. Q. Is there something on the horizon  
13 that you see a time when you will be able to pay  
14 those amounts?

15 A. Yes. We have a major lawsuit against  
16 several defendants including Margarita for \$400  
17 million, very well substantiated, has not gone to  
18 hearings yet. So we expect to get a solution on  
19 that and when that happens, we are going to have,  
20 you know, money to pay for this. I say "we"  
21 again, it's myself or any of the other two  
22 parties.

23 49. Q. And just so I'm clear, that -- the  
24 action -- the lawsuit that you are just referring  
25 to is the lawsuit that you and Xela and others

1 pay Margarita; am I right?

2 A. At this point in the immediate time,  
3 I can't. I have no source of income coming, and  
4 I may add, it's a direct consequence of many of  
5 the actions taken by Margarita and the other  
6 people that are working with her. So they have  
7 cornered me. So at this point, I don't have  
8 anything else. I gave you my financial statement  
9 there.

10 53. Q. Right. So you have nothing right now  
11 and you have nothing foreseeable other than the  
12 potential recovery on the action.

13 MR. MENDELZON: Counsel, I think you've  
14 asked him this about --

15 BY MR. WOYCHESHYN:

16 54. Q. No, but he hasn't --

17 A. I answer again, as far as I know, I'm  
18 not the -- let me put it this way: I don't have  
19 a crystal ball that tell me what's going to  
20 happen in the future. At this particular time, I  
21 don't have any other thing that I can tell you is  
22 going to barely make me survive at this point. I  
23 cannot tell you what's going to happen in a year  
24 or in two years or five years.

25 55. Q. Okay. I note you have a lawyer

1 commenced against Margarita, Ricardo, Roberto and  
2 I'll call them the boys in Guatemala, but that  
3 action was commenced in 2011 in Ontario; is that  
4 the action you are referring to?

5 A. That is the action and it's been held  
6 for six years arguing the service of process  
7 which has been affirmed. So go figure, six years  
8 to discuss service, that's where we are but when  
9 that lawsuit is resolved, we'll have more than  
10 plenty resources to pay for this judgment.  
11 Before that, I can't.

12 50. Q. Okay. So just so I understand,  
13 that's the only potential source of income that  
14 you can get that will satisfy the -- that will  
15 allow you to pay Margarita.

16 A. Me personally, yes. That's the only  
17 -- the only option I have.

18 51. Q. And if -- I know you anticipate that  
19 you will be successful in that action but if that  
20 action does not result in a payment to you, am I  
21 right that you will not be able to pay Margarita?

22 A. As things are today, I can't.

23 52. Q. And other than the outcome of the  
24 action, you don't have any source of income that  
25 you see on the horizon that would allow you to

1 present with you today.

2 A. Yes.

3 56. Q. Who is paying for your lawyer?

4 A. Well --

5 R/F MR. MENDELZON: Don't answer that.  
6 THE DEPONENT: Okay.

7 MR. WOYCHESHYN: On the grounds of?

8 MR. MENDELZON: It's privileged.

9 MR. WOYCHESHYN: As to who is paying?

10 MR. MENDELZON: Correct.

11 BY MR. WOYCHESHYN:

12 57. Q. Are you paying your lawyer?

13 R/F MR. MENDELZON: Don't answer that.

14 BY MR. WOYCHESHYN:

15 58. Q. I'm going to be examining you in your  
16 personal capacity and I just -- I'm going to ask  
17 you some questions about Xela but I'm not  
18 expecting you to answer questions on behalf of  
19 Xela; do you understand the difference?

20 A. Yes.

21 59. Q. You are the president and CEO of  
22 Xela?

23 A. Yes.

24 60. Q. And just for clarity of the record,  
25 when I refer to Xela, I'm referring to Xela

1 Enterprises Ltd.; you understand that?  
 2 A. Yes.  
 3 61. Q. You have been in that role for more  
 4 than five years?  
 5 A. Yes.  
 6 62. Q. What is Xela's address?  
 7 A. We had to close our office because of  
 8 lack of resources to continue paying the rent, so  
 9 we moved and the new address on the top of my  
 10 head I don't know it, but I can provide it to you  
 11 later.  
 12 MR. WOYCHESHYN: Okay. Can I get an  
 13 undertaking, counsel?  
 14 U/T MR. MENDELZON: Yes.  
 15 BY MR. WOYCHESHYN:  
 16 63. Q. And is that new office in Toronto?  
 17 A. Yes.  
 18 64. Q. And that's where Xela operates out  
 19 of?  
 20 A. Well, Xela is really not operating  
 21 anymore. Right now we are just --  
 22 65. Q. A holding company.  
 23 A. A holding co, just holding.  
 24 66. Q. Do you receive a salary from Xela?  
 25 A. Not since September last year.

1 67. Q. Since September of 2016?  
 2 A. Yes.  
 3 68. Q. And as of September 2016, what was  
 4 your salary?  
 5 A. It was 70,000. It was around \$60,000  
 6 or 70, but one of the two numbers.  
 7 69. Q. Okay. And how long had it been  
 8 either 60- or 70,000?  
 9 A. It was 60,000 since 1984 and I  
 10 believe it was an adjustment recently, but I  
 11 can't remember the detail.  
 12 70. Q. Okay. Did you receive any bonuses?  
 13 A. No bonuses.  
 14 71. Q. How were you -- how often were you  
 15 paid? Was it weekly, biweekly?  
 16 A. Biweekly.  
 17 72. Q. And was it automatically deposited  
 18 into your account?  
 19 A. Yes.  
 20 73. Q. And is this one of your bank accounts  
 21 at TD?  
 22 A. The only bank account I have, TD  
 23 Bank.  
 24 74. Q. That's a joint account with your  
 25 wife?

1 A. With my wife, yes.  
 2 75. Q. And from the -- just do you have  
 3 copies of your pay stubs?  
 4 A. No. We never got the copies. I just  
 5 check the deposit in the bank and it's through  
 6 the Internet and that's it. I never got the  
 7 copies. I don't have them.  
 8 76. Q. So when you would be paid biweekly,  
 9 you wouldn't receive, you know, a statement  
 10 showing what your payment was, what your  
 11 deductions were, anything like that?  
 12 A. Well, I didn't get them. They are --  
 13 the accountants have it when they issue my --  
 14 when they get the T4 and all that at the end of  
 15 the year for the tax returns. That's where  
 16 everything is. I wasn't really looking at  
 17 exactly how much was deducted. That was -- the  
 18 accounting department did it, the payroll company  
 19 who paid it, and I didn't get the slips.  
 20 77. Q. Okay. So but Xela would have the  
 21 slips.  
 22 A. Xela would have the information I  
 23 assume.  
 24 78. Q. Would there be deductions for income  
 25 tax?

1 A. Oh, yes. Yes, absolutely.  
 2 79. Q. Did you have --  
 3 A. Everything, everything that's by law  
 4 was done.  
 5 80. Q. Were there any insurance plans  
 6 through Xela that you had?  
 7 A. Used to have a health insurance plan.  
 8 81. Q. Right.  
 9 A. And that's it as far as I remember.  
 10 82. Q. And the premiums would be deducted  
 11 off of your salary?  
 12 A. Yeah.  
 13 83. Q. How about was there any RSP  
 14 contributions?  
 15 A. There was very minor. I don't  
 16 remember the details. It was for everybody in  
 17 the office. I think I accumulated about \$7,000  
 18 on that over the years. It was very minor.  
 19 84. Q. So 7,000 over 30-plus years?  
 20 A. It was just recent because it wasn't  
 21 done in the past. So...  
 22 85. Q. I see. So Xela's group RSP wasn't  
 23 always there.  
 24 A. No.  
 25 86. Q. At some point, it started, and your

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1 recollection is that your accumulation of the  
 2 group RSP through Xela totalled around \$7,000.  
 3 A. Around, yeah.  
 4 87. Q. And do you have any records that you  
 5 can check to verify that number?  
 6 A. We can check the number. I don't  
 7 have the records with me.  
 8 MR. WOYCHESHYN: Can I get an undertaking,  
 9 counsel?  
 10 U/T MR. MENDELZON: We'll undertake best  
 11 efforts to get that information.  
 12 BY MR. WOYCHESHYN:  
 13 88. Q. Thank you.  
 14 I would like an undertaking for you to  
 15 look for any copies of pay slips that you may  
 16 have from Xela for the past six years and if you  
 17 find any, if you could produce them to me,  
 18 please.  
 19 U/T MR. MENDELZON: We can look.  
 20 MR. WOYCHESHYN: And if you find them?  
 21 MR. MENDELZON: I'm not sure about the  
 22 six-year mark but we'll take a look and then  
 23 we'll produce what we think is relevant for the  
 24 purposes of this examination.  
 25 MR. WOYCHESHYN: So if I can't get six, I

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1 will want everything from October 2015.  
 2 MR. MENDELZON: Okay.  
 3 MR. WOYCHESHYN: Is that an advisement?  
 4 U/T MR. MENDELZON: October 2015 we can  
 5 probably -- we can take a look and if there's pay  
 6 stubs from October 2015 forward, we can produce  
 7 those.  
 8 BY MR. WOYCHESHYN:  
 9 89. Q. Did you have a car allowance through  
 10 Xela?  
 11 A. No.  
 12 90. Q. Did you, let's say in the past two  
 13 years, have you had any other direct sources of  
 14 income other than your pay from Xela which you  
 15 told me stopped in September 2016?  
 16 A. I had received some shareholder draws  
 17 with my dad. He had a shareholder loan which he  
 18 was collecting and he was giving some of that to  
 19 me. So that was how I was compensated.  
 20 91. Q. Okay. Explain that to me. How did  
 21 that work?  
 22 A. Well, we had this shareholder -- he  
 23 had shareholder loans into the company, so he  
 24 would collect from that and he would gift the  
 25 money to us. That was how I paid, how

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1 Margarita's husband was paid when he was with the  
 2 company, how Margarita was paid when she was a  
 3 director also.  
 4 92. Q. So this is, just so I understand,  
 5 your father, Juan Arturo, had made various  
 6 shareholder loans to Xela. Xela would then repay  
 7 the loan and some of those repayments would be  
 8 directed to you; do I have that right?  
 9 A. No. They were not directed to me.  
 10 They were to him and he would gift them to us. I  
 11 said to us because Margarita got the same,  
 12 Ricardo got the same when he was in the company.  
 13 93. Q. And when did you receive those?  
 14 Like, when did those payments stop?  
 15 A. They stopped in August last year.  
 16 94. Q. And between October of 2015 and  
 17 August 2016, how much were the payments?  
 18 A. What was the date again?  
 19 95. Q. October 2015 to August 2016.  
 20 A. That would be for a month -- for a  
 21 year?  
 22 96. Q. Yes. Did you receive them per month?  
 23 A. Sort of.  
 24 97. Q. Okay.  
 25 A. So that would probably be about

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1 200-and-something thousand. I don't know off the  
 2 top of my head. I have to go and check.  
 3 98. Q. Roughly 20,000 a month; does that  
 4 sound right?  
 5 A. A little more than that. Between 20  
 6 and 27, somewhere in there, in that  
 7 neighbourhood. I would have to go check the  
 8 numbers to give you an exact number.  
 9 99. Q. If you could do that and let me know  
 10 what the exact number was, please.  
 11 U/T MR. MENDELZON: Yes, we can do that.  
 12 BY MR. WOYCHESHYN:  
 13 100. Q. And that would be -- how would you  
 14 receive that amount? Would it be directly  
 15 deposited into your account?  
 16 A. It would be deposited to my joint  
 17 account.  
 18 101. Q. And because it was treated as a gift,  
 19 there was no deductions off of that.  
 20 A. Correct.  
 21 102. Q. And you didn't pay any taxes on that.  
 22 A. Well, we declared all that in the  
 23 tax, and I may add that I was audited by the  
 24 Revenue -- CRA, by Revenue Canada, and they gave  
 25 me a letter saying that I don't owe anything,

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1 that they didn't find any errors or any problems.  
 2 So everything is absolutely legal and correct and  
 3 according to the rules.  
 4 103. Q. And just so I understand, I  
 5 understand your father passed away in June of  
 6 2016 and you would have received one or two more  
 7 payments after his passing; is that correct?  
 8 A. Yes, that's correct.  
 9 104. Q. And you mentioned Margarita while she  
 10 was still with the company, she was receiving  
 11 these payments from your father as well.  
 12 A. She did, yeah.  
 13 105. Q. Was he, to your knowledge, up until  
 14 August 2016, making gifts to anyone else from  
 15 these shareholder loans?  
 16 A. Not that I know but I don't know what  
 17 he was doing on his own.  
 18 106. Q. So other than your employment income  
 19 from Xela and the gifts that you received from  
 20 your father between October 2015 and August 2016,  
 21 you had no other source of income?  
 22 A. No.  
 23 107. Q. You agree with me?  
 24 A. Yeah. I don't have any other source  
 25 of income than that.

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1 108. Q. Do you receive any dividends on the  
 2 shares that you owned?  
 3 A. The only shares I own are the ones  
 4 from the Alberta company. There's never been a  
 5 dividend for that company at all and the pref  
 6 shares that we have on Xela are not dividend. We  
 7 don't receive dividends.  
 8 109. Q. So you have produced today, sir, your  
 9 T1 General - Condensed tax return for 2016. I'm  
 10 going to ask, and please let your counsel respond  
 11 as to the appropriateness of my request, but I  
 12 would like your personal tax returns for the past  
 13 six years going back to 2011.  
 14 U/A MR. MENDELZON: We'll take that under  
 15 advisement back to 2011.  
 16 MR. WOYCHESHYN: Alternatively for 2014,  
 17 '15, '16 and in the further alternative, 2015 --  
 18 U/T MR. MENDELZON: We can give an undertaking  
 19 to produce the 2015 T1 tax -- personal tax  
 20 return.  
 21 U/A And we'll take 2014 under advisement.  
 22 MR. WOYCHESHYN: Okay. I would also like  
 23 any of the schedules to your tax returns for all  
 24 of the years I've requested.  
 25 U/T MR. MENDELZON: If we have copies of

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1 those, we'll produce them.  
 2 MR. WOYCHESHYN: And if there are any T4  
 3 slips, to produce those as well.  
 4 U/T MR. MENDELZON: We'll undertake to look  
 5 for those and produce them if they are available.  
 6 MR. WOYCHESHYN: And the same thing with  
 7 T5 slips.  
 8 U/T MR. MENDELZON: Again, we'll give the same  
 9 undertaking and again this is confined to 2015  
 10 and 2016.  
 11 MR. WOYCHESHYN: And so we are clear, my  
 12 request applies to all the years, just for the  
 13 record, and you can take your position.  
 14 U/A MR. MENDELZON: Yes. So we'll take  
 15 anything prior to 2015 under advisement.  
 16 MR. WOYCHESHYN: And then same thing for  
 17 the years 2011 to 2016, any Notices of Assessment  
 18 received from the CRA, and the same alternatives  
 19 -- and the second alternative being 2014, '15,  
 20 '16 and then the third alternative being for '15  
 21 and '16.  
 22 U/A MR. MENDELZON: So the same answers for  
 23 2011 to 2014, we'll take that under advisement.  
 24 UT For 2015 and 2016, we'll look for any  
 25 Notices of Assessment and produce them if we can

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1 find them.  
 2 BY MR. WOYCHESHYN:  
 3 110. Q. Have you received any tax refunds in  
 4 the past three years?  
 5 A. I have received a couple, not every  
 6 year.  
 7 111. Q. Okay. When is the last time you  
 8 received a refund?  
 9 A. I don't remember off the top of my  
 10 head but probably about two or three years ago.  
 11 112. Q. Do you remember how much it was?  
 12 A. No, I don't remember.  
 13 113. Q. I guess we'll see that from the  
 14 Notices of Assessment if you can find them. Do  
 15 you pay income tax in any other jurisdiction?  
 16 A. No, I don't. I don't have any  
 17 revenues anywhere else.  
 18 114. Q. Besides being a director and officer  
 19 of Xela, are you an officer or director of any  
 20 other corporation?  
 21 A. Yes, I am a -- I'm a director of  
 22 Tropic International, I think it's Limited or  
 23 Ltd. I'm a director of Xela International.  
 24 115. Q. Xela International Inc.?  
 25 A. Inc., yes. And Global Food Traders.

1 116. Q. Right.  
 2 A. And the Alberta company that you have  
 3 there.  
 4 117. Q. The 696093 I think is the --  
 5 A. Yes.  
 6 118. Q. Alberta Ltd.  
 7 A. Yes. And I've been -- I became a  
 8 director of another Alberta company that belonged  
 9 to my father. Without him, there's no director,  
 10 so I accepted to be a director for the time  
 11 being.  
 12 119. Q. Any other companies?  
 13 A. No. Not that I remember.  
 14 120. Q. I'm just going to show you this  
 15 corporate diagram. This was produced in the  
 16 application, the oppression application. We'll  
 17 just run through and see if it helps your  
 18 recollection as to whether you are currently an  
 19 officer, director of any other of the entities.  
 20 What about Gabinvest S.A.?  
 21 A. No. I've never been involved in  
 22 that.  
 23 121. Q. Or an officer?  
 24 A. No.  
 25 122. Q. Xela Global Resources Inc.?

1 A. Well, as far as I know, Global  
 2 Resources no longer exist. I think that's the  
 3 one that is now Global Food Traders. I have to  
 4 confirm that but that's my understanding.  
 5 123. Q. And you see under Xela International  
 6 Inc., there's SCMN Global Traders.  
 7 A. Yeah.  
 8 124. Q. Is that a different Global Traders  
 9 company?  
 10 A. No, that's the company but I think --  
 11 I may be wrong but I think Global Resources and  
 12 Global Traders at one time were together.  
 13 125. Q. Amalgamated?  
 14 A. But I'm not -- I have to confirm  
 15 that. I don't remember. Those two companies  
 16 have not been operational for a long time.  
 17 126. Q. And what about Empresas Arturo  
 18 International?  
 19 A. I've never been a member of that --  
 20 I'm not a member of that.  
 21 127. Q. And what about Fresh Quest Inc.?  
 22 A. Fresh Quest no longer exists.  
 23 128. Q. How about Tropic International?  
 24 A. Yes, I am a director of that.  
 25 129. Q. And I see the company Muskoka

1 Finance.  
 2 A. I'm not there.  
 3 130. Q. You are not a director and officer of  
 4 that company?  
 5 A. No.  
 6 131. Q. And what about Lisa S.A.?  
 7 A. Not a director of Lisa either.  
 8 132. Q. And Crystal Del Pacifico S.A.?  
 9 A. No.  
 10 133. Q. You are not a director and officer?  
 11 A. No.  
 12 134. Q. And other than what you -- the  
 13 blanket, none of the other companies listed on  
 14 this diagram, for none of the other companies  
 15 listed on this diagram other than the ones that  
 16 you already mentioned, you are not a director or  
 17 officer.  
 18 A. I'm not.  
 19 135. Q. Do you mind if we mark this as an  
 20 exhibit. Exhibit L is the Xela Enterprises Ltd.  
 21 corporate diagram.  
 22 EXHIBIT L: Xela Enterprises Ltd.  
 23 corporate diagram.  
 24 BY MR. WOYCHESHYN:  
 25 136. Q. Are you a part of any partnership?

1 Are you a partner in any legal partnership?  
 2 A. Illegal?  
 3 137. Q. Legal.  
 4 A. Not legal or illegal. I'm not a  
 5 member of any partnerships.  
 6 138. Q. Okay. Are you a beneficiary under  
 7 any trust?  
 8 A. Under Gutierrez Family Trust that my  
 9 father created in 1996 I'm listed as many others.  
 10 Even though there's no -- been listed doesn't  
 11 mean you are a beneficiary. There's never been a  
 12 benefit distribution or anything and that's under  
 13 the state now.  
 14 139. Q. So from the Gutierrez Family Trust,  
 15 you have never received any payment.  
 16 A. Never.  
 17 140. Q. Are you an executor or a trustee of  
 18 any trust?  
 19 A. No.  
 20 141. Q. Your wife's full name is Wencke  
 21 Gutierrez?  
 22 A. Yes.  
 23 142. Q. That's W-E-N-C-K-E?  
 24 A. Yes.  
 25 143. Q. What was her maiden name?

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1 A. Maiden name, Johannessen,  
 2 J-O-H-A-N-N-E-S-S-E-N.  
 3 144. Q. What is her employment status?  
 4 A. She doesn't work. She is at home.  
 5 145. Q. When did she last work?  
 6 A. I don't remember exactly. She  
 7 doesn't have a specific job for -- she was always  
 8 with the children. She's done little interior  
 9 design projects but it's a very long long time  
 10 since she has done any of that.  
 11 146. Q. Anything in the past six years?  
 12 A. I don't think so, no. I think it's  
 13 farther than that. I can't be for sure but as  
 14 far as I know, she hasn't been doing any work for  
 15 a very long time.  
 16 147. Q. If you recall something different,  
 17 then you will let me know?  
 18 U/T A. Yeah.  
 19 148. Q. You have four children?  
 20 A. Yes.  
 21 149. Q. And your son Juan Andres?  
 22 A. Yeah.  
 23 150. Q. He is 36?  
 24 A. Yes.  
 25 151. Q. Your daughter Lisa, she is 34?

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1 A. Yeah, she just turned 35.  
 2 152. Q. Your son Thomas, he is 29.  
 3 A. He is 30. He turned 30 this year.  
 4 153. Q. Your daughter Astrid, 27.  
 5 A. She was born in '88, so she is 28,  
 6 will be 29 this year.  
 7 154. Q. I'm sorry, my math was a bit off.  
 8 Are all of your children working?  
 9 A. Yes.  
 10 155. Q. None of them are in school?  
 11 A. No.  
 12 156. Q. You agree with me?  
 13 A. My youngest daughter is in school but  
 14 she is a teacher, so she doesn't study. She  
 15 teaches.  
 16 157. Q. Got it.  
 17 A. That's her job.  
 18 158. Q. That's Astrid.  
 19 A. Yeah.  
 20 159. Q. They all finished their education.  
 21 A. Yes.  
 22 160. Q. Who was the last to finish?  
 23 A. Astrid.  
 24 161. Q. Okay. And when did she finish?  
 25 A. Four or five years ago. I don't

Page 40

1 remember exactly.  
 2 162. Q. So she went to teachers' college?  
 3 A. Yeah. She went to the university in  
 4 Halifax.  
 5 163. Q. Dalhousie?  
 6 A. Dalhousie. And then she took one  
 7 year of teaching school in Australia and she's  
 8 been working since.  
 9 164. Q. I take it that you paid for her  
 10 tuition at Dalhousie and Australia?  
 11 A. Yes, I did.  
 12 165. Q. Do any of your children live with  
 13 you?  
 14 A. Not right now.  
 15 166. Q. When is the last time they lived with  
 16 you?  
 17 A. I think it's almost two years ago  
 18 since Thomas moved out.  
 19 167. Q. And was Thomas the only child living  
 20 with you at that time?  
 21 A. Yes.  
 22 168. Q. And I take it that Astrid lived with  
 23 you until she went to school in Dalhousie.  
 24 A. Yes.  
 25 169. Q. And Lisa is married. She hasn't

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1 lived with you for a number of years?  
 2 A. For a long time.  
 3 170. Q. And when is the last time Juan Andres  
 4 lived with you? Over ten years?  
 5 A. Probably ten years. They all have  
 6 been independent since they went to university.  
 7 Then they all have their own lives. They have  
 8 been living independently. Thomas stayed home  
 9 for the longest because he was saving money to  
 10 buy an apartment. When he got the money, he  
 11 moved out.  
 12 171. Q. So none of your children are  
 13 dependent on you.  
 14 A. None of them.  
 15 172. Q. And do you have any other dependants?  
 16 A. Just my wife. And now I'm helping my  
 17 mother.  
 18 173. Q. How do you help her?  
 19 A. Well, when she needs -- because she  
 20 doesn't have any source of income, so when she  
 21 needs something, I help her with that.  
 22 174. Q. Your mother's name is Carmen?  
 23 A. Yes.  
 24 175. Q. How much have you helped her with  
 25 since your father's passing? Like, how much



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1 money have you given her?

2 A. I have no idea. I have to go and add

3 because it's not large amounts. When she needs

4 something, pay her credit cards, stuff like that,

5 I've been giving her some money. I haven't for

6 the last two months because my account is frozen,

7 so I can't do it anymore, so...

8 MR. WOYCHESHYN: If you can review your

9 records, please, and let me know how much money

10 Mr. Gutierrez has provided to his mother since

11 July of 2016.

12 U/T MR. MENDELZON: We can do that.

13 BY MR. WOYCHESHYN:

14 176. Q. Your primary residence at 2 Gordon

15 Road, that is your matrimonial home?

16 A. Yes.

17 177. Q. It's a detached two-storey home?

18 A. Yes.

19 178. Q. Is it on the Bridle Path? Is that

20 the neighbourhood?

21 A. No.

22 179. Q. No?

23 A. I live three blocks away from my

24 sister's house. So that's the same neighbourhood

25 that she is. It's not the Bridle Path.

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1 180. Q. Okay. How many square feet is it?

2 A. Around 4,000. I don't remember

3 exactly. I bought the house in '97, so I can't

4 remember.

5 181. Q. How many bedrooms?

6 A. It has four including the master

7 bedroom.

8 182. Q. It's a two car garage?

9 A. Yes.

10 183. Q. How many bathrooms?

11 A. I think it's four-and-a-half.

12 184. Q. Are there any unfinished areas on the

13 house?

14 A. No.

15 185. Q. The basement is finished?

16 A. Yes.

17 186. Q. And that you own jointly with Wencke.

18 A. Yes.

19 187. Q. So you said you bought it in 1997.

20 If I told you that you bought it for 1.339

21 million, does that sound right?

22 A. It sounds right. I don't remember

23 the exact price but close to that area --

24 neighbourhood.

25 188. Q. All right. And if we look at the

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1 document you gave me this morning from the Bank

2 of Nova Scotia which we've marked as an exhibit,

3 do you know which mortgage is --

4 A. The two on the bottom.

5 189. Q. The two on the bottom. So the

6 \$739,972.13 is the mortgage you have with

7 Scotiabank on your home at 2 Gordon Road?

8 A. Yes. And the 900,000 figure

9 underneath is the line of credit guaranteed by

10 the house too.

11 190. Q. So it's a home equity line of credit?

12 A. Yes. And there is also a third

13 mortgage on that property for \$500,000.

14 191. Q. What branch of the Scotiabank are you

15 dealing with for your mortgage?

16 A. We don't have a branch. We not --

17 like, I don't have any other bank accounts or

18 anything with Scotia for about two years, so I

19 don't have any branches specific that we talk to.

20 192. Q. Do you have a mortgage advisor?

21 A. Well, there is a person that we have

22 contact on the phone when we need anything, but

23 all we do is -- all I do is pay the monthly

24 payment. That's all.

25 193. Q. So you have no savings or chequings

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1 accounts with Scotiabank.

2 A. No.

3 194. Q. So I understand last week that there

4 was a notice of sale on your mortgage for your

5 house you got from the bank?

6 A. I haven't been served with that yet.

7 195. Q. You haven't?

8 A. No.

9 196. Q. Okay. Well, out of fairness because

10 I've referred to it, I should give it at least to

11 you. Our office was served with a notice of sale

12 on the mortgage because we had a writ registered.

13 So I won't mark it as an exhibit because he

14 hasn't received it, but I think he should have

15 it.

16 MR. MENDELZON: Okay. Yes. I mean, I

17 think you can ask some questions about it without

18 putting the document to him.

19 BY MR. WOYCHESHYN:

20 197. Q. Okay. So the mortgage, the \$700,000

21 mortgage on the house, that has an interest of

22 2.99 percent; does that sound right?

23 A. Probably. I don't remember off the

24 top of my head. That sounds right.

25 198. Q. And I take it that you haven't been

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1 able to keep up with the mortgage payments?  
 2 A. I have. The thing is that for the  
 3 last few months or the last two or three months,  
 4 the bank didn't accept the payment. I wrote the  
 5 cheques, deposit the cheques and they send them  
 6 back.  
 7 199. Q. And do you know why they didn't  
 8 accept the payment?  
 9 A. I don't know. At the moment I am in  
 10 the process of refinancing the mortgage. So we  
 11 are still talking to continue with this.  
 12 200. Q. When you wrote the bank the cheque to  
 13 pay your mortgage, what account did you use?  
 14 A. The TD Bank. The only account I  
 15 have.  
 16 201. Q. Okay. Do you remember what your  
 17 monthly payments are to Scotia?  
 18 A. Off the top of my head, one by one I  
 19 don't but all of them combined, I think they are  
 20 about 12,000. Somewhere in that neighbourhood.  
 21 202. Q. Now, is that to Scotia for both the  
 22 cottage and the house?  
 23 A. For both, yes.  
 24 203. Q. So 12,000 altogether.  
 25 A. All the mortgages were taken at the

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1 same time.  
 2 204. Q. Yes.  
 3 A. And I may add why I took those  
 4 mortgages because I was almost pay off my  
 5 mortgages since I bought the property so long  
 6 ago, and the reason I mortgaged my property was  
 7 my dad asked me some time, I forgot the year, but  
 8 2007 or around there, so I mortgaged my property  
 9 so I could get some funding that was used, my  
 10 understanding from what my father told me, was  
 11 used to pay my sister's mortgages on her house  
 12 and cottage. When they separated from the  
 13 family, their business, Margarita wanted her  
 14 mortgages free or her properties free and that's  
 15 why I undertook refinancing of my properties and  
 16 that's what you have in front of you.  
 17 205. Q. You never took out a mortgage to help  
 18 pay amounts that your brother Luis had obtained  
 19 by a judgment?  
 20 A. That was about five years before that  
 21 and those mortgages were being paid down and  
 22 those were what she has too -- what she had too.  
 23 206. Q. Just so I understand the last part  
 24 because you sort of made reference to Margarita,  
 25 so Margarita also had, as you understood it, a

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1 mortgage to help pay for the amounts that Xela  
 2 owed her brother Luis?  
 3 A. I don't know about that. I know that  
 4 when she left the family business, she had  
 5 mortgages on her properties and then my dad told  
 6 me that she wanted to free her properties and  
 7 that he couldn't help her do that, so he asked me  
 8 if I would mortgage my properties, he asked me,  
 9 and I helped him doing that.  
 10 207. Q. Okay. So you --  
 11 A. I regret it now, I have to say that.  
 12 208. Q. So you took out mortgages to -- at  
 13 the request of your father to help pay down  
 14 Margarita's mortgage.  
 15 A. That's correct.  
 16 209. Q. Okay. So I know you said, sir, that  
 17 you are still talking to Scotiabank but under the  
 18 document that I handed your counsel, it looks  
 19 like they are requesting payment of \$1,680,828.31  
 20 by August 25th, 2017. Based on your earlier  
 21 evidence, I take it that the only way you will be  
 22 able to pay that is if you refinance?  
 23 A. Yes. I can't pay myself, so we are  
 24 trying to refinance.  
 25 210. Q. And who are you trying to refinance

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1 with?  
 2 A. It's a mortgage company. I forgot  
 3 the name right now. I can get you the name.  
 4 211. Q. If you will, please.  
 5 U/T MR. MENDELZON: Yes.  
 6 BY MR. WOYCHESHYN:  
 7 212. Q. And then in or around November of  
 8 2016, so I guess it's about eight or nine months  
 9 ago, you took out a further mortgage with DX  
 10 Financial?  
 11 A. That's the third mortgage I referred  
 12 to.  
 13 213. Q. Yes. The principal and the initial  
 14 amount was 700,000?  
 15 A. Yes, but we only -- we only draw  
 16 500,000 for it.  
 17 214. Q. And that required monthly payments of  
 18 around 5,400; does that sound right?  
 19 A. Yes.  
 20 215. Q. At an interest rate of 9.37?  
 21 A. Yes.  
 22 216. Q. Is that mortgage in good standing?  
 23 A. Yes.  
 24 217. Q. And can you give me the amount owing  
 25 on that mortgage?

1 A. Five hundred thousand.  
 2 218. Q. Exactly or?  
 3 A. That's my understanding, yeah.  
 4 219. Q. Can you confirm that by looking at  
 5 your records?  
 6 A. Yeah.  
 7 U/T MR. MENDELZON: Yes, we can do that.  
 8 BY MR. WOYCHESHYN:  
 9 220. Q. Now, in looking at the records on  
 10 title that DX Financial had, it suggested that  
 11 you needed to have your property, that is the 2  
 12 Gordon Road property, appraised at, at least \$4  
 13 million as a condition of that financing? Does  
 14 that --  
 15 A. What was that?  
 16 221. Q. Before DX Financial gave you that  
 17 third mortgage, they had to appraise your house  
 18 at \$4 million; do you remember that?  
 19 A. No. I was -- there was never an  
 20 appraisal as far as I know.  
 21 222. Q. And what was the purpose of the  
 22 700,000 mortgage?  
 23 A. Well, we needed funds to survive.  
 24 That was necessary to keep us going.  
 25 223. Q. And what did you do with those funds?

1 much did you have to pay --  
 2 U/A MR. MENDELZON: We'll take that under  
 3 advisement. I mean, it might be privileged. I'm  
 4 not sure.  
 5 MR. WOYCHESHYN: I'm only talking about  
 6 the lease payments. I'm not talking about your  
 7 legal fees.  
 8 MR. MENDELZON: But there was a settlement  
 9 involved. I'm not sure what the confidentiality  
 10 provisions were of that settlement, so I just  
 11 wanted to take it under advisement.  
 12 BY MR. WOYCHESHYN:  
 13 229. Q. Okay. Besides paying for legal fees  
 14 and the lease break settlement, I'll refer to it  
 15 as, what else did you have to pay on behalf of  
 16 Xela?  
 17 A. Living expenses.  
 18 230. Q. No, no, on behalf of Xela. You said  
 19 --  
 20 A. Oh, on behalf of Xela? I don't know.  
 21 I don't remember. I don't think I paid anything  
 22 else.  
 23 231. Q. If you do remember anything else that  
 24 you used that \$700,000 to pay on behalf of Xela,  
 25 you will let me know?

1 A. Well, I don't remember off the top of  
 2 my head everything but it's been our -- since  
 3 August and September last year, I haven't had any  
 4 income, so we needed to pay our mortgages and  
 5 live our lives and I also had to pay some other  
 6 commitments that I had in the past.  
 7 224. Q. What commitments are you referring  
 8 to?  
 9 A. Well, I helped Xela to pay some --  
 10 some things, like -- couple of things that Xela  
 11 had to settle and Xela couldn't pay them and we  
 12 are always trying to protect the family name. So  
 13 I paid for a couple of things that had to be  
 14 paid.  
 15 225. Q. Okay. And what are those couple of  
 16 things?  
 17 A. One was legal fees.  
 18 226. Q. What else?  
 19 A. There was a settlement for the lease  
 20 of the company office. We settled with the  
 21 landlord. So we had to pay a price to be able to  
 22 leave early.  
 23 227. Q. Was there litigation related to that?  
 24 A. No.  
 25 228. Q. How much did it cost you to -- how

1 U/T MR. MENDELZON: We can, and just to  
 2 clarify, I believe he said there was 500,000 that  
 3 was drawn.  
 4 THE DEPONENT: Yeah.  
 5 BY MR. WOYCHESHYN:  
 6 232. Q. That's right. Sorry, the third  
 7 mortgage is for 700,000 but you only withdrew  
 8 500,000. So to be clear, any money that you drew  
 9 from the DX Financial mortgage and you used to  
 10 pay for Xela expense, you will let me know what  
 11 those Xela expenses were.  
 12 U/T MR. MENDELZON: Yes, we will.  
 13 BY MR. WOYCHESHYN:  
 14 233. Q. Did you have a lawyer act for you on  
 15 behalf of -- when you got the mortgage with DX  
 16 Financial?  
 17 A. Well, I wasn't involved myself. It  
 18 was a company issue. I didn't handle it myself.  
 19 So I assume there was one but I don't know.  
 20 234. Q. And right now only you and Wencke  
 21 live at 2 Gordon Road?  
 22 A. Yes.  
 23 235. Q. Based on the tax bill that you gave  
 24 me from the City of Toronto for the 2 Gordon Road  
 25 property, it looks like your annual property

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1 taxes are approximately \$17,000; is that right?  
 2 A. I believe so.  
 3 236. Q. And do you pay them monthly or  
 4 annually, semi-annually?  
 5 A. Until now they were paid through the  
 6 mortgage, same as the cottage, and now I think  
 7 it's half a year approximately missing payment,  
 8 yeah.  
 9 237. Q. So you are in arrears of  
 10 approximately half year of that tax liability.  
 11 A. I can't pay them because my account  
 12 is frozen by you and I don't have any other  
 13 source of money.  
 14 238. Q. Have you done any renovations or  
 15 other work on your home recently, in the past  
 16 year?  
 17 A. A couple of minor repairs but no  
 18 renovations or any work.  
 19 239. Q. What were the minor repairs?  
 20 A. I don't know, some plugged plumbing  
 21 or something.  
 22 240. Q. Club plumbing?  
 23 A. Plugged. We had some plumbing  
 24 issues. We had a water pressure problem and  
 25 that's been fixed.

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1 241. Q. Any --  
 2 A. Last year we had to repair a stone  
 3 wall that we have on the -- from the entrance to  
 4 the garage because after the winter, it fell  
 5 apart. That was just a repair. Prior to that, I  
 6 don't know.  
 7 242. Q. How much did that cost to repair the  
 8 stone wall?  
 9 A. I don't know. My wife handled that.  
 10 I don't know. I don't remember.  
 11 243. Q. Can you ask your wife how much that  
 12 cost, please?  
 13 A. Yeah.  
 14 U/A MR. MENDELZON: We'll take that under  
 15 advisement.  
 16 BY MR. WOYCHESHYN:  
 17 244. Q. Aside from your personal residence,  
 18 you have a cottage. It's around Parry Sound,  
 19 Ontario?  
 20 A. Yeah, MacTier.  
 21 245. Q. Sorry, McDeer?  
 22 A. Around MacTier.  
 23 246. Q. MacTier. And that is in the Township  
 24 of Seguin?  
 25 A. Yes.

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1 247. Q. Is that how you say it, it's in  
 2 Seguin?  
 3 A. I don't know. I guess so.  
 4 248. Q. Do you know?  
 5 MR. MENDELZON: I don't know either. I  
 6 know the hockey player is Seguin, so...  
 7 BY MR. WOYCHESHYN:  
 8 249. Q. I know. You bought your cottage in  
 9 1992?  
 10 A. Yes.  
 11 250. Q. And that's something that you always  
 12 owned jointly with your wife.  
 13 A. Yes.  
 14 251. Q. And I think in 2004 you took out a  
 15 mortgage for around 1.85 million. Does that  
 16 sound right?  
 17 A. Yes, sounds right.  
 18 252. Q. And again, your mortgages are always  
 19 with Bank of Nova Scotia.  
 20 A. I believe so. I'm not -- I don't  
 21 remember as far as 2004, but could be.  
 22 253. Q. Have you been able to keep up with  
 23 the mortgage on the cottage?  
 24 A. Yes.  
 25 254. Q. So that is still in good standing.

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1 A. So far, yes.  
 2 255. Q. Do you know what the current balance  
 3 is on that mortgage?  
 4 A. You have it there in the list.  
 5 256. Q. That's true, I do.  
 6 A. The top three ones.  
 7 257. Q. So there's two mortgages, one  
 8 mortgage for \$546,881.39, the second mortgage for  
 9 \$171,213.81 and then is it a home equity line of  
 10 credit for \$244,259?  
 11 A. Yes.  
 12 258. Q. And do you remember when you took out  
 13 that second mortgage?  
 14 A. All those were taken at the same  
 15 time. My recollection is that the current  
 16 numbers that you have there have been paid off  
 17 since about 2007 or -8 which is when I -- as I  
 18 told you before, refinanced my properties on my  
 19 dad's request so he could help Margarita pay her  
 20 mortgages.  
 21 259. Q. Do you know what the estimated  
 22 current value of your cottage is?  
 23 A. I have no idea. I'm not in the real  
 24 estate business.  
 25 260. Q. How about your home?

1 A. I don't know. I don't look at the  
 2 markets. I'm not interested in buying or  
 3 selling, so I don't know. I have no idea.  
 4 261. Q. And I asked you about whether you  
 5 have any knowledge about an appraisal on your  
 6 home. Have you had a recent appraisal done on  
 7 your cottage?  
 8 A. No.  
 9 262. Q. And it looks like the taxes for your  
 10 cottage annually are just under \$13,000; does  
 11 that sound about right to you?  
 12 A. It could be. I'm not sure. I don't  
 13 remember but it sounds right.  
 14 263. Q. And are these property taxes paid at  
 15 the same time as your mortgage withdrawal is?  
 16 A. Yes.  
 17 264. Q. Okay. So where -- and your mortgage  
 18 payments on your cottage, are those made monthly?  
 19 A. Yes.  
 20 265. Q. So where is the money coming from to  
 21 make those mortgage payments?  
 22 A. It was coming from my joint account  
 23 and since it got frozen, then my wife is paying  
 24 from her savings or her personal savings.  
 25 266. Q. And is the address for the cottage

1 actually have a beneficial interest?  
 2 A. No. The only ownerships I have are  
 3 the shares of the Alberta company as you see and  
 4 the pref shares of Xela and those two properties,  
 5 the house and the cottage. That's the only thing  
 6 I have in that sense.  
 7 276. Q. Have you sold or transferred any  
 8 property in the past six years?  
 9 A. I didn't have any property before.  
 10 277. Q. And I take it that based on your  
 11 earlier answers, you don't lease, personally  
 12 lease any properties, real estate properties.  
 13 A. Real estate properties, no.  
 14 278. Q. Does your wife own any real estate  
 15 apart from her joint interest in the cottage and  
 16 the house at Gordon Road?  
 17 A. Not to my knowledge. I don't think  
 18 so.  
 19 279. Q. Did you help your children buy any of  
 20 their properties?  
 21 A. They all bought their own properties.  
 22 They pay their own mortgages. I may have helped  
 23 them from time to time when they are a little  
 24 short as far -- but I did not buy anything for  
 25 them.

1 174 Hammer Bay Road?  
 2 A. Yes.  
 3 267. Q. Other than your matrimonial home at 2  
 4 Gordon Road and your cottage in MacTier, do you  
 5 own any other real estate personally?  
 6 A. No.  
 7 268. Q. You have no vacation properties?  
 8 A. No.  
 9 269. Q. Do you have a timeshare?  
 10 A. No.  
 11 270. Q. No condominiums?  
 12 A. No.  
 13 271. Q. No farms?  
 14 A. No.  
 15 272. Q. Do you personally own any real estate  
 16 in Guatemala?  
 17 A. No.  
 18 273. Q. In Europe?  
 19 A. No.  
 20 274. Q. And nowhere else in the world that --  
 21 A. Nowhere else in the world. Those are  
 22 my only two properties.  
 23 275. Q. Do you have an interest in any other  
 24 properties anywhere in the world, that is,  
 25 whether you are not legally on title but you

1 280. Q. Okay. Andres, he owns a condo in the  
 2 Distillery District?  
 3 A. Correct.  
 4 281. Q. And do you know when he bought that?  
 5 A. When?  
 6 282. Q. Yes.  
 7 A. I don't know for sure, but at least  
 8 five years ago.  
 9 283. Q. And did you help him pay for that  
 10 condo?  
 11 A. Not that I remember. He's been  
 12 working for a very long time and making --  
 13 saving. He lives alone. He doesn't spend very  
 14 much. They are all independent. It's their  
 15 properties. It's their mortgages.  
 16 284. Q. If you do remember helping  
 17 financially Andres buy that condo, you will let  
 18 me know?  
 19 U/T A. Yes.  
 20 MR. MENDELZON: We'll do that within the  
 21 time frame of the date of the debt --  
 22 THE DEPONENT: As I said before, I may  
 23 helped them from time to time when they are a  
 24 little short of cash. That's as far as it goes.  
 25 They are independent.

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1 BY MR. WOYCHESHYN:  
 2 285. Q. Since October of 2015, have you  
 3 helped any of your children pay their -- any of  
 4 their debts?  
 5 A. No. In the case of my daughter,  
 6 Astrid, I was just supervising the payment of her  
 7 mortgage since she is living out of the country  
 8 and she got it sub-leased -- or rented her  
 9 apartment to a third party, but I was not  
 10 involved. My wife was doing that. We were not  
 11 paying for them.  
 12 286. Q. So that's the condo near Bloor and  
 13 Jarvis?  
 14 A. Yes.  
 15 287. Q. Is that 10 Charles Street East; does  
 16 that sound right?  
 17 A. I think so, yeah.  
 18 288. Q. So to understand your answer, you say  
 19 that while she was in -- abroad, you would  
 20 administer the payment of --  
 21 A. My wife would. But we were not  
 22 paying for her.  
 23 289. Q. She was paying her debts.  
 24 A. Yes. I just say that because I don't  
 25 want later to say that I was hiding something.

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1 I'm telling you everything as is.  
 2 290. Q. And your daughter Lisa, she owns a  
 3 property on King Street West?  
 4 A. No.  
 5 291. Q. No?  
 6 A. She doesn't own any property. She is  
 7 leasing a house.  
 8 292. Q. I see. She operates a -- is it a  
 9 pizza place with her husband?  
 10 A. Yeah.  
 11 293. Q. What vehicles do you drive?  
 12 A. I have a Porsche Panamera 2012, it's  
 13 a leased car.  
 14 294. Q. That's with MVL Leasing?  
 15 A. Yes.  
 16 295. Q. Is that the car you drove here today?  
 17 A. Yes.  
 18 296. Q. Any other vehicles that you drive?  
 19 A. That's the one I normally drive. I  
 20 have those other two you have the ownerships on  
 21 there but those are old cars.  
 22 297. Q. Yes.  
 23 A. One is a 1982 Porsche that I own  
 24 since new and it's worth very little but I like  
 25 the car very much.

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1 298. Q. This is the 928?  
 2 A. Yeah. And the other one is a BMW Z8  
 3 from 2001. And the third car I have, which I  
 4 don't have the certificate -- sorry, the  
 5 ownership with me, I couldn't find it, is a BMW  
 6 2002 TI from 1975. That was the first car I ever  
 7 owned and I -- recover it for almost nothing. So  
 8 it's just sentimental value.  
 9 299. Q. And you are going to look for that  
 10 permit for that third vehicle, that third BMW?  
 11 U/T MR. MENDELZON: Yes.  
 12 BY MR. WOYCHESHYN:  
 13 300. Q. So the three vehicles that you don't  
 14 use on a regular basis, where are they?  
 15 A. They are in storage at my friend from  
 16 MVL.  
 17 301. Q. Who is your friend?  
 18 A. Terry Koutsaris?  
 19 302. Q. Sorry, how do you say his last name?  
 20 A. Koutsaris.  
 21 303. Q. Koutsaris.  
 22 A. He is -- it's his leasing company and  
 23 he stores them for us or for me.  
 24 304. Q. Okay. So he stores the '82 Porsche,  
 25 the 2001 Z8 and the 1975 BMW?

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1 A. Yeah.  
 2 305. Q. And I take it he is the guy you lease  
 3 your other vehicles through.  
 4 A. Yeah.  
 5 306. Q. Do you have to pay for storage?  
 6 A. Yeah.  
 7 307. Q. How much do you pay to store your  
 8 vehicles?  
 9 A. I don't remember right now because  
 10 for a while he hasn't charged me for it because  
 11 I've been unable to pay.  
 12 308. Q. Do you know how much you owe him?  
 13 A. Not off the top of my head.  
 14 309. Q. Can you look at your records and let  
 15 me know?  
 16 A. Yeah.  
 17 310. Q. That's fine.  
 18 MR. MENDELZON: Sorry, what was the  
 19 undertaking?  
 20 B MR. WOYCHESHYN: To check the records  
 21 and see how much money is owed for the storage on  
 22 the vehicles --  
 23 U/T MR. MENDELZON: Yes, we can do that.  
 24 BY MR. WOYCHESHYN:  
 25 311. Q. Just so I'm clear, Mr. Koutsaris, is

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1 he preventing you from taking those vehicles out?  
 2 A. No.  
 3 312. Q. So he hasn't asserted a lien of any  
 4 sort against those vehicles?  
 5 A. No, not at all.  
 6 313. Q. Do you know the market value of your  
 7 three owned vehicles?  
 8 A. I have no idea. I don't know. I  
 9 have to check.  
 10 314. Q. The Z8, that's the vehicle that they  
 11 don't make anymore, right?  
 12 A. Correct. Well, none of the three are  
 13 made anymore. They are old cars.  
 14 315. Q. Right. But the Z8, my understanding,  
 15 I'm not a vehicle connoisseur by any stretch of  
 16 the imagination, but they are -- that vehicle,  
 17 you would agree with me, has a value of over a  
 18 hundred thousand dollars?  
 19 A. It's possible. I have no idea.  
 20 316. Q. And the Porsche Panamera that you  
 21 drive is 2012. What are your lease payments?  
 22 A. I don't remember off the top of my  
 23 head exactly but it's about a thousand dollars a  
 24 month.  
 25 317. Q. How long have you been leasing that

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1 vehicle?  
 2 A. Since new and we still have about a  
 3 year-and-a-half to go.  
 4 318. Q. If you can review your records and  
 5 let me know what the actual monthly payments are.  
 6 U/T MR. MENDELZON: Yes, we can do that.  
 7 MR. WOYCHESHYN: And a copy of the lease  
 8 agreement, please.  
 9 U/T MR. MENDELZON: We'll search if we have it  
 10 and produce it if we find it.  
 11 BY MR. WOYCHESHYN:  
 12 319. Q. Are you current on that lease?  
 13 A. Yes.  
 14 320. Q. And the payments, how do you make  
 15 those payments?  
 16 A. The last couple of payments were done  
 17 by my wife.  
 18 321. Q. From her savings. Yes?  
 19 A. Yes.  
 20 322. Q. What about a 2013 Mini Cooper?  
 21 A. That's my son Thomas' car.  
 22 323. Q. You don't lease that?  
 23 A. I've been paying the lease for that  
 24 car, yes.  
 25 324. Q. How long have you been paying the

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1 lease for that?  
 2 A. A couple of years, I think.  
 3 325. Q. That's also with MVL?  
 4 A. Yes.  
 5 326. Q. Is that lease in good standing?  
 6 A. Yes.  
 7 327. Q. And how are you making those  
 8 payments?  
 9 A. I was doing it from my joint account  
 10 and by then my wife was paying it from her  
 11 savings.  
 12 328. Q. If I can get a copy of -- I'll ask  
 13 for a copy of the lease agreement for that 2013  
 14 Mini Cooper and in the alternative, a breakdown  
 15 of the term and monthly payments on that lease,  
 16 please.  
 17 U/A MR. MENDELZON: I'll take that under  
 18 advisement.  
 19 BY MR. WOYCHESHYN:  
 20 329. Q. What about a 2013 Audi A4?  
 21 A. We don't have -- that was my daughter  
 22 Astrid's car. That lease, it was terminated.  
 23 The car was returned.  
 24 330. Q. When was it returned?  
 25 A. I don't remember.

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1 331. Q. Past year, two years?  
 2 A. Probably more than that because my  
 3 daughter has been living abroad for the last  
 4 two-and-a-half years or three.  
 5 332. Q. I thought she -- is she back  
 6 teaching?  
 7 A. No. She is teaching in London.  
 8 333. Q. I see. 2012 Audi SUV?  
 9 A. Yeah. That's the lease.  
 10 334. Q. Okay. Who is that leased to?  
 11 A. Same, same company. Exactly the same  
 12 arrangement.  
 13 335. Q. But is it for one of your children?  
 14 A. No. That was my wife's car.  
 15 336. Q. You said "was".  
 16 A. Well, it is my wife's car.  
 17 337. Q. Okay. So that's a vehicle she still  
 18 drives?  
 19 A. Yes. We actually share the car,  
 20 so...  
 21 338. Q. So in terms of I'll say that your  
 22 family everyday use car is you have the 2012 Audi  
 23 SUV and the 2012 Porsche Panamera, right?  
 24 A. Yes, yes.  
 25 339. Q. Is that lease on the 2012 Audi SUV in

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1 good standing?  
 2 A. Yes.  
 3 340. Q. Same answer, the payments used to  
 4 come from your joint account but now are coming  
 5 from Wencke's savings?  
 6 A. Yes, it's the same answer.  
 7 341. Q. And same request for a copy of the  
 8 lease agreement for that 2012 Audi SUV,  
 9 alternatively a copy of -- or details of the  
 10 monthly lease payments and the term, please?  
 11 U/A MR. MENDELZON: We'll take that under  
 12 advisement.  
 13 BY MR. WOYCHESHYN:  
 14 342. Q. The Mini Cooper, where is that  
 15 stored?  
 16 A. That's my car -- my son Thomas' car.  
 17 343. Q. So it's at his place?  
 18 A. He drives it. It's at his place.  
 19 344. Q. You don't drive it at all.  
 20 A. No.  
 21 345. Q. I'll also ask for the VIN for both  
 22 the 2013 Mini Coop -- or, pardon me, the 2012  
 23 Audi SUV.  
 24 U/A MR. MENDELZON: I'll take that under  
 25 advisement.

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1 BY MR. WOYCHESHYN:  
 2 346. Q. Does your wife own or lease any  
 3 vehicle herself personally?  
 4 A. No.  
 5 MR. MENDELZON: Sorry, counsel, I think  
 6 the evidence given was that she leases the Audi  
 7 SUV.  
 8 BY MR. WOYCHESHYN:  
 9 347. Q. I think the lease is in your name.  
 10 A. I think the lease is in my name but  
 11 she pays for it.  
 12 348. Q. Any other vehicles that you own,  
 13 lease or use?  
 14 A. I own two boats.  
 15 349. Q. Are they motorboats?  
 16 A. Motorboats. One is a Sea-Doo.  
 17 350. Q. Yes. What year?  
 18 A. I can't remember. It's probably  
 19 somewhere between five and ten years old. I  
 20 can't remember the year we got it.  
 21 351. Q. Okay.  
 22 A. And the other one is a Ski Boat  
 23 Mastercraft 20 footer. It's at least 10 or 12  
 24 years old.  
 25 352. Q. Okay. Those you keep up at the

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1 cottage?  
 2 A. Yes.  
 3 353. Q. Do you know the models of them, of  
 4 the Sea-Doo?  
 5 A. I don't know off the top of my head.  
 6 I don't remember.  
 7 354. Q. Do you know what the value of those  
 8 boats are?  
 9 A. I have no idea. They are getting  
 10 older. I have no idea.  
 11 355. Q. Do you still use them?  
 12 A. From time to time when we are at the  
 13 cottage, yeah.  
 14 356. Q. Are they stored in a boathouse?  
 15 A. Yes.  
 16 357. Q. Do you owe any money on those boats?  
 17 A. No.  
 18 358. Q. If I can get an undertaking for the  
 19 details of the make, year and model and any other  
 20 identifying information of those boats, can I  
 21 have that, please?  
 22 U/T MR. MENDELZON: Yes, we can do that.  
 23 BY MR. WOYCHESHYN:  
 24 359. Q. Any other recreational vehicles?  
 25 A. Couple of plastic kayaks, a canoe,

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1 bicycle.  
 2 360. Q. Snowmobiles?  
 3 A. No.  
 4 361. Q. Any tractors?  
 5 A. No. I have a lawnmower.  
 6 362. Q. No private airplanes?  
 7 A. No private airplanes. Never owned  
 8 one.  
 9 363. Q. Did you ever lease one?  
 10 A. Never.  
 11 364. Q. How about motorcycles?  
 12 A. Never had one.  
 13 365. Q. So you have two motorboats, plastic  
 14 kayaks. No sailboat?  
 15 A. No sailboat. A windsurfer if that  
 16 qualifies as a vehicle. I haven't used it in  
 17 more than 12 years.  
 18 366. Q. I know that windsurfing gear can be  
 19 actually quite expensive. My father-in-law is a  
 20 big windsurfer. And have you owned any other  
 21 boats in the past six years?  
 22 A. Not in the past six years.  
 23 367. Q. Do you want to take a ten minute  
 24 break there.  
 25 MR. MENDELZON: Sure.



1 --- Short recess at 11:26 a.m.  
 2 --- Upon resuming at 11:43 a.m.  
 3 BY MR. WOYCHESHYN:  
 4 368. Q. Mr. Gutierrez, you acknowledge you  
 5 are still under oath?  
 6 A. Yes.  
 7 369. Q. Before the break, we were talking  
 8 about the -- when your father came to you and  
 9 asked that you mortgage your real estate to help  
 10 pay for Margarita's real estate. Do you remember  
 11 that?  
 12 A. Yes, I do.  
 13 370. Q. My understanding is that to protect  
 14 the credit facility that Xela had, that is the  
 15 overdraft on that credit facility, Margarita's  
 16 house was used as collateral or security for that  
 17 overcharge -- overdraft protection and that at  
 18 some point when Ricardo left, that that  
 19 collateral shifted from Margarita and Ricardo's  
 20 house to your house. Does that sound right to  
 21 you or is that different than your recollection?  
 22 A. That's different than my recollection  
 23 but I don't know exactly what her house was  
 24 guaranteeing. All I know is that she had a  
 25 mortgage on her property and my father asked me

1 you are the sole employee of Xela.  
 2 A. Yeah.  
 3 376. Q. You agree with me.  
 4 A. Yes.  
 5 377. Q. When --  
 6 A. I think it's -- I'm not a hundred  
 7 percent sure but I think there's one other person  
 8 still in Xela's payroll, but it's a temporary  
 9 thing because Xela is no longer operating.  
 10 MR. MENDELZON: And, counsel, you will  
 11 have your opportunity to ask questions about Xela  
 12 when -- at the examination of Calvin Shields.  
 13 BY MR. WOYCHESHYN:  
 14 378. Q. Do you know when Thomas or Andres  
 15 stopped being employees?  
 16 A. I don't remember that.  
 17 379. Q. More than two years ago?  
 18 A. No, that would have been last year.  
 19 380. Q. Just so I'm clear, my notes say that  
 20 your evidence on your bank accounts is the only  
 21 chequing or savings bank account that you have is  
 22 with TD Canada Trust.  
 23 A. Yes, that's correct.  
 24 381. Q. And that's owned jointly with Wencke?  
 25 A. That's correct.

1 to mortgage mine and my understanding is that  
 2 that money was used to free her property and  
 3 that's as far as I can tell you because I don't  
 4 know more than that. That was my dad's dealing  
 5 with Margarita.  
 6 371. Q. That was a private deal between your  
 7 father and Margarita.  
 8 A. Yes. But the fact is still the same,  
 9 I have this mortgage to help her.  
 10 372. Q. I understand.  
 11 A. Doesn't matter what the conditions of  
 12 that mortgage were or the reasons, it's still the  
 13 same fact. I had no responsibility on doing that  
 14 and I did that in goodwill.  
 15 373. Q. Okay.  
 16 A. And I regret it today, I have to say  
 17 that.  
 18 374. Q. And earlier you mentioned how all  
 19 four of your children are independent. Lisa  
 20 works abroad -- sorry, Lisa has the pizza place  
 21 with her husband. Astrid works abroad. Do  
 22 either Thomas or Andres work for Xela?  
 23 A. They used to work for Xela, but now  
 24 I'm the only one in Xela.  
 25 375. Q. Okay. So as of today, Xela is a --

1 382. Q. No other bank accounts in Ontario?  
 2 A. Not in Ontario or anywhere else.  
 3 383. Q. Anywhere in the world.  
 4 A. Anywhere in the world.  
 5 384. Q. Do you know what the current balance  
 6 is in the joint account at TD?  
 7 A. It's approximately 70,000 in red. I  
 8 have an overdraft facility on it.  
 9 385. Q. Do you remember when the last time  
 10 you drew a cheque on that? Actually, let me back  
 11 up. Is it within its overdraft limit or is it  
 12 beyond its overdraft --  
 13 A. It's within its overdraft limit.  
 14 386. Q. Okay. And what is the overdraft  
 15 limit?  
 16 A. One hundred thousand.  
 17 387. Q. And is that overdraft limit secured  
 18 against any asset?  
 19 A. I don't think so. I don't remember  
 20 for sure. It's been in place for so long, I  
 21 don't remember the guarantee.  
 22 388. Q. So because you still have 30,000 in,  
 23 I'll call it, available overdraft credit, are you  
 24 still drawing down on that joint account?  
 25 A. I can't because you froze my account.

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1 389. Q. So as of --  
 2 A. It's the only account I have and it's  
 3 been frozen by you.  
 4 390. Q. And as of --  
 5 A. That's all I can tell you.  
 6 391. Q. As of today, the sole source of  
 7 day-to-day financing comes from your wife's  
 8 savings.  
 9 A. Yes.  
 10 392. Q. Nothing else.  
 11 A. Nothing else.  
 12 393. Q. In terms of her savings, is that  
 13 savings that she had before you were married?  
 14 A. That's her savings.  
 15 394. Q. Right.  
 16 A. It's her issue. I don't get into her  
 17 personal stuff. It's her savings.  
 18 395. Q. But did she have those savings before  
 19 you married her?  
 20 A. I don't know. I don't think so.  
 21 396. Q. Do those savings form -- contain any  
 22 gifts that you gave her over the course of your  
 23 marriage?  
 24 A. I suppose. I don't know.  
 25 397. Q. Did you gift her money in the past

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1 two years?  
 2 A. We always live together. We share  
 3 everything, you know. So I don't know -- she has  
 4 some savings. Her father also passed away. I  
 5 don't know the exact source. All I can tell you  
 6 is they are almost gone anyway because that's  
 7 what we are living from and we have to buy the  
 8 food and we have to pay the mortgages and try to  
 9 stay alive and that's all we have.  
 10 398. Q. Since October --  
 11 A. There's nothing else.  
 12 399. Q. Since October 2015 to date, have you  
 13 transferred any funds from your joint account  
 14 with your wife to your wife's savings account?  
 15 A. Not into her savings account, no.  
 16 400. Q. Does she have just one savings  
 17 account?  
 18 A. I don't know. I don't know -- I  
 19 don't handle her account.  
 20 401. Q. Right. But that's what you are  
 21 living off of right now.  
 22 A. Yes. She is paying, she is paying  
 23 for our expenses.  
 24 402. Q. And you don't know whether she has  
 25 one account or more than one account?

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1 A. Why should I know? It's her account.  
 2 403. Q. You've been married for close to 40  
 3 years?  
 4 A. Close to.  
 5 404. Q. And your evidence is that you don't  
 6 know how many savings accounts she has.  
 7 A. I assume she only has one as far as I  
 8 know but I don't know. I cannot tell you what  
 9 I'm not firsthand witness, right. I have to say  
 10 what I have knowledge of.  
 11 405. Q. In terms of spending cash, how do you  
 12 have spending cash?  
 13 A. I haven't been spending cash. All  
 14 I've been doing is charging to my credit card for  
 15 gasoline, groceries. Very limited.  
 16 406. Q. So you don't take out money from any  
 17 source?  
 18 A. No.  
 19 407. Q. That is cash?  
 20 A. No. I don't use any cash. I pay  
 21 everything through my credit card.  
 22 408. Q. Now, in the period October 2015 to  
 23 date, did you gift any money to your wife Wencke?  
 24 A. No.  
 25 409. Q. None whatsoever?

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1 A. I didn't give her any cheques or  
 2 anything that she would put in her account or  
 3 anything, no. I only pay the expenses.  
 4 410. Q. Do you know if Xela did?  
 5 A. Xela didn't as far as I know because  
 6 -- you have to ask Xela for that.  
 7 411. Q. You said earlier that your wife's  
 8 savings are almost gone. How do you know that?  
 9 A. Well, because she's concerned that we  
 10 don't have very much more time to go unless we  
 11 find some other source of income.  
 12 412. Q. And did she tell you how much is left  
 13 in her savings?  
 14 A. No.  
 15 413. Q. And your best evidence is you don't  
 16 know where or how she accumulated her savings.  
 17 A. No. I only tell you what I know. So  
 18 I already answered your questions. So you want  
 19 me to invent something, then keep asking the same  
 20 question. I only know what I know.  
 21 414. Q. No. I'm just puzzled, sir, that you  
 22 have no idea where your wife accumulated savings  
 23 that you are now living off of.  
 24 A. It's from money from way in the past,  
 25 you know.

1 415. Q. From where?  
 2 A. I don't know. I already told you the  
 3 answer.  
 4 416. Q. And that is that you don't know.  
 5 A. I'm not -- I don't know for sure. I  
 6 can't tell you what I don't know for sure.  
 7 417. Q. I'd like you to provide me with  
 8 Wencke's personal bank account numbers or any  
 9 bank accounts held in her name in Ontario.  
 10 R/F MR. MENDELZON: That's refused.  
 11 MR. WOYCHESHYN: And the current balances  
 12 in any of her personal accounts in Ontario.  
 13 R/F MR. MENDELZON: That's also refused.  
 14 BY MR. WOYCHESHYN:  
 15 418. Q. When you told me earlier that you  
 16 would assist your children from time to time with  
 17 paying their debts, would that happen by way of  
 18 transferring money directly into their accounts?  
 19 A. Possibly, yes. Depends on the  
 20 circumstances, and we are talking in the past.  
 21 419. Q. Sometimes you would write a cheque,  
 22 sometimes you would make a transfer?  
 23 A. Depending what it is and it was  
 24 always small amounts.  
 25 420. Q. Small amounts being, what, less than

1 access to one that belonged to the company but  
 2 that was years ago. I don't have any safety  
 3 deposit boxes at all.  
 4 424. Q. I'll ask some questions about any  
 5 investments you have. Do you have any RSPs?  
 6 A. I do.  
 7 425. Q. With what bank?  
 8 A. TD, I think it's called TD Waterhouse  
 9 or something like that.  
 10 426. Q. Yes. Do you deal with a particular  
 11 broker or investment advisor?  
 12 A. Yes.  
 13 427. Q. Who is that?  
 14 A. Scott Lawrence.  
 15 428. Q. Does he work downtown here?  
 16 A. Yes.  
 17 429. Q. What's the current balance of your  
 18 RSPs?  
 19 A. It's approximately 540,000, I  
 20 believe. I don't know the exact number but in  
 21 that neighbourhood.  
 22 430. Q. If you can give me the precise  
 23 current number, please.  
 24 U/T MR. MENDELZON: Yes, we can do that.  
 25 BY MR. WOYCHESHYN:

1 a thousand?  
 2 A. Could be or it could be a little  
 3 more. It depends on the circumstance. And this  
 4 is over all their lives, since they've been  
 5 adults. I can't tell you with precision.  
 6 421. Q. None of those transfers happened in  
 7 the last two years?  
 8 A. It's possible that it happened in the  
 9 last two years but it hasn't happened since my  
 10 account has been frozen, and as I said, it's only  
 11 been to cover for emergencies or things they  
 12 actually need.  
 13 MR. WOYCHESHYN: I think I may have asked  
 14 for this, and if I have, I'd like an undertaking  
 15 for any transfers of funds made from Mr.  
 16 Gutierrez to any of his children from October  
 17 2015 to date.  
 18 U/T MR. MENDELZON: We can do that.  
 19 BY MR. WOYCHESHYN:  
 20 422. Q. Do you have access to any safety  
 21 deposit boxes?  
 22 A. No.  
 23 423. Q. All right. Have you ever had access  
 24 to a safety deposit box?  
 25 A. Not personally. I used to have

1 431. Q. When is the last time you made a  
 2 contribution to your RSP account?  
 3 A. I don't remember. Way in the past.  
 4 I don't remember. I have to go and check. It  
 5 wasn't this year or last year.  
 6 432. Q. All right. Can you advise me the  
 7 last date that a contribution was made?  
 8 U/T MR. MENDELZON: Yes.  
 9 BY MR. WOYCHESHYN:  
 10 433. Q. And I take it that the source of the  
 11 funds used to contribute to your RSP came from  
 12 your salary at Xela?  
 13 A. Yes.  
 14 434. Q. Do you own any mutual funds?  
 15 A. No. Only what's in the RSP, nothing  
 16 else.  
 17 435. Q. And I take it no RESPs given that  
 18 your children are now done school.  
 19 A. What, sorry?  
 20 436. Q. RESPs, it's a Registered Education  
 21 Savings Plan.  
 22 A. No.  
 23 437. Q. How about TFSAs, Tax Free Savings  
 24 Accounts.  
 25 A. I don't have any.

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1 438. Q. Guaranteed Investment Certificates or  
 2 GICs?  
 3 A. I don't have any.  
 4 439. Q. Any term deposits?  
 5 A. None.  
 6 440. Q. Would you agree with me that your  
 7 most valuable asset that you have is your  
 8 interest in the Alberta holding company that  
 9 holds the preference shares in Xela?  
 10 A. Probably, yes.  
 11 441. Q. And those preference shares really  
 12 have value only if Avicola pays what is owed to  
 13 Lisa; is that a fair summary?  
 14 A. I think at this time it is fair to  
 15 say that.  
 16 442. Q. A-V-I-C-O-L-A. Where are Lisa's  
 17 shares in Avicola held?  
 18 MR. MENDELZON: Sorry, I'm not sure how  
 19 that question relates to his personal assets and  
 20 liabilities for the purpose of an examination in  
 21 aid of execution.  
 22 MR. WOYCHESHYN: Because it's -- his most  
 23 valuable asset is an interest in those shares  
 24 indirectly owned, right?  
 25 MR. MENDELZON: If you want to ask him

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1 about his personal assets in which shares he  
 2 personally owns and where those are, you can ask  
 3 those questions. Beyond that, I think you are  
 4 going outside the scope of your examination.  
 5 BY MR. WOYCHESHYN:  
 6 443. Q. Do you know where Lisa's shares in  
 7 Avicola are?  
 8 A. Where they physically are?  
 9 444. Q. Yes.  
 10 A. At this moment, I don't.  
 11 445. Q. Where is the last place that you knew  
 12 them to be?  
 13 A. At a lawyer's office.  
 14 446. Q. At Juan Rodriguez?  
 15 A. Yes.  
 16 447. Q. In Miami?  
 17 A. Yeah.  
 18 448. Q. Do you get personal investment or  
 19 brokerage statements from Mr. Lawrence, that is,  
 20 sort of monthly, here is how you are --  
 21 A. I'm paperless. I don't get -- I  
 22 don't get papers all the time. And so I have to  
 23 access through the Internet or I'll ask him.  
 24 449. Q. If I can get your personal investment  
 25 statements/brokerage statements. What I'm

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1 looking for is the performance of the RSP over  
 2 the past three years, please.  
 3 U/A MR. MENDELZON: I'll take that under  
 4 advisement.  
 5 BY MR. WOYCHESHYN:  
 6 450. Q. Any bonds? Do you own any bonds?  
 7 A. No.  
 8 451. Q. Are you a mortgagee, that is, you  
 9 have, not borrowed, but are the financier, that  
 10 is, you have a charge as a mortgagee on any  
 11 property?  
 12 A. What does that mortgagee means?  
 13 452. Q. So you are like the bank, you have  
 14 loaned money but you have a security interest in  
 15 a property.  
 16 A. I don't have anything like that.  
 17 453. Q. Okay. Any IOUs, that is, promises to  
 18 pay you?  
 19 A. To pay me, no.  
 20 454. Q. Any other loan agreements where you  
 21 are owed money by someone?  
 22 A. No.  
 23 455. Q. Do you have a big screen TV?  
 24 A. Depending what you call a big screen.  
 25 I have a TV. A normal size TV today is 45 inch

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1 or something.  
 2 456. Q. That's how big yours is, 45 inches?  
 3 A. Probably 45, around that.  
 4 457. Q. When did you buy that?  
 5 A. I don't know, three years ago maybe.  
 6 458. Q. Do you own -- do you owe money on any  
 7 of your household items, that is, your  
 8 appliances, your furniture?  
 9 A. Everything we have has been in the  
 10 house for ten years or more. We don't owe  
 11 anything.  
 12 459. Q. So you didn't -- you didn't -- when  
 13 you bought them, they are now fully paid off.  
 14 A. Yeah.  
 15 460. Q. Everything in your house is fully  
 16 paid.  
 17 A. Yes.  
 18 461. Q. And in the past five years, have you  
 19 replaced any major appliances like your  
 20 refrigerator, your stove, washer and dryer?  
 21 A. Not that I know. I don't think so.  
 22 462. Q. Do you have a stereo system?  
 23 A. I have an iPod -- iPad or whatever  
 24 it's called. If you want, I can give you, I have  
 25 a couple of very old stereos from the 1980s.

1 463. Q. With a record player?  
 2 A. I have a record player.  
 3 464. Q. Eight-track?  
 4 A. No 8-track but I have a cassette  
 5 player. Not useful then.  
 6 465. Q. Nostalgic. Do you have any -- do you  
 7 or your wife have any fur coats?  
 8 A. No. I don't have any fur coats.  
 9 466. Q. Dealing with you, I notice you are  
 10 not wearing any jewellery. Do you own any  
 11 jewellery such as watches or rings?  
 12 A. I hate jewellery. I don't have any.  
 13 467. Q. You don't have a Rolex watch?  
 14 A. No.  
 15 468. Q. What about rings, do you wear a  
 16 wedding band?  
 17 A. I have a wedding band but I don't  
 18 wear it. I can't stand it. Actually, it doesn't  
 19 fit on my finger anymore. I broke my fingers  
 20 playing sports, so they don't go in.  
 21 469. Q. Okay. Any other jewellery besides  
 22 your wedding band that you have?  
 23 A. No. I think I have a little pen --  
 24 one of those things that my grandmother gave me  
 25 when I was born. Somewhere in storage.

1 470. Q. Like a baptismal --  
 2 A. One of those little --  
 3 471. Q. A cross or crucifix?  
 4 A. It's not a crucifix. It's like a  
 5 virgin or something. Like little. How do you  
 6 call those metals, tiny little thing. I got when  
 7 I was baptized.  
 8 472. Q. With the Blessed Virgin Mary. Okay.  
 9 Do you own any gold bars?  
 10 A. No.  
 11 473. Q. Any collections of silver?  
 12 A. No.  
 13 474. Q. In your house, do you have any art?  
 14 A. My wife is an artist. So she's got a  
 15 lot of paintings she's done and any art we have,  
 16 it's hers. Nothing of great value if that's what  
 17 you want to know. There's nothing of great  
 18 value. We don't spend money on those things.  
 19 475. Q. What would be great value in your  
 20 mind in terms of art?  
 21 A. Anything over 2- or \$3,000.  
 22 476. Q. Okay. How many pieces of art, again  
 23 based on your best evidence, would you have over  
 24 a thousand dollars in your house?  
 25 A. Over a thousand dollars? I don't

1 know. A couple maybe.  
 2 477. Q. Can I get the details of those,  
 3 please?  
 4 U/T MR. MENDELZON: Yes.  
 5 BY MR. WOYCHESHYN:  
 6 478. Q. How about in the cottage, do you have  
 7 any art in the cottage?  
 8 A. Yeah. Some art in the cottage. Some  
 9 is done by my wife. Others we bought from local  
 10 painters. Nothing of significance.  
 11 479. Q. Anything over a thousand dollars per  
 12 unit?  
 13 A. I never pay more than that for  
 14 anything that I have there.  
 15 480. Q. And up in the cottage, do you have a  
 16 big screen TV?  
 17 A. No.  
 18 481. Q. Any recent renovations up in the  
 19 cottage?  
 20 A. No.  
 21 482. Q. Any new appliances in the past two  
 22 years?  
 23 A. No.  
 24 483. Q. Do you have any special collectibles  
 25 or do you have a wine cellar anywhere?

1 A. No wine cellar.  
 2 484. Q. Any liquor collection?  
 3 A. No.  
 4 485. Q. Coin, stamps?  
 5 A. No coins.  
 6 486. Q. What about model cars?  
 7 A. I have maybe 10, 15 little cars like  
 8 this but that's it.  
 9 487. Q. Okay. Were those from your father?  
 10 A. No.  
 11 488. Q. These are separate?  
 12 A. Yeah.  
 13 489. Q. And just so I'm clear, are they sort  
 14 of those six to eight inch model cars or are they  
 15 the little two to three inch Tonka cars?  
 16 A. I have a couple of each size. I have  
 17 the cars I owned.  
 18 490. Q. I see.  
 19 A. That's it.  
 20 491. Q. My dad has the same thing actually.  
 21 Do you know what the value of those collectibles  
 22 are?  
 23 A. Hundred bucks. Two hundred bucks  
 24 maybe. I have no idea. I don't have a  
 25 collection. I just have a few things there, not

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1 a collection per se.  
 2 492. Q. I take it you don't own any guns?  
 3 A. No guns.  
 4 493. Q. Did you or have you received any  
 5 bequests from your father's estate since his  
 6 passing other than the shares that we talked  
 7 about?  
 8 A. I haven't received anything from the  
 9 estate. The estate is not resolved yet as far as  
 10 I know. I have not received anything from it.  
 11 494. Q. Do you own any life insurance  
 12 policies?  
 13 A. I used to.  
 14 495. Q. No longer active?  
 15 A. No. We -- I had to cash them out to  
 16 survive.  
 17 496. Q. When did you cash them out?  
 18 A. Over the last few years.  
 19 497. Q. Within the last year or within the  
 20 last two years?  
 21 A. I have to check my records because  
 22 I'm not sure exactly when but it's been over the  
 23 last few years. I had two or three insurance.  
 24 498. Q. Can you give me -- review your  
 25 records and let me know when you did cash out

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1 those life insurance policies, please?  
 2 U/T MR. MENDELZON: Yes, we can do that.  
 3 BY MR. WOYCHESHYN:  
 4 499. Q. And what the value of them was when  
 5 they were cashed out?  
 6 U/T MR. MENDELZON: Yes.  
 7 BY MR. WOYCHESHYN:  
 8 500. Q. So you are not paying any life  
 9 insurance premiums right now.  
 10 A. No.  
 11 501. Q. Did you also carry life insurance on  
 12 Wencke?  
 13 A. She has her own policy.  
 14 502. Q. And she makes the payments on her --  
 15 from her savings?  
 16 A. Yes. Now it is done that way.  
 17 Before it used to be from our joint account.  
 18 503. Q. And did she ever contribute to the  
 19 joint account or was it basically your share --  
 20 A. Basically me, yeah.  
 21 504. Q. If I can get details on that life  
 22 insurance policy that Wencke has.  
 23 U/A MR. MENDELZON: I'll take that under  
 24 advisement.  
 25 MR. WOYCHESHYN: And just for the record,

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1 I'd like to know the name of the insurance  
 2 company, the policy number, the amount of the  
 3 policy, the beneficiaries, the cash surrender  
 4 value and the premiums.  
 5 U/A MR. MENDELZON: Okay. Under advisement.  
 6 BY MR. WOYCHESHYN:  
 7 505. Q. Did you also carry any life insurance  
 8 for any of your children?  
 9 A. I don't.  
 10 506. Q. Did you before?  
 11 A. No.  
 12 507. Q. Did you carry life insurance on  
 13 behalf of anybody else?  
 14 A. No.  
 15 508. Q. Now, I asked you before whether there  
 16 was any -- whether you were owed any monies  
 17 either under a loan agreement or under an IOU.  
 18 Outside of the monies that you were owed as part  
 19 of the action that we talked about earlier this  
 20 morning, does anybody else owe you money?  
 21 A. No.  
 22 509. Q. Do you have a will?  
 23 A. Yes, I do.  
 24 510. Q. When was it last updated?  
 25 A. I can't remember for sure. Five

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1 years or more.  
 2 511. Q. I'd like a copy of it, please.  
 3 U/A MR. MENDELZON: It's under advisement.  
 4 BY MR. WOYCHESHYN:  
 5 512. Q. You are a member of the Granite Club?  
 6 A. Yes.  
 7 513. Q. And is that a club that you buy in,  
 8 that is, you have to invest in the equity when  
 9 you first become a member?  
 10 A. You have to pay a big amount of money  
 11 when you enter. Now, we entered the club in  
 12 1992, if I'm not mistaken of the year, around  
 13 there, so it was much less than now.  
 14 514. Q. Do you remember how much it was?  
 15 A. I don't remember. Maybe 20 grand or  
 16 something. Now it's much more, but if you leave,  
 17 you don't get money back. I can assure you that.  
 18 515. Q. It's a one-way street?  
 19 A. It's a one-way street.  
 20 516. Q. Do you have to spend a certain amount  
 21 of money every month or every year to continue  
 22 your membership?  
 23 A. You pay an annual fee for membership  
 24 and then you pay what you spend.  
 25 517. Q. What is the annual fee at the Granite

1 Club that you pay?  
 2 A. I don't know off the top of my head  
 3 but I think it's probably around 4,000 bucks or  
 4 something between my wife and I.  
 5 518. Q. Per year.  
 6 A. Per year. Then plus we spend.  
 7 519. Q. When you say plus what you spend,  
 8 that would be if you have a meal at the  
 9 restaurant.  
 10 A. A meal at the restaurant, if you buy  
 11 something at the clothing store that they have  
 12 there for sports like a tennis ball or something.  
 13 520. Q. And I take it that the payments for  
 14 that Granite Club membership used to come from  
 15 your joint account?  
 16 A. Yes.  
 17 521. Q. And now your wife is paying them from  
 18 her savings?  
 19 A. Yes.  
 20 522. Q. Are you a member of ClubLink?  
 21 A. Yes.  
 22 523. Q. That's a golf club membership, as I  
 23 understand, that lets you golf at various golf  
 24 courses?  
 25 A. Yes, that's true.

1 524. Q. Is that also something that you have  
 2 to buy in and then pay regular payments to?  
 3 A. It's very similar, yes.  
 4 525. Q. And when you leave, you don't get  
 5 money back?  
 6 A. As far as I know you don't.  
 7 526. Q. Okay. When did you join the  
 8 ClubLink?  
 9 A. When the Rocky Crest go up near my  
 10 cottage, that would be early mid-'90s.  
 11 527. Q. And what's the annual fee that you  
 12 pay there?  
 13 A. I think it's somewhere around 9,000  
 14 or something like that per year.  
 15 528. Q. Same answer as before, I take it that  
 16 until recently, you would pay that membership out  
 17 of your joint account and now your wife is paying  
 18 it from her savings?  
 19 A. Well, it's actually charged to one of  
 20 my credit cards.  
 21 529. Q. I see. So right now you --  
 22 A. And then I used to pay the credit  
 23 card. Now my wife pays it.  
 24 530. Q. But the accounts at -- your accounts  
 25 at the Granite Club and ClubLink are both still

1 in good standing?  
 2 A. Yes, they are.  
 3 531. Q. Any other memberships that you still  
 4 maintain?  
 5 A. No. Does Netflix count as a  
 6 membership?  
 7 532. Q. I don't think so. Now, we know from  
 8 the prior litigation that you used to have to  
 9 provide personal guarantees to support the  
 10 operating lines of Fresh Quest. I take it  
 11 because Fresh Quest no longer operates, you no  
 12 longer have to provide those guarantees; is that  
 13 right?  
 14 A. Not to Fresh Quest.  
 15 533. Q. Not to Fresh Quest. Are you a  
 16 guarantor on any other financing for any other  
 17 company?  
 18 A. Yes, I am.  
 19 534. Q. Okay. Who are you the guarantor for?  
 20 A. Guarantee some loans in Guatemala for  
 21 the farm company. The farming company.  
 22 535. Q. Is that Nobleza?  
 23 A. It would be -- I'm not a hundred  
 24 percent sure on my memory but I think the debtor  
 25 is La Floresta Crops, I believe, or Nayacrops,

1 one of those. I'm a co-guarantor of the loans  
 2 they have.  
 3 536. Q. And when did you first become a  
 4 guarantor?  
 5 A. Since the loans exist.  
 6 537. Q. And you have to do it on an annual  
 7 basis?  
 8 A. When the loans either expire or the  
 9 company renegotiates the terms of the contracts.  
 10 538. Q. And when you serve as a guarantor for  
 11 the farm in Guatemala, do you have to do a  
 12 personal net worth statement?  
 13 A. Not really. They just ask me  
 14 questions. I answer all their questions, fill  
 15 out their forms. The reason is they -- the  
 16 reason for that is because they are guaranteed by  
 17 the land, their mortgages, and they demand that  
 18 representative of the ultimate beneficiary which  
 19 is Xela and me as president of Xela, they need me  
 20 to sign as a co-guarantor, otherwise, they would  
 21 not approve the loans. Similar thing that we had  
 22 in Florida with the Fresh Quest land.  
 23 539. Q. Right. Well, the bank down in  
 24 Guatemala, is the form that you fill out similar  
 25 to the form that you used to have to fill out for

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1 International Finance Bank?  
 2 A. No, it's different.  
 3 540. Q. So your evidence --  
 4 A. They have completely different set of  
 5 documentation.  
 6 541. Q. So you don't have to submit a form to  
 7 the bank as a guarantor describing your assets  
 8 and liabilities.  
 9 A. No.  
 10 542. Q. You agree with me.  
 11 A. As far as I know, no. Our finance  
 12 guys over there fill up all the forms and all I  
 13 have to do is go sign the contract at the end.  
 14 MR. WOYCHESHYN: If there is any personal  
 15 net worth statement or a similar document that  
 16 Mr. Gutierrez has prepared for the bank in  
 17 Guatemala in the past two years or for any other  
 18 financial institution where he lists his assets  
 19 and liabilities, I'd like to see a copy of that.  
 20 U/T MR. MENDELZON: Yes. That's been prepared  
 21 since October 2015, we will look for those and  
 22 produce them if relevant.  
 23 MR. WOYCHESHYN: Just because I have it  
 24 written a bit differently here, I'm going to read  
 25 it, production of any personal financial

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1 statement or personal net worth statements  
 2 submitted by Mr. Gutierrez to any financial  
 3 institutions since October 2015.  
 4 U/T MR. MENDELZON: Yes.  
 5 MR. WOYCHESHYN: And included in that  
 6 request is the documentation submitted to DX  
 7 Financial for the third mortgage taken out on his  
 8 personal residence.  
 9 U/T MR. MENDELZON: Yes. We can search for  
 10 the documentation related to that mortgage.  
 11 BY MR. WOYCHESHYN:  
 12 543. Q. Do you have a passport, sir?  
 13 A. Yes, I do.  
 14 544. Q. It's a Canadian passport?  
 15 A. Yes.  
 16 545. Q. Do you also have a Guatemalan  
 17 passport?  
 18 A. No.  
 19 546. Q. Do you have a NEXUS card?  
 20 A. A what? A NEXUS card, yes, I do.  
 21 547. Q. How about a Global Entry card?  
 22 A. It's the same as the NEXUS.  
 23 548. Q. I think there is a slight difference,  
 24 but -- well, I have a Global one.  
 25 A. I have a NEXUS card.

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1 549. Q. In the past two years, have you spent  
 2 more than 179 days per year outside of Canada?  
 3 A. Last year?  
 4 550. Q. In the past two years have you spent  
 5 --  
 6 A. Combined?  
 7 551. Q. No, per year.  
 8 A. Per year. That would be half the  
 9 year basically. Probably in 2015 I may have but  
 10 I doubt it. I have to count the days. I don't  
 11 know for sure. 2016 definitely not.  
 12 552. Q. Can you count the days and let me  
 13 know, please, for 2015 and 2016?  
 14 U/T MR. MENDELZON: We can make best efforts  
 15 to do that.  
 16 MR. WOYCHESHYN: I'd also like a copy of  
 17 Mr. Gutierrez's passport and NEXUS card, please.  
 18 U/A MR. MENDELZON: I'll take that under  
 19 advisement.  
 20 BY MR. WOYCHESHYN:  
 21 553. Q. You last left Canada when?  
 22 A. I'm not a hundred percent sure but  
 23 probably about two or three weeks ago. I was out  
 24 for one day.  
 25 554. Q. To the United States or to --

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1 A. I went to the United States.  
 2 555. Q. And before that, you went to  
 3 Guatemala in June?  
 4 A. I believe so, yeah.  
 5 556. Q. How long were you there on the last  
 6 trip.  
 7 A. Couple of weeks.  
 8 557. Q. How was the trip paid for?  
 9 A. Sorry?  
 10 558. Q. How did you pay for the trip?  
 11 A. I think it was paid on my credit card  
 12 but I have to check that. I don't remember  
 13 exactly. It could have been paid by points. I'm  
 14 not sure.  
 15 559. Q. If you can check and let me know,  
 16 please.  
 17 U/T MR. MENDELZON: Yes, we can do that.  
 18 BY MR. WOYCHESHYN:  
 19 560. Q. What sort of travel points do you  
 20 have?  
 21 A. I have Aeroplan and the one that  
 22 American Airlines has. I forget the name. I  
 23 think it's Advantage or something like that.  
 24 561. Q. What's your current points balance  
 25 with each of those?



1 A. I have no idea.

2 562. Q. Can you review your records and let  
3 me know, please?

4 U/T MR. MENDELZON: Yes, we can do that.

5 THE DEPONENT: I travel for business all  
6 my life since we moved to Canada in 1984. So I  
7 have accumulated tons of miles over the years.  
8 Many of them expire. I have no idea what I have  
9 there. And all my business are business -- all  
10 my trips are business related in the last two  
11 years. I haven't gone on vacation or anything  
12 like that. So some of those trips may have been  
13 paid by Xela or some other companies in the  
14 group.

15 BY MR. WOYCHESHYN:

16 563. Q. And when -- logistically when Xela  
17 would pay them, would you pay them first on your  
18 personal credit card and then Xela would  
19 reimburse you or would it vary from time to time?

20 A. Varies.

21 564. Q. So in terms of your personal debts,  
22 we talked about your mortgages that you have with  
23 Scotiabank and the home equity lines of credit  
24 and the judgment and orders that Margarita has,  
25 other than those, what other personal debts do

1 572. Q. When they do use it, do you pay for  
2 it?

3 A. I pay for it, yeah. It's very minor  
4 stuff.

5 573. Q. Do you know how much is owing on each  
6 credit card right now?

7 A. The Visa has got around \$30,000 debt.

8 574. Q. Thirty?

9 A. Thirty. The other two I don't know  
10 for sure but the MasterCard, probably about five  
11 and the Amex would be --

12 575. Q. Five thousand?

13 A. Five thousand, and the American  
14 Express maybe a thousand. I don't know. I don't  
15 know for sure those balances.

16 576. Q. Is the Amex a charge card that is  
17 that you are expected to pay the full balance  
18 every month?

19 A. Yes.

20 MR. WOYCHESHYN: So I'll ask for a broad  
21 request for copies of all credit card statements  
22 for credit cards over which Mr. Gutierrez had  
23 signing authority for the past six years.

24 U/A MR. MENDELZON: I'll take that under  
25 advisement.

1 you have?

2 A. I have a Visa card and an American  
3 Express card and a MasterCard.

4 565. Q. Any personal lines of credit?

5 A. Just the overdraft and the ones in  
6 Scotia you know about.

7 566. Q. Is the MasterCard with a bank?

8 A. I assume it's a bank. It's related  
9 to Canadian Tire.

10 567. Q. And then the Visa, is that a TD Visa?

11 A. Yes.

12 568. Q. Are these owned in your name solely  
13 or are they joint?

14 A. They are in my name and my wife has a  
15 secondary card.

16 569. Q. Okay.

17 A. In the MasterCard case, two of my  
18 children have cards.

19 570. Q. In addition to your wife?

20 A. In addition to my wife.

21 571. Q. Which children?

22 A. Thomas and Astrid. I got that --  
23 that account I opened it when they went to  
24 university, so I gave them the -- so they don't  
25 use it very much but they have it.

1 MR. WOYCHESHYN: Alternatively I'll ask  
2 for the past two years.

3 U/T MR. MENDELZON: Yes. We can search our  
4 records for the past two years and produce what  
5 we find.

6 BY MR. WOYCHESHYN:

7 577. Q. Other than the judgment and orders in  
8 favour of Margarita, are there any other  
9 judgments against you personally, sir?

10 A. Not that I know.

11 578. Q. If you do find out about any, will  
12 you let me know?

13 U/T MR. MENDELZON: Yes.

14 BY MR. WOYCHESHYN:

15 579. Q. Any other creditors that you can  
16 think of?

17 A. No. I can't think of.

18 580. Q. I guess Mike Koutsaris (sic) would be  
19 MVL Leasing --

20 A. MVL Leasing would be. That's it.

21 581. Q. And you don't recall sitting here  
22 today what the amount that you owe him is.

23 A. I don't know. I would have to check  
24 how much is left on the leases of the cars.

25 582. Q. Well, he stores the cars as well.

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1 A. Oh, you mean on the storage, yes.  
 2 583. Q. That's what I was referring to.  
 3 A. Yeah. Sorry about that. I don't  
 4 know. We have to check.  
 5 584. Q. And I think we have a request.  
 6 MR. MENDELZON: Yes.  
 7 BY MR. WOYCHESHYN:  
 8 585. Q. Have you in the past two years paid  
 9 off any particular debt that you had that is no  
 10 longer in existence?  
 11 A. No.  
 12 586. Q. Have you ever been bankrupt?  
 13 A. No.  
 14 587. Q. When did you take your last vacation?  
 15 A. My last vacation, I don't know. Long  
 16 time ago.  
 17 588. Q. Over five years ago?  
 18 A. Probably in 2012, maybe. That would  
 19 be five years ago. I don't remember going on  
 20 vacation since then.  
 21 589. Q. Where did you go in 2012?  
 22 A. The location, we went to Germany.  
 23 590. Q. With all your children?  
 24 A. Just my wife and I.  
 25 591. Q. Was that the World Cup? That was the

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1 World Cup year?  
 2 A. No. Never been to the World Cup.  
 3 592. Q. Do you have a monthly budget that  
 4 helps you track your expenses?  
 5 A. Not formally. We just reasonably --  
 6 we don't spend -- we don't spend all that much  
 7 money unless we have to. We are not -- we don't  
 8 buy luxury -- we don't take luxurious trips. We  
 9 don't go to World Cups, you know. We don't go to  
 10 a lot of expenditures like that. We don't buy  
 11 jewellery. You know, we live a very quiet life,  
 12 you know, except that I work. I worked too many  
 13 hours in the past.  
 14 593. Q. Now, people are different but I keep  
 15 an Excel spreadsheet with all my expenses for  
 16 every month. Do you have a document like that?  
 17 A. No. I'm too busy to have.  
 18 Unfortunately I don't have time to get into that  
 19 one. When I have time, I do other things. I  
 20 just know what I can buy and not from doing --  
 21 know how much I can afford. We just buy food,  
 22 fill the car up with gas, pay a couple of car  
 23 washes a month. What else. We have to pay the  
 24 gardener who cuts the grass and the guy who  
 25 cleans the pool. Hydro, and that's it.

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1 594. Q. So right now you have no salary.  
 2 A. Right now I don't have any salary.  
 3 595. Q. And neither does Wencke, she has no  
 4 salary.  
 5 A. She doesn't.  
 6 596. Q. Do you rent out a room in your house  
 7 or any place?  
 8 A. No.  
 9 597. Q. You don't rent out the cottage ever?  
 10 A. Not yet.  
 11 598. Q. I take it that you don't expect to  
 12 receive a private pension?  
 13 A. What do you mean by private pension?  
 14 599. Q. Xela doesn't have a pension that you  
 15 contributed to.  
 16 A. No, we don't.  
 17 600. Q. And you are not getting any dividends  
 18 or interest off of your shareholdings.  
 19 A. No.  
 20 601. Q. And no royalties or licence fees that  
 21 you earn?  
 22 A. No.  
 23 602. Q. How much do you spend a month in  
 24 food?  
 25 A. In food, I don't know. I don't do

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1 the shopping. My wife does the shopping.  
 2 603. Q. Does she charge the shopping to --  
 3 A. To the credit cards.  
 4 604. Q. What about clothing, do you go  
 5 shopping for clothing?  
 6 A. I don't shop for clothing at all.  
 7 From time to time, I -- my wife buys me something  
 8 when she thinks I'm looking to used. I hate  
 9 clothes.  
 10 605. Q. In terms of the gardening, how much  
 11 do you pay the gardener a month?  
 12 A. Well, I don't know exactly but it  
 13 varies depending on --  
 14 606. Q. The time of the year?  
 15 A. About \$300 a month around.  
 16 607. Q. Is there a contract with him or her?  
 17 A. Yeah. He comes, he comes once a  
 18 month, cuts the grass, does -- takes care of the  
 19 flowers and stuff and that's it.  
 20 608. Q. But do you actually have a written  
 21 contract with him?  
 22 A. I don't think so. I think -- I don't  
 23 know. My wife handles that. I don't know if we  
 24 have a contract signed with him. I don't think  
 25 so.

1 609. Q. Can I get the -- over the past year  
 2 the payments made to the gardener?  
 3 U/T MR. MENDELZON: Yes. We can do that.  
 4 BY MR. WOYCHESHYN:  
 5 610. Q. And do you have a gardener up at the  
 6 cottage as well?  
 7 A. No.  
 8 611. Q. And you mentioned the pool  
 9 maintenance. Is that something you pay per month  
 10 as well?  
 11 A. Yeah.  
 12 612. Q. How much is that?  
 13 A. About the same as the gardener, a  
 14 little more I think.  
 15 MR. WOYCHESHYN: Same request, if I can  
 16 get the payments to the pool company for the last  
 17 year.  
 18 U/T MR. MENDELZON: Yes.  
 19 BY MR. WOYCHESHYN:  
 20 613. Q. Is there a contract with the pool  
 21 company that you know of?  
 22 A. Yes. We just changed because they  
 23 weren't doing a good job. So we had a new  
 24 company starting last month.  
 25 MR. WOYCHESHYN: Okay. If I can get a

1 619. Q. That's what I was thinking. But do  
 2 you pay anybody to maintain the cottage in the  
 3 wintertime?  
 4 A. There's a lady that cleans once every  
 5 couple of weeks. It doesn't cost much. Maybe  
 6 the whole year it's about \$500 or between 500 to  
 7 a thousand the whole year, I think. I don't know  
 8 exactly. I don't pay her but my wife does.  
 9 620. Q. And is there a contract with her?  
 10 A. No.  
 11 MR. WOYCHESHYN: If I can get any bills or  
 12 invoices over the past year for cleaning services  
 13 either at his home or his cottage, please.  
 14 U/T MR. MENDELZON: To the extent that they  
 15 are paid by Mr. Gutierrez, we can do that.  
 16 BY MR. WOYCHESHYN:  
 17 621. Q. Do you have a cleaning lady at your  
 18 home?  
 19 A. No.  
 20 622. Q. I take it you or your wife takes care  
 21 of all the cleaning?  
 22 A. Mostly my wife.  
 23 623. Q. I didn't want to be presumptuous.  
 24 And how about -- the gardening would include  
 25 cutting grass?

1 copy of that contract, please.  
 2 U/T MR. MENDELZON: Yes.  
 3 BY MR. WOYCHESHYN:  
 4 614. Q. How much do you spend in gas a month?  
 5 A. It very much depends if I have to  
 6 come downtown or not. If -- how many times we go  
 7 to the cottage. It varies.  
 8 615. Q. But those would be the two locations  
 9 where you would do your driving mostly is to  
 10 downtown and to the cottage up in --  
 11 A. No. Downtown we come just seldom.  
 12 Sometimes the reason my kids live downtown and  
 13 then we go to the cottage in the summer. Usually  
 14 go on the Friday and come back on the Monday.  
 15 616. Q. Unlikely to be over \$300 a month; is  
 16 that fair?  
 17 A. Probably it would be around 200.  
 18 Between 200 and 300 a month depending how many  
 19 times we go up.  
 20 617. Q. Any other -- do you have a pool at  
 21 the cottage? I doubt it.  
 22 A. Pool at the cottage?  
 23 618. Q. Yes.  
 24 A. We have a huge lake. Who needs a  
 25 pool.

1 A. The gardener?  
 2 624. Q. Yes.  
 3 A. He mows the grass, yeah.  
 4 625. Q. But up at the cottage, who cuts the  
 5 grass?  
 6 A. We don't have grass at the cottage.  
 7 It's just bushes.  
 8 626. Q. Bushes?  
 9 A. We have a small area that has sort of  
 10 grass but my wife and I mow it when we are there.  
 11 627. Q. Okay. And no snow removal service at  
 12 either place?  
 13 A. At the -- here in the city, yes, we  
 14 have a snow remover and it costs about 3- or \$400  
 15 for the whole winter. If it snows a lot, he  
 16 loses. If it doesn't snow, we lose.  
 17 MR. WOYCHESHYN: If I can get the invoices  
 18 from the snow removal company for the past year,  
 19 please.  
 20 MR. MENDELZON: Do you pay for those?  
 21 THE DEPONENT: It's paid from the joint  
 22 account.  
 23 U/T MR. MENDELZON: Yes, we can produce those.  
 24 THE DEPONENT: And we also have a guy at  
 25 the cottage that looks after the -- protects the

1 boathouse in the winter putting bubblers in.  
 2 BY MR. WOYCHESHYN:  
 3 628. Q. Putting what in, sorry?  
 4 A. Putting bubblers in the boathouse.  
 5 629. Q. Bubblers.  
 6 A. They charge about \$300 a year to do  
 7 that.  
 8 630. Q. And again he is paid from the joint  
 9 account?  
 10 A. Yes.  
 11 MR. WOYCHESHYN: If I can get for the past  
 12 year any invoices from that --  
 13 U/T MR. MENDELZON: Yes.  
 14 MR. WOYCHESHYN: -- individual, please.  
 15 BY MR. WOYCHESHYN:  
 16 631. Q. You have insurance on the home I  
 17 presume?  
 18 A. Yes.  
 19 632. Q. Who is your insurer?  
 20 A. Insurer was a broker but they changed  
 21 names lately. I forgot the name. Gallagher, I  
 22 think, is the new name. I have to check. I  
 23 forgot the new name of the company.  
 24 633. Q. Am I right that the payments for the  
 25 insurance used to come from the joint account and

1 now are being paid by Wencke?  
 2 A. Yes.  
 3 634. Q. Same for the cottage?  
 4 A. Yes.  
 5 635. Q. And for the vehicle insurance?  
 6 A. Same thing.  
 7 636. Q. Do you still have coverage from Xela  
 8 for medical and dental?  
 9 A. I don't think so. I'm not sure if  
 10 the policy is still valid but Xela is not  
 11 operating anymore. That's actually a good point.  
 12 I'm going to ask.  
 13 637. Q. Was it a Blue Cross plan or something  
 14 like that?  
 15 A. I guess something like that. I don't  
 16 remember the name of the -- in the name of Xela.  
 17 638. Q. Other than the payments on the credit  
 18 cards, the lines of credit and the mortgages,  
 19 there's no other regular payments that you are  
 20 required to make on a monthly basis to any  
 21 financial institution?  
 22 A. Well, the hydro bills.  
 23 639. Q. Right.  
 24 A. Gas, telephone. That's it.  
 25 640. Q. Internet for Netflix.

1 A. Internet and Netflix.  
 2 641. Q. And I take it all those household  
 3 expenses would previously be coming from the  
 4 joint account but now are being funded by Wencke.  
 5 A. Yes. Otherwise, they'll cut the  
 6 lights, you know -- I mean, the power.  
 7 642. Q. Other than the proceeding in Ontario,  
 8 that is, what we call the action and the  
 9 application, are you a personal party in any  
 10 other proceeding in Ontario?  
 11 A. Only on the -- where you guys are  
 12 defendants.  
 13 643. Q. Right. So just the two proceedings,  
 14 one, Margarita's application, and, two, the  
 15 action that you and Xela started, right?  
 16 A. Yes.  
 17 644. Q. Right?  
 18 A. In Canada, yes.  
 19 645. Q. In the United States, are you a  
 20 personal party to any litigation?  
 21 A. In the United States personally, no.  
 22 646. Q. In Bermuda?  
 23 A. Personally, no.  
 24 647. Q. In the Caribbean?  
 25 A. No.

1 648. Q. I take it that, and please correct me  
 2 if I'm wrong, but my understanding is there would  
 3 be possibly hundreds of pieces of litigation  
 4 where you are a personal party in Guatemala; is  
 5 that right?  
 6 A. That's correct.  
 7 649. Q. Leaving aside Guatemala, are there  
 8 other jurisdictions where you are a personal  
 9 party in a litigation?  
 10 A. No, not that I know.  
 11 650. Q. I'm not going to ask for all of the  
 12 pleadings. Since October 2015, have you sold any  
 13 assets worth more than a thousand dollars?  
 14 A. Any assets?  
 15 651. Q. Yes.  
 16 A. What do you mean by assets exactly?  
 17 652. Q. Have you sold a car, have you sold a  
 18 boat, have you sold --  
 19 A. None.  
 20 653. Q. -- a TV, have you sold --  
 21 A. No, I have not sold any of that.  
 22 654. Q. Have you transferred any assets since  
 23 October 2015 that are worth more than a thousand  
 24 dollars?  
 25 A. Not that I know. If I understand

1 correctly your question, no.  
 2 655. Q. Okay. If you can review your bank  
 3 statements to confirm that recollection, please.  
 4 U/T MR. MENDELZON: Yes, we can do that.  
 5 THE DEPONENT: I think the only case would  
 6 be the insurance that were cashed out.  
 7 BY MR. WOYCHESHYN:  
 8 656. Q. Did you buy any family members a  
 9 Christmas present of any value over a thousand  
 10 dollars last year?  
 11 A. No.  
 12 657. Q. Have you let anybody use any of your  
 13 real estate free of charge, and just to  
 14 understand, have you let anyone, let's say, live  
 15 in your cottage for free or live in your house  
 16 for free leaving aside your children of course?  
 17 A. No.  
 18 MR. WOYCHESHYN: Just give me a couple of  
 19 minutes. I think we are done.  
 20 --- Short recess at 12:39 p.m.  
 21 --- Upon resuming at 12:51 p.m.  
 22 BY MR. WOYCHESHYN:  
 23 658. Q. Mr. Gutierrez, you acknowledge you  
 24 are still under oath?  
 25 A. Yes.

1 MR. WOYCHESHYN: Subject to the answers to  
 2 undertakings, advisements, refusals and  
 3 objections and anything arising from these, those  
 4 are my questions for you today. Thank you, Mr.  
 5 Gutierrez.  
 6 MR. MENDELZON: Thank you.  
 7 THE DEPONENT: Thank you.  
 8  
 9 --- Whereupon examination adjourned at 12:52 p.m.  
 10 I HEREBY CERTIFY THE FOREGOING  
 11 to be a true and accurate  
 12 transcription of my shorthand notes  
 13 to the best of my skill and ability.  
 14  
 15 \_\_\_\_\_  
 16 Voula Kirkos, CSR  
 17 Computer-Aided Transcription  
 18  
 19 Reproductions of this transcript are in direct violation  
 20 of O.R. 587/91 of Administration of Justice Act  
 21 January 1, 1990 and are not certified without the  
 22 original signature of the Court Reporter  
 23  
 24  
 25

1 659. Q. Earlier today I asked you about  
 2 whether you personally owned any real estate  
 3 outside of Canada, remember that?  
 4 A. Yes.  
 5 660. Q. Do you remember Ricardo's mom having  
 6 a house in Guatemala?  
 7 A. That was a house owned by one of  
 8 Xela's companies.  
 9 661. Q. Okay. So your evidence is that one  
 10 of Xela's companies took the house that was owned  
 11 by -- or that where Ricardo's mother lived.  
 12 MR. MENDELZON: Counsel, you are giving  
 13 evidence on his behalf.  
 14 THE DEPONENT: -- owned the house. I had  
 15 nothing to do with that house.  
 16 MR. MENDELZON: Counsel, he is giving  
 17 evidence on behalf of himself, not on behalf of  
 18 Xela.  
 19 BY MR. WOYCHESHYN:  
 20 662. Q. I know, but that's my --  
 21 A. Well, you are asking if I had  
 22 anything to do with the ownership of the house  
 23 and the answer is no.  
 24 663. Q. And you are sure about that.  
 25 A. Yes.

**TAB U**

THIS IS EXHIBIT "U" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

In the Matter Of:  
Margarita Castillo v.  
Xela Enterprises Ltd., et al.

---

CALVIN SHIELDS  
July 27, 2017

---

neelsons

77 King Street West, Suite 2020  
Toronto, ON M5K 1A2  
1.888.525.6666 | 416.413.7755



Court File No. CV-11-9062-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARGARITA CASTILLO

Plaintiff

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED

FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN

GUILLERMO GUTIERREZ and CARMEN S. GUTIERREZ, as

Executor of the Estate of Juan Arturo Guterrez

Defendants

-----

--- This is the Examination in Aid of Execution of  
CALVIN SHIELDS, via videoconference, taken at the  
offices of Neeson Court Reporting Inc., Suite 2020,  
77 King Street West, Toronto, Ontario, on  
July 27, 2017.

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Page 2

1 A P P E A R A N C E S:

2

3 Jason W.J. Woycheshyn, Esq., for the Plaintiffs

4

5 Juan J. Rodriguez, Esq. for Calvin Shields

6 (via videoconference)

7

8 Also Present: Samuel Mosonyi - Student-at-law

9

10

11 REPORTED BY: Cindy Littlemore, CSR

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Page 3

1 I N D E X

2

3 WITNESS: CALVIN SHIELDS, AFFIRMED

4 PAGE

5 EXAMINATION BY MR. WOYCHESHYN..... 5

6

7

8

9 \*\*The following list of undertakings, advisements and

10 refusals is meant as a guide only for the assistance of

11 counsel and no other purpose\*\*

12

13 INDEX OF UNDERTAKINGS

14 The questions/requests undertaken are noted by U/T and

15 appear on the following pages: None

16

17 INDEX OF ADVISEMENTS

18 The questions/requests taken under advisement are noted

19 by U/A and appear on the following pages: 9, 16, 17, 21,

20 25, 26, 27, 38, 41, 44, 45, 47, 48, 50, 52, 53, 54, 55,

21 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66

22

23 INDEX OF REFUSALS

24 The questions/requests refused are noted by R/F and

25 appear on the following pages: None

Page 4

1 INDEX OF EXHIBITS

2

3 NUMBER/DESCRIPTION PAGE/LINE NO.

4

5 No Exhibits Marked

6

7

8

9

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Page 5

1 --- Upon commencing at 1:07 p.m.

2 CALVIN SHIELDS, AFFIRMED:

3 EXAMINATION BY MR. WOYCHESHYN:

4 1 Q. You are Calvin Shields?

5 A. Yes.

6 2 Q. You acknowledge you're under oath

7 here today, sir?

8 A. I beg your pardon?

9 3 Q. You acknowledge that you promise

10 to tell the truth today?

11 A. Yes, I just did.

12 4 Q. My name is Jason Woycheshyn. As

13 you know, I am a lawyer for Margarita Castillo.

14 A. Okay.

15 5 Q. You may remember that about five

16 years ago I examined you up here in Toronto.

17 A. Oh, was that you? I don't

18 remember, but yeah, that's fine.

19 6 Q. I probably look a bit older. I

20 apologize.

21 A. I know I do.

22 7 Q. I've had three kids in the

23 intervening period, so...

24 A. Wow.

25 8 Q. It's been busy. This is an

Page 6

1 examination-in-aid of execution, and Mr. Shields,  
2 you understand that you're being examined in your  
3 capacity as a director of Xela Enterprises Ltd.?  
4 A. Yes.  
5 9 Q. If at any point during my  
6 examination you don't understand a question, please  
7 let me know.  
8 A. Correct.  
9 10 Q. And if at any point during the  
10 examination you need to take a break, please let me  
11 know, and we'll take a break.  
12 A. All right.  
13 11 Q. You live at 4118 Oakmont Court in  
14 Vero Beach, Florida?  
15 A. Yes.  
16 12 Q. You are 85 years old?  
17 A. Yes.  
18 13 Q. During the examination, I will  
19 refer to Xela Enterprises Ltd. as Xela, and when I  
20 do, you'll understand what entity I'm referring to?  
21 A. Yes.  
22 14 Q. You've been a director of Xela  
23 since 1998?  
24 A. That's about right. I don't  
25 remember the exact time. It was about that era.

Page 7

1 15 Q. Approximately 20 years?  
2 A. Yeah. Probably a little less than  
3 that.  
4 16 Q. It was Juan Arturo Gutierrez that  
5 asked you to join Xela's board?  
6 A. Yes.  
7 17 Q. And Juan Arturo Gutierrez is  
8 commonly known as Arturo?  
9 A. Correct.  
10 18 Q. And if I mention his name, I will  
11 simply refer to him as Arturo. Is that acceptable?  
12 A. Perfect.  
13 19 Q. Sir, you understand, as a  
14 director, you owe obligations to Xela?  
15 A. Yes.  
16 20 Q. You owe an obligation to act  
17 honestly?  
18 A. Yes.  
19 21 Q. In good faith?  
20 A. Yes.  
21 22 Q. And in the best interests of the  
22 company?  
23 A. Certainly.  
24 23 Q. And you take those obligations  
25 seriously?

Page 8

1 A. Yes, sir.  
2 24 Q. When I last examined you in 2012,  
3 you indicated that you were paid a fixed fee by  
4 Xela. Sitting here today, are you still being paid  
5 a fixed fee by Xela?  
6 A. I haven't received anything for a  
7 year-and-a-half.  
8 25 Q. Okay. Since -- it would be the  
9 fall of -- well, actually, I'm trying to do the  
10 math here.  
11 A. That's about the beginning of last  
12 year.  
13 26 Q. So the beginning of 2016?  
14 A. Yeah. Mm-hmm.  
15 27 Q. And between October 2015 and  
16 January 2016, were you receiving a fixed fee?  
17 A. Well, yes and no. I was, I guess.  
18 It came spasmodically because of the short of  
19 funds -- shortage of funds that they were already  
20 encountering.  
21 28 Q. Okay. Before January 2016, what  
22 was the fixed fee supposed to be?  
23 A. It was about \$4,000 a quarter.  
24 29 Q. Okay, and had that -- sorry, go  
25 ahead.

Page 9

1 A. I'd been receiving that for  
2 several years.  
3 30 Q. So that hadn't changed in the  
4 preceding five years; that is, between 2011 and  
5 2016?  
6 A. As best I can recollect, that's  
7 correct.  
8 31 Q. Can you tell me when the last time  
9 you received any payment from Xela?  
10 A. I think it was in January of 2016.  
11 I think that was it.  
12 32 Q. And do you know the amount of that  
13 payment?  
14 A. I don't recollect. I would have  
15 to go back and look, because there was -- I just  
16 don't remember. It was probably one quarter's  
17 worth, and it might have been two quarter's worth,  
18 I don't remember, because they were behind on their  
19 payments.  
20 33 Q. Can you check your records and let  
21 me know what the amount of the last payment you  
22 received from Xela was, please?  
23 U/A A. Yeah, I can get that. Yeah, I can  
24 get that for you.  
25 34 Q. And in January 2016, that was the

Page 10

1 last payment. Why did the payments stop, sir?  
2 A. There wasn't any money I think was  
3 the primary reason.  
4 35 Q. So your roles with Xela did not  
5 change?  
6 A. No, I basically -- we still  
7 had -- still had meetings until he died and then  
8 basically everything stopped, but that's basically  
9 it.  
10 36 Q. When you say that Xela had  
11 meetings until he died, you're referring to Arturo?  
12 A. Arturo, yes.  
13 37 Q. And Arturo passed away in June of  
14 last year?  
15 A. I believe that's when it was, yes,  
16 mm-hmm.  
17 38 Q. Sir, you received a letter from my  
18 office notifying you of today's examination?  
19 A. Several of them. Yes.  
20 39 Q. Did you bring any documents with  
21 you today?  
22 A. None whatsoever.  
23 40 Q. I see that you have a lawyer with  
24 you today, Mr. Rodriguez, from the Carey Rodriguez  
25 firm in Miami. Is he there representing you or the

Page 11

1 company?  
2 MR. RODRIGUEZ: I'm here representing  
3 Mr. Calvin Shields.  
4 MR. WOYCHESHYN: In his personal  
5 capacity?  
6 MR. RODRIGUEZ: Yes, sir.  
7 BY MR. WOYCHESHYN:  
8 41 Q. Mr. Shields, you understand that  
9 my client, Ms. Castillo, received a judgment back  
10 in October 2015 from an Ontario judge that required  
11 Xela to jointly pay Margarita \$4.25 million for her  
12 shares in Tropic?  
13 A. Yes.  
14 42 Q. And after that judgment, there was  
15 a costs decision by the same judge which ordered  
16 Xela to jointly pay Margarita's costs of that  
17 application of over \$800,000? You knew about that?  
18 A. I didn't recollect that but -- all  
19 I remember was basic settlement.  
20 43 Q. Okay. If I propose to you, sir,  
21 that the joint amounts owing to Margarita by Xela,  
22 Juan Guillermo Gutierrez and Arturo's estate is  
23 approximately \$5.2 million Canadian, will you  
24 accept that?  
25 A. I guess there's no reason not to.

Page 12

1 44 Q. Are you aware of any amounts that  
2 Xela has paid to Margarita in response to the  
3 orders and judgments issued in Ontario?  
4 A. No.  
5 45 Q. No, you're not aware of any  
6 amounts, or no, you know that no amounts have been  
7 paid?  
8 A. I'm not aware of any.  
9 46 Q. Okay. Do you know why Xela has  
10 not paid anything?  
11 A. I guess it's because there's no  
12 money available.  
13 47 Q. If the money were to be available,  
14 do you know whether Xela intends to pay the amounts  
15 ordered by the Ontario courts?  
16 A. I can't answer that. I don't  
17 know. We would have to have some sort of a  
18 discussion on it, I guess.  
19 48 Q. So sitting here today as a  
20 director of Xela, you don't know whether -- if the  
21 funds did exist whether Xela would pay the amounts  
22 ordered by the Ontario court?  
23 A. Well, it's kind of a moot point,  
24 because they don't have any money to do it, so...  
25 49 Q. And is there any prospect of money

Page 13

1 coming in in the near future, within the next 12  
2 months?  
3 A. We have no sources of income. The  
4 only sources that we would have -- oh, I don't  
5 know. We don't have any sources because all  
6 the -- all of the business is, I suppose, if  
7 anything came out of Maya crops in Guatemala.  
8 There's just no assets to generate any money right  
9 now.  
10 50 Q. Has Xela done any fiscal  
11 projections for the next 12 months?  
12 A. If they have, I haven't seen them.  
13 We haven't had any meetings. We haven't seen any  
14 financial numbers for -- well, since before Arturo  
15 passed away.  
16 51 Q. How do you know that there have  
17 been projections then if you haven't seen them?  
18 A. I don't know that there have been  
19 any projections. I question that there has been  
20 quite frankly, but my guess is that there is no  
21 projections out there, but certainly I haven't seen  
22 them or I haven't been involved with them.  
23 52 Q. Whose job would it be at Xela to  
24 prepare the projections?  
25 A. Mark Korol.

Page 14

1 53 Q. Is Mark Korol still with Xela?  
 2 A. Yes.  
 3 54 Q. Do you know what role he has with  
 4 Xela?  
 5 A. He's the chief financial officer.  
 6 55 Q. And when is the last time that you  
 7 spoke to Mr. Korol in his capacity as chief  
 8 financial officer leaving aside any discussion  
 9 about the litigation?  
 10 A. We speak once every couple weeks  
 11 for a few minutes by cell phone, but we don't go  
 12 into much in the way of details or anything. It's  
 13 just trying to see how they're keeping the doors  
 14 open, I guess, is the main issue.  
 15 56 Q. Have you asked Mr. Korol why there  
 16 have been no projections provided to the board?  
 17 A. No.  
 18 57 Q. Have you asked Mr. Korol why there  
 19 have not been any financial statements provided to  
 20 the board?  
 21 A. No.  
 22 58 Q. Can you ask Mr. Korol to provide  
 23 you with the most recent financial projections for  
 24 Xela?  
 25 A. I guess I could, but I don't know

Page 15

1 that they would be very meaningful, but I mean  
 2 I'll -- is there -- it's hard to visualize a  
 3 financial projection being worth anything when  
 4 there's no sources of income.  
 5 59 Q. But I would like to see any  
 6 projections that Xela has prepared, the most recent  
 7 ones.  
 8 MR. RODRIGUEZ: Well, the testimony has  
 9 been, Jason, that there haven't been any  
 10 projections.  
 11 BY MR. WOYCHESHYN:  
 12 60 Q. Well, his testimony is actually  
 13 that he hasn't seen any, so I would like him to ask  
 14 Mr. Korol if there have been, and if Mr. Korol  
 15 gives them to this witness, I would like them  
 16 produced to me.  
 17 A. Well, I don't have them. Okay, so  
 18 what am I supposed to do?  
 19 MR. RODRIGUEZ: You're supposed to ask  
 20 Mark if he has any projections.  
 21 THE DEPONENT: If he has any  
 22 projections.  
 23 MR. RODRIGUEZ: And then we'll report  
 24 back to Jason as to whether those projections exist  
 25 or not.

Page 16

1 U/A THE DEPONENT: We can do that.  
 2 BY MR. WOYCHESHYN:  
 3 61 Q. Thank you. The last set of  
 4 financial statements I have seen that have been  
 5 produced through Xela's lawyers in Canada are the  
 6 financial statements for the year ended May 31st,  
 7 2015. Have you seen more recent financial  
 8 statements?  
 9 A. I don't believe so. Again, I  
 10 don't keep those financial statements. When we had  
 11 board meetings, I was given them a day before  
 12 generally of the meeting and then we had the  
 13 meetings and then I never -- I never took them away  
 14 from the office. So I don't have a great  
 15 recollection of every -- of what really took place.  
 16 62 Q. Okay. I take it that the person  
 17 that would have the most knowledge of the currency  
 18 of Xela's financial statements would be Mr. Korol?  
 19 A. That's correct.  
 20 63 Q. Can you ask Mr. Korol whether  
 21 there are any more recent financial statements for  
 22 Xela other than the statements for the year ended  
 23 May 31st, 2015?  
 24 U/A A. May 31st, 2015. Yes, I can do  
 25 that.

Page 17

1 64 Q. Thank you, and if he indicates  
 2 that there are more recent statements, please ask  
 3 that he provide them to you, and if he does, that  
 4 you provide them to me.  
 5 U/A A. Okay.  
 6 65 Q. Xela is a holding company?  
 7 A. In many respects, yes. It's  
 8 really not an operating company.  
 9 66 Q. In the last five years, it's had  
 10 no operations in Ontario in terms of actual  
 11 operating business in Ontario, is that fair?  
 12 A. We had the Mexican food company.  
 13 Was that within the last five years?  
 14 MR. RODRIGUEZ: I don't remember.  
 15 THE DEPONENT: We had a Mexican food  
 16 company, kind of a wholesaler --  
 17 BY MR. WOYCHESHYN:  
 18 67 Q. Yes.  
 19 A. -- in Toronto.  
 20 68 Q. Right.  
 21 A. Five years ago is -- whether it  
 22 was -- whether we had a stand or not, I don't  
 23 remember, but it was about five years ago, I guess,  
 24 and other than that, I don't think there was  
 25 anything else.

Page 18

1 69 Q. Okay. Was that called Global  
2 Traders?  
3 A. Yes, it was.  
4 70 Q. Okay. So other than Global  
5 Traders in the past five years, you can't recall if  
6 Xela having any operating businesses in Ontario?  
7 A. No.  
8 71 Q. You agree with me?  
9 A. Yes.  
10 72 Q. Who else is currently on the board  
11 of directors of Xela?  
12 A. Just me and Juan Gutierrez.  
13 73 Q. I take it there's no longer an  
14 audit committee if there's only two directors?  
15 A. That's correct, we haven't had,  
16 but that's correct, yes.  
17 74 Q. Does Xela have an office in  
18 Ontario?  
19 A. I can't honestly answer. I think  
20 so, but they've all toned down, and I don't know  
21 where they meet now or what they do now. I haven't  
22 been there, so I can't answer that.  
23 75 Q. Okay. When you say where they  
24 meet, who are you referring to?  
25 A. Well, the old offices are closed,

Page 19

1 I know that.  
2 76 Q. Yes.  
3 A. Now, where they meet now -- I  
4 think they have a smaller office. Do you know? I  
5 can't answer that. I don't know, okay? That's the  
6 best I can tell you.  
7 77 Q. The old office was on Sheppard  
8 Avenue, does that sound right?  
9 A. Yes. Yes, it was.  
10 78 Q. And that's an office that you had  
11 been to in the past?  
12 A. Yes. I've been there numerous  
13 times, yes.  
14 79 Q. Do you know the reasons why Xela  
15 left the Sheppard Avenue location?  
16 A. No money. If you can't pay the  
17 bills, you've got to leave.  
18 80 Q. And was that the case, that Xela  
19 was unable to stay current with its lease at  
20 Sheppard Avenue?  
21 A. Well, I can't honestly say it  
22 was -- I know they left because they didn't have  
23 money. I don't know what the status was of the  
24 lease or any of those operating things. I wasn't  
25 involved with that sort of thing, but I think, you

Page 20

1 know, they pruned down the number of people they  
2 had. They did a lot of cutting back, and certainly  
3 the cost of the office was a major expense, but the  
4 details, I have no idea. Okay?  
5 81 Q. When you say "they" in your  
6 answer, are you referring to Juan and Mark?  
7 A. Mostly Mark, I think, but Juan  
8 certainly -- he was a board member, so he was  
9 involved. So all of the actions and so far up  
10 there have been taking place because of them, those  
11 two individuals, yes.  
12 82 Q. Is there anybody else in a  
13 management role for Xela?  
14 A. Well, you manage -- how about the  
15 guy that's -- heads up the computer work for the  
16 company? Is he management? I don't know, but he  
17 would be the only one other than those two.  
18 83 Q. Can you ask Mr. Korol if Xela does  
19 have an office in Ontario?  
20 A. Okay.  
21 84 Q. And if they do, where it's  
22 located, specifically the address?  
23 A. We'll give you that.  
24 85 Q. And if you can ask him whether the  
25 space is owned or leased, and if it is leased, to

Page 21

1 produce a copy of the lease.  
2 Do I have confirmation that you'll  
3 undertake those tasks?  
4 U/A A. Yes.  
5 86 Q. Thank you. Global Traders, as far  
6 as you know, does no longer operate, right?  
7 A. Well, I think it operates as a  
8 company but not as part of the Xela organization.  
9 87 Q. Right. It's no longer a Xela  
10 subsidiary?  
11 A. No.  
12 88 Q. You agree with me?  
13 A. Yes.  
14 89 Q. Xela still has a website?  
15 A. I don't know.  
16 90 Q. I will read you what I looked  
17 at -- what I took from Xela's website this morning.  
18 It says:  
19 "Xela is a holding company with  
20 a wide range of commercial ventures  
21 in countries with high levels of  
22 economic development and potential  
23 for growth. We have operations  
24 underway in the United States,  
25 Canada, South and Central America."

Page 22	Page 24
<p>1 Am I right that, as of today, there's 2 no operating business that Xela has in the United 3 States? 4 A. That's correct. There's none, I 5 think. I've been trying to think whether 6 there's -- but there's nothing as far as I'm aware 7 of. 8 91 Q. Fresh Quest was -- 9 A. That's probably -- that's an old 10 website which you apparently viewed, because it's 11 not very accurate. 12 92 Q. Fresh Quest was an operating 13 business in the United States, but -- 14 A. Yes. 15 93 Q. -- since at least -- in or around 16 October 2015, Xela has been out of the melon 17 business, is that right? 18 A. That's correct, yes. 19 94 Q. And Fresh Quest was the 20 distributor of its melons, and Fresh Quest was 21 based in Florida, right? 22 A. Yes. 23 95 Q. Any operations currently underway 24 in South America? 25 A. Well, I can't -- PAICA -- is PAICA</p>	<p>1 Who is the computer guy that you referenced? 2 A. Julio -- what's Julio's -- Julio 3 Fabrini. 4 102 Q. And he is the computer/IT guy? 5 A. Yeah. 6 103 Q. Can I get the spelling of that 7 last name, please? 8 A. F-A-B-R-I-N-I. Is that right? 9 104 Q. What about Jim O'Connell? 10 A. Jim is an accountant. I don't 11 know that he's management. He's -- he does a lot 12 of the accounting to bring the numbers together. 13 105 Q. Okay, and I apologize for not 14 being clear in my question, Mr. Shields. I'm 15 looking for all of the current employees for Xela 16 that are, you know, employed with Xela, the parent 17 company. So we have Juan, Mark, Julio Fabrini. 18 Is Jim O'Connell still employed with 19 Xela? 20 A. I can't answer for sure. I think 21 so. You know, I haven't been to Toronto, so I have 22 no idea. You know, we don't -- I'm not involved in 23 any of the day-to-day operations, so I can't answer 24 your question directly, but I think he's still 25 involved, but that's a think. It's not a sure.</p>
Page 23	Page 25
<p>1 considered part of that? 2 MR. RODRIGUEZ: Yeah, PAICA is -- well, 3 Venezuela is in South America, so... 4 THE DEPONENT: Yeah, so -- 5 BY MR. WOYCHESHYN: 6 96 Q. Is Venezuela in South America? 7 A. PAICA would be the only thing that 8 I'm aware of down there. 9 97 Q. Okay, and PAICA is the company 10 that is the operating business for Arturo's 11 restaurants? 12 A. Yes. 13 98 Q. And Arturo's has a number of 14 restaurants only in Venezuela, is that right? 15 A. Yes. 16 99 Q. The figures that I last saw where 17 there was approximately 80 restaurants, is that 18 number still accurate? 19 A. Yes, pretty close. As far as I 20 know, it is. I don't think there's been a change 21 in that. 22 100 Q. Okay. So today, Juan is still the 23 president and CEO of Xela? 24 A. Yes. 25 101 Q. And you said Mr. Korol is the CFO.</p>	<p>1 106 Q. Can you ask Mr. Korol if 2 Mr. O'Connell is still employed with Xela? 3 U/A A. Yes, we can do that. 4 107 Q. And if he is not, when he stopped 5 being employed? 6 U/A A. Okay. 7 108 Q. Do you recognize the name Diego 8 Silva? 9 A. Vaguely. Yeah, he used to be an 10 auditor, if I'm right. 11 109 Q. Do you know whether he's employed 12 with Xela? 13 A. I have no idea. 14 110 Q. When you say he used to be an 15 auditor, did you understand that he used to be an 16 internal employee or a -- 17 A. Yeah, he was the corporate 18 internal auditor that would go to the various 19 operations and see that they were doing things 20 according to corporate standards. 21 111 Q. Do you know how much Juan's salary 22 is? 23 A. I don't have the vaguest idea. 24 112 Q. Who would be the person to answer 25 that question?</p>

Page 26

1 A. Mark.  
2 113 Q. Can you ask Mark, please?  
3 U/A A. Got a lot of questions for Mark.  
4 Okay.  
5 114 Q. And I should say, there will be a  
6 list that madam reporter is preparing here that we  
7 can send to you after, and my colleague here is  
8 also taking notes.  
9 A. Okay. Well, we're taking notes  
10 here, too.  
11 115 Q. Can you also ask Mr. Korol what  
12 his salary is with Xela? No?  
13 A. Well -- no, I was just thinking,  
14 but I know they all were taking less money from  
15 what I understood than what they -- their salaries  
16 were, and they were delaying them. So the question  
17 is is it what they're making today, or what they  
18 made before everything went south?  
19 116 Q. It's making today is what I'm  
20 interested in.  
21 U/A A. Okay.  
22 117 Q. Xela has a number of wholly-owned  
23 subsidiaries, right?  
24 A. Yes.  
25 118 Q. Are you involved in the business

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1 of any of those subsidiaries?  
2 A. Not really. I'm the president of  
3 Lisa.  
4 119 Q. All right.  
5 A. And I don't know that I'm involved  
6 in any of the others. I may be out of order on or  
7 two of them. I don't remember.  
8 120 Q. Okay. Can you make inquiries and  
9 see if you are on the board or an officer of any  
10 other Xela wholly-owned subsidiary other than Lisa  
11 SA?  
12 U/A A. Okay.  
13 121 Q. And when I say wholly-owned, I  
14 mean directly or indirectly, and just to explain  
15 what I mean, because Xela wholly owns Gabinvest.  
16 Gabinvest wholly owns Lisa, right?  
17 A. Right.  
18 122 Q. So that's a situation where Xela  
19 is the indirect hundred percent owner of Lisa?  
20 A. That's correct.  
21 123 Q. Because we have an undertaking on  
22 the request to look for the documents -- or to look  
23 for his role in that subsidiary? I think he said  
24 yes.  
25 MR. RODRIGUEZ: You did.

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1 BY MR. WOYCHESHYN:  
2 124 Q. Yeah, okay. So last time, you  
3 mentioned that you were the president of Lisa SA.  
4 So that -- you've maintained that presidency again  
5 for just shy of 20 years, is that right?  
6 A. Basically. There hasn't been much  
7 happening.  
8 125 Q. And that's because Lisa is a  
9 holding company as well, right?  
10 A. Yes, that's correct. It holds --  
11 126 Q. Is that -- sorry, go ahead.  
12 A. It holds the shares of Villalobos,  
13 and that's basically its only function.  
14 127 Q. All right, and when you say  
15 Villalobos, that is a group of companies known as  
16 Avicola Villalobos?  
17 A. Mm-hmm.  
18 128 Q. Yes?  
19 MR. RODRIGUEZ: You have to say yes.  
20 THE DEPONENT: Yes.  
21 BY MR. WOYCHESHYN:  
22 129 Q. And that group of companies,  
23 Avicola Villalobos, that's a group of poultry  
24 companies?  
25 A. Yes.

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1 130 Q. I typically refer to that as the  
2 Avicola Group. Is it more convenient for your  
3 nomenclature if I call it Villalobos, or can I call  
4 it Avicola?  
5 A. Avicola Group is fine by me.  
6 131 Q. And Lisa owns a one-third share in  
7 the Avicola Group; right?  
8 A. That's correct.  
9 132 Q. And for over -- definitely over 10  
10 years, Xela, Arturo while he was still alive, and  
11 Juan have been involved in litigation with  
12 Gutierrez family members in Guatemala over Lisa's  
13 interest in the Avicola Group; right?  
14 A. Yes.  
15 133 Q. And when I refer to the Gutierrez  
16 family members, I'm referring to principally Juan  
17 Luis Bosch, Dionisio Mayorga, Juan Jose Mayorga and  
18 Felipe Bosch, and those individuals are commonly  
19 refer to as The Boys?  
20 A. Correct.  
21 134 Q. That litigation hasn't just been  
22 one litigation. There have been many, many pieces  
23 of litigation, right?  
24 A. That's correct, yes.  
25 135 Q. In multiple jurisdictions?



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1 A. Yes.  
 2 136 Q. In Florida?  
 3 A. Yes.  
 4 137 Q. Bermuda?  
 5 A. I beg your pardon?  
 6 138 Q. In Bermuda? There was litigation  
 7 in Bermuda?  
 8 A. Yes.  
 9 139 Q. In Ontario?  
 10 A. Yes.  
 11 140 Q. And I understand that there have  
 12 been hundreds of lawsuits in Guatemala. Is that  
 13 your understanding?  
 14 A. Yes.  
 15 141 Q. So because there's been so many  
 16 pieces of litigation, I'll just collectively refer  
 17 to that as the Avicola litigation, and will that be  
 18 acceptable to you?  
 19 A. Fine.  
 20 142 Q. And with that many lawsuits, I  
 21 understand that there are a multitude of issues,  
 22 but at its core, is it fair to say that what is in  
 23 dispute is what Lisa is owed by The Boys for its  
 24 holding in the Avicola Group?  
 25 A. Yes.

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1 143 Q. And I understand Xela's position  
 2 is that that amount could be -- that is the amount  
 3 that they are owed for their -- for Lisa's interest  
 4 in Avicola could be as high as \$400 million?  
 5 A. Yes.  
 6 144 Q. And in fighting the Avicola  
 7 litigation, am I right that Xela has spent at least  
 8 \$30 million in legal fees and disbursements and  
 9 expert fees?  
 10 A. I can't answer that actually. I  
 11 don't know how much they spent. They've spent a  
 12 lot of money, but I don't know -- put a number on  
 13 it, I can't do that.  
 14 145 Q. That number wouldn't sound  
 15 outrageous to you?  
 16 A. No, I guess it wouldn't.  
 17 146 Q. And I take it that legal expenses,  
 18 that was something that was discussed at Xela board  
 19 meetings?  
 20 A. Yes, I guess that's right, but  
 21 not -- but yes, I guess the answer is.  
 22 147 Q. And --  
 23 A. We didn't go into a lot of depth  
 24 about questioning the costs or anything. That was  
 25 basically done by Arturo. Arturo was the -- is the

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1 leader in that.  
 2 148 Q. And in addition to the legal fees,  
 3 I understand, to help its position in the Avicola  
 4 litigation, Xela also approved a number of  
 5 political expenditures in Guatemala?  
 6 A. Very little. To say no on any of  
 7 it would be correct, but we certainly didn't  
 8 approve very much, if we did at all, to my  
 9 recollection.  
 10 149 Q. Sorry, can I just -- I didn't hear  
 11 that question -- or hear that answer, I'm sorry.  
 12 A. Well, to my recollection, we did  
 13 not. If there was any money that went there, it  
 14 was very little, okay, but I can't put a number on  
 15 it or anything of that nature because it was a big  
 16 point of discussion that was going on because of  
 17 this case, and in the last election, there was -- I  
 18 don't know anything that was -- that came out of  
 19 Xela.  
 20 150 Q. Okay, and --  
 21 A. If there was, it was something I  
 22 wasn't aware of.  
 23 151 Q. And are you putting any time  
 24 restrictions on your answer? Are you referring to  
 25 recently, or does your answer apply broadly since

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1 the Avicola litigation started?  
 2 A. Relate that -- certainly not in  
 3 the last election, where Juan ran for president,  
 4 there was not anything there. Prior to that, in  
 5 previous elections, there may have been some, but  
 6 we were never a big backer of these things, and  
 7 normally, frankly, they didn't come up in the board  
 8 meeting. If there had been money spent there, it  
 9 might have come directly from Arturo for all I  
 10 know. I'm not aware of it. We didn't -- it was  
 11 not something that we got into.  
 12 152 Q. Who would be the person best  
 13 situated to know how much money Xela spent on  
 14 political activities in Guatemala?  
 15 A. Well, I guess if it was Xela that  
 16 spent it, it would be Mark.  
 17 153 Q. Mark Korol?  
 18 A. Yes.  
 19 154 Q. And if I were to suggest to you  
 20 that Xela, in the past 15 years, has spent over \$12  
 21 million on political activities in Guatemala, would  
 22 that be --  
 23 A. I would laugh. I would laugh at  
 24 that.  
 25 155 Q. To you that would seem to be an

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1 unreasonable number?  
2 A. It would be ridiculous. It would  
3 be ridiculous.  
4 156 Q. I mentioned litigation in Bermuda,  
5 and I understand that, in one piece of litigation  
6 in Bermuda that falls within the umbrella of  
7 Avicola litigation with The Boys, that Xela was  
8 successful and actually recovered over \$5 million.  
9 Do I have that right?  
10 A. I don't think it was that much. I  
11 think it was more like two or three million.  
12 157 Q. Okay.  
13 A. That's quite awhile ago, but I  
14 don't think it was five million.  
15 158 Q. Okay, and other than that, that  
16 judgment, has Xela recovered any other judgment in  
17 the Avicola litigation?  
18 A. No, not that I'm aware of.  
19 159 Q. Having been a director of Xela for  
20 over 15 years, would you agree that there's no  
21 question that its most valuable asset is the  
22 interest that Lisa holds in the Avicola Group?  
23 A. Yes.  
24 160 Q. Would you agree that, based on the  
25 current state of affairs, that -- the financial

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1 state of affairs of Xela, that unless that interest  
2 in the Avicola Group is monetized, that there is no  
3 reasonable prospect for Xela to be able to pay the  
4 orders against it in Ontario in favour of  
5 Margarita?  
6 A. I would say that's correct.  
7 There's no money coming in.  
8 161 Q. And is it fair to say that,  
9 without monetizing that asset that Lisa has in the  
10 Avicola Group, that there is a -- that Xela is in  
11 serious jeopardy of being a going concern?  
12 A. Yeah, I don't see how it could  
13 continue unless -- unless the money comes somewhere  
14 or another from the contribution out of Lisa.  
15 That's very problematic though, I think.  
16 162 Q. As president of Lisa, do you  
17 know -- I take it that the shares that Lisa holds  
18 in the Avicola Group are in safekeeping someplace?  
19 A. I assume they are. I have been  
20 told they are, but I don't know where they are.  
21 163 Q. Who would be the best person to  
22 ask about the location of those shares?  
23 A. Probably Juan, I think.  
24 164 Q. Juan Gutierrez?  
25 A. I would think, but I can't answer

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1 that with any authority. So it's either going to  
2 be Juan or Mark.  
3 165 Q. Okay.  
4 A. One of the two of them, so I don't  
5 know, but I would bet Juan would be the better one  
6 of the two.  
7 166 Q. So as between Mark and Juan  
8 Gutierrez, you think Juan would be better  
9 positioned to know the location of those shares?  
10 A. Probably. He's more familiar with  
11 the -- living in Guatemala and that sort of thing.  
12 167 Q. Okay. As far as you know, in his  
13 role as chief financial officer for Xela, does Mark  
14 have financial oversight over the subsidiaries of  
15 Xela?  
16 A. Yeah, I would guess that's  
17 correct. Yes. He's the one that consolidated all  
18 the numbers and so forth.  
19 168 Q. What do you mean by consolidated  
20 all the numbers?  
21 A. Well, when we got reports in from  
22 the various subsidiaries, he did the consolidation.  
23 169 Q. And in terms of consolidation,  
24 would he consolidate their financial operations?  
25 A. What do you mean? Consolidate

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1 them on a piece of paper, yes, but as far as  
2 consolidating from a bank point of view, no.  
3 170 Q. Right.  
4 A. I don't think there's any way you  
5 can do that. You know, each operation is run under  
6 its own in various countries, so you had to go with  
7 the rules of the road, so to speak.  
8 171 Q. And did Xela have any financial  
9 statements that were consolidated with its  
10 subsidiaries; that is, annual financial statements?  
11 A. I can't answer whether they were  
12 consolidated by Deloitte or not. We would get  
13 reports at the board meeting that was -- that was  
14 there, but whether there was an official audited  
15 type of statement, I don't think. I doubt that.  
16 172 Q. Okay.  
17 A. But again, I don't know for sure.  
18 173 Q. I take it that you weren't the one  
19 that had direct contact with Deloitte?  
20 A. No. Oh, no. I basically -- they  
21 came to one or two meetings I think over the years,  
22 but other than that, no, I didn't have anything to  
23 do with them.  
24 174 Q. The main point of contact from  
25 Xela to Deloitte would have been Mr. Korol?

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1	A. Would have been Mark Korol, yes.	1	minutes of that meeting?
2	175 Q. I'm going to ask -- can we just go	2	A. No, I did not.
3	off for a second?	3	182 Q. And the result of that meeting was
4	---Discussion off the record	4	you formed the conclusion that Xela was not in a
5	BY MR. WOYCHESHYN:	5	financial position to redeem any of the preference
6	176 Q. I would like you to ask Mr. Korol	6	shares?
7	for a current listing of all directors and officers	7	A. That's correct because -- and Juan
8	for any Xela subsidiary, whether directly or	8	recused himself because he had an equal number of
9	indirectly owned.	9	shares than Margarita did, and we didn't have
10	I would like you to ask Mr. Korol for	10	enough to pay any money, let alone to do that,
11	the -- for, pardon me, a list of any amounts paid	11	so -- so there was -- it was a rather easy decision
12	to all directors of Xela and any Xela subsidiary in	12	to make.
13	the past five years.	13	183 Q. And what information were you
14	I would like you to ask Mr. Korol for a	14	looking at to make that decision?
15	current listing of all employees for any Xela	15	A. I wasn't looking at anything other
16	subsidiary, whether owned directly or indirectly.	16	than verbal contacts with Mark.
17	I would like you to ask Mr. Korol for a	17	184 Q. And what did Mark tell you?
18	list of the salaries for any employee of a Xela	18	A. There's no money.
19	subsidiary in the past five years, and I would like	19	185 Q. Okay. Anything more particular,
20	you to ask Mr. Korol for the production of the	20	or just that generic statement, there is no money?
21	minute book for any Xela subsidiary, whether that	21	A. Well, basically that's what it
22	subsidiary is directly or indirectly owned.	22	was. I don't know whether it was -- I have no
23	U/A MR. RODRIGUEZ: Okay.	23	verbatim of the conversations, but the fact of the
24	BY MR. WOYCHESHYN:	24	matter is we didn't have any money and, you know,
25	177 Q. Do you know, Mr. Shields, where	25	how it was stated and when it was done, I can't
Page 39		Page 41	
1	Xela's minute book is kept?	1	respond to that but -- you know, it's been a
2	A. No.	2	scraping together things here for quite sometime
3	178 Q. My office has received production	3	from everything I can see.
4	of the minute book up until the end of September	4	186 Q. Yes. Can you ask Mr. Korol the
5	2016. Based on that review, it looks like there	5	location of Xela's minute book?
6	was a board meeting on January 30th of this year.	6	U/A A. Yeah.
7	Do you recall that?	7	187 Q. And ask him whether there has been
8	A. The only one we had was we had a	8	anything added to the minute book since September
9	meeting to discuss the purchase of shares -- or	9	12, 2016?
10	whether the shares were being cashed in by	10	A. September 12, 2016. Okay.
11	Margarita and also Juan, and Juan recused himself.	11	188 Q. Yes? Sorry, I need a verbal.
12	So I was the only board member ever there, if	12	MR. RODRIGUEZ: We've made note of it.
13	that's the one you're referring to.	13	MR. WOYCHESHYN: But the reporter needs
14	179 Q. Was there significant argument at	14	to know whether you will do it or whether you won't
15	that board meeting amongst yourself? That was a	15	do it or whether you're going to take it under
16	joke.	16	advisement.
17	A. I was going to say, you're trying	17	U/A MR. RODRIGUEZ: We'll take it under
18	to get me hooked into that one. It was -- anyway,	18	advisement. We'll take all of them under
19	I was the only one.	19	advisement so I can pass this along to my counsel.
20	180 Q. Okay. So that board meeting dealt	20	Xela's counsel, excuse me.
21	with a request for redemption of the preference	21	MR. WOYCHESHYN: And to be fair, I
22	shares that certain shareholders had made to Xela?	22	think that all of the undertakings, madam reporter,
23	A. It's the only one I can recollect	23	should be listed as under advisements.
24	anyway, so it had to be that meeting.	24	That's what you were getting at,
25	181 Q. I take it that you didn't take	25	Mr. Rodriguez, right?

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1 MR. RODRIGUEZ: That's correct.  
2 BY MR. WOYCHESHYN:  
3 189 Q. Xela's financial year end is May  
4 31?  
5 A. Yes.  
6 190 Q. And in recent years -- well, let  
7 me ask it this way. Did Deloitte used to provide  
8 audited financial statements for Xela?  
9 A. Yes.  
10 191 Q. And the statements that I have for  
11 May 31, 2015, which are the most recent ones I  
12 have, those were done on a review engagement basis.  
13 Was that something new to your knowledge, or was  
14 that the common way they prepared the statements?  
15 A. I don't remember.  
16 192 Q. Okay. Do you understand the  
17 difference between an audited financial statement  
18 and a review engagement statement?  
19 A. Not exactly. I know what an  
20 audited one is. I don't know what a reviewed one  
21 is. I assume it's one that's put together before  
22 they get a chance to do all the detailed checking.  
23 That would be my guess.  
24 193 Q. In Canada, there are three  
25 standards of financial statements that are reviewed

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1 by external auditors or accountants. The highest  
2 standard is the audited, the middle standard is the  
3 review engagement, and the lowest standard would be  
4 what's called a notice to reader statement.  
5 A. I don't know. I can't answer any  
6 of that.  
7 194 Q. I take it that you are authorized  
8 to attend today on behalf of Xela?  
9 A. Yes.  
10 195 Q. Let me put it this way. Juan  
11 Gutierrez didn't -- he knows that you are being  
12 examined?  
13 A. Yes.  
14 196 Q. And he didn't tell you not to be  
15 examined or not to attend your examination, right?  
16 A. No. We haven't talked since I  
17 received this.  
18 MR. RODRIGUEZ: Well, in fairness, I  
19 don't think that Cal thought that he had any other  
20 choice. You served him with a notice, and he's  
21 complying with your notice.  
22 BY MR. WOYCHESHYN:  
23 197 Q. Right. Then I will ask for an  
24 undertaking for you to ask Mr. Gutierrez, who is  
25 the only other office -- only other director,

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1 pardon me, of Xela to confirm that the evidence  
2 given by Mr. Shields in this examination is binding  
3 on Xela.  
4 U/A MR. RODRIGUEZ: Okay.  
5 BY MR. WOYCHESHYN:  
6 198 Q. And I'm also going to ask that  
7 Xela, after you speak with Mr. Gutierrez, provide a  
8 waiver to allow my office to speak directly to  
9 Deloitte regarding Xela's financial affairs.  
10 Sorry, we just have to wait until we  
11 hear something. Otherwise, the reporter is going  
12 to look at me all...  
13 U/A MR. RODRIGUEZ: We'll take those under  
14 advisement.  
15 BY MR. WOYCHESHYN:  
16 199 Q. So, Mr. Shields, on March 8th of  
17 this year, Xela's lawyer at Groia & Company,  
18 Mr. Mark Mendelzon, advised me that Xela was  
19 working on getting financial statements for the  
20 Xela subsidiaries, and it was expected that they  
21 would be provided to me by the end of March, with  
22 the 2016 statements to be provided to me by the end  
23 of April.  
24 I take it that you weren't involved in  
25 the preparation of any of Xela's subsidiaries'

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1 financial statements?  
2 A. That's correct.  
3 200 Q. Can you ask Mr. Korol to provide  
4 me with all financial statements for Xela's  
5 subsidiaries for the year 2011 through to 2016?  
6 U/A MR. RODRIGUEZ: Okay.  
7 BY MR. WOYCHESHYN:  
8 201 Q. And if consolidated financial  
9 statements were prepared for Xela or any of its  
10 subsidiaries for the years 2011 to 2016, I would  
11 like you to ask Mr. Korol to produce those to me.  
12 U/A MR. RODRIGUEZ: Okay.  
13 BY MR. WOYCHESHYN:  
14 202 Q. You don't have a copy of the 2015  
15 financial statements in front of you, correct?  
16 A. No, I don't have a copy.  
17 203 Q. Okay. I won't get in granular  
18 detail, but I do want to ask you some questions,  
19 and I don't -- if at any point you feel  
20 uncomfortable, just let me know.  
21 The statement of operations on the most  
22 recent financial statements for May 31, 2015 show  
23 that Xela had a foreign exchange loss of \$8.4  
24 million approximately, and I take it that the  
25 foreign exchange losses that Xela has incurred in

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<p>1 recent years has principally been the result of the 2 operation in Venezuela? 3 A. That's correct. 4 204 Q. And in recent years, Venezuela has 5 experienced hyperinflation? 6 A. Correct. 7 205 Q. And the political and economic 8 situation in Venezuela has financially hurt 9 Arturo's restaurants? 10 A. Very much so. 11 206 Q. And what is Xela's plan to deal 12 with that? 13 A. It's not that we have a plan. 14 We're trying to keep the doors open as it goes 15 through this terrible time. That's the main issue, 16 that we are of the opinion that if the -- we can 17 get through everything, and the country gets back 18 on its feet, we're in a great position because we 19 have a lot of restaurants, and they're good 20 restaurants. So the company will take care of 21 itself, I think, very nicely if the country was 22 all... 23 207 Q. So there's no plans at this point 24 to shut down Arturo's restaurants? 25 A. No. As far as I know. Of course,</p>	<p>1 in April of 2016? 2 A. I can't remember that. I don't 3 know. It sounds like it was too high to me, that's 4 it, but I can't answer that. 5 213 Q. Do you know where Xela keeps its 6 cash? 7 A. No. 8 214 Q. The financial statements for the 9 year ended May 31, 2015 state that there are -- or 10 there was computer equipment of around \$100,000, 11 just over \$90,000. 12 Do you know where that equipment is? 13 A. No. 14 215 Q. Can you ask Mr. Korol? 15 U/A A. Yes. 16 216 Q. I'm going to read to you note 17 2 -- or parts of note 2 to the financial statements 18 for the year ended May 31, 2015. Under the heading 19 Going Concern, it says: 20 "While the non-consolidated 21 financial statements have been 22 prepared on the basis of accounting 23 principles applicable to a going 24 concern, adverse conditions and 25 events cast substantial doubt upon</p>
<p>Page 47</p> <p>1 I'm not involved in the day-to-day things. I'm 2 astounded quite frankly that they've been able to 3 operate as well as they have right now just to keep 4 the doors open. Getting chicken is not an easy 5 thing in a country that doesn't have food. 6 208 Q. I take it it's a very popular fast 7 food chain though? 8 A. Yes. 9 209 Q. The financial statements, 10 statement of operations, for May 31, 2015 also show 11 a bad debt on advances to related parties of 11.7 12 million. I take it that, sitting here today, you 13 don't know what that relates to? 14 A. I haven't the foggiest idea what 15 it is. 16 210 Q. Can you ask Mr. Korol, please? 17 U/A A. Okay. I will do that. 18 211 Q. Do you know what the current cash 19 position is for Xela? 20 A. No. 21 212 Q. Based on my review of the minutes 22 from the April 2016 board meeting for Xela, it said 23 that Xela's cash position was 550,000. 24 Does that sound about right -- I'm not 25 holding you to the exact figure -- that it was back</p>	<p>Page 49</p> <p>1 the validity of this assumption." 2 A. That probably was related to the 3 problems in Venezuela, but it also may have been 4 part of the Fresh Quest, because we were running 5 into problems with Fresh Quest at that time too, 6 so... 7 217 Q. And since May 31st, 2015, have the 8 financial conditions improved for Xela? 9 A. No. 10 218 Q. And it says in this note 2: 11 "As of May 31, 2015, the 12 company has an accumulated deficit 13 of \$54,767,667. These financial 14 statements have been prepared on a 15 going concern basis which 16 contemplates the realization of 17 assets and the payment of 18 liabilities in the ordinary course 19 of business. The company relies on 20 continued support from a company 21 under common control and one of the 22 shareholders of the company for its 23 future viability." 24 So where it says "the company relies on 25 continued support from a company under common</p>

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1 control", do you know what company that references?  
2 A. No, I don't.  
3 219 Q. Can you ask Mr. Korol, please?  
4 U/A A. Yes.  
5 220 Q. And where it says "the company  
6 relies on continued support from one of the  
7 shareholders of the company for its future  
8 viability", I take it that that shareholder in all  
9 likelihood was Arturo?  
10 A. I would assume so.  
11 221 Q. In looking at note 5 of the  
12 financial statements for Xela for the year ended  
13 May 31, 2015, there are two amounts due to related  
14 parties that are over 20 million. One is an amount  
15 of \$26,168,125 to be BDT Investments Inc., and BDT  
16 Investments, is that related to Arturo's?  
17 A. Yes.  
18 222 Q. And do you know why, as of May 31,  
19 2015, Xela owed BDT Investments 26 million?  
20 A. Well, I think BDT was the one that  
21 owned PAICA from what I remember and probably  
22 the -- they loaned money to Xela because of the --  
23 that was the only lifeline they really had. So  
24 that's my guess. That's probably an IOU to BDT.  
25 That's a guess. It's not an authoritative...

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1 223 Q. Can you ask Mr. Korol?  
2 A. Sure.  
3 MR. RODRIGUEZ: What question exactly  
4 are you -- do you want us to pose to Mr. Korol?  
5 BY MR. WOYCHESHYN:  
6 224 Q. Is the amount that was due to BDT  
7 Investments of over 26 million as of May 31, 2015,  
8 how did that debt arise, and just to be fair to  
9 you, Mr. Shields, my understanding is that PAICA is  
10 owned by a company called Arven, A-R-V-E-N?  
11 A. I think that's correct. Is that  
12 correct? I think so. I think so.  
13 225 Q. And that --  
14 A. I don't really recollect. We got  
15 into that tangled web of all the subsidiaries. I  
16 get a little confused from time to time.  
17 226 Q. No problem. And then another  
18 significant amount on the note 5 of the financial  
19 statements May 31, 2015 is just over 20 million to  
20 Badatop Holdings, and you understood that Badatop  
21 was related to the farms?  
22 A. I don't remember.  
23 227 Q. Can you ask Mr. Korol what that  
24 amount related to; that is, the 20 million  
25 reflected in note 5 that was owed from Xela to

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1 Badatop?  
2 U/A MR. RODRIGUEZ: Okay.  
3 BY MR. WOYCHESHYN:  
4 228 Q. And I'm not sure, did we get an  
5 okay on the last one, Madam reporter?  
6 MR. RODRIGUEZ: Yes, you did.  
7 BY MR. WOYCHESHYN:  
8 229 Q. Thank you, and then the last one  
9 on this note, if you could ask Mr. Korol why Arven  
10 SA, this is Corporacion Arven, A-R-V-E-N, owed --  
11 or was owed 6.8 million from Xela as of May 31,  
12 2015.  
13 U/A MR. RODRIGUEZ: Yes.  
14 BY MR. WOYCHESHYN:  
15 230 Q. Note 6 of the financial  
16 statements, under the heading Bank Indebtedness,  
17 and it states that the company has a credit  
18 facility with a major Canadian chartered bank.  
19 Do you know what bank Xela has a credit  
20 facility with or had a credit facility with as of  
21 May 31, 2015?  
22 A. I would have to ask Mark.  
23 231 Q. Okay. Can you ask him what the  
24 credit facility was as of May 31, 2015?  
25 U/A A. Okay.

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1 232 Q. And what, if any, credit facility  
2 has been in place since that date for Xela?  
3 U/A A. Okay.  
4 MR. RODRIGUEZ: Can we take a bathroom  
5 break, Jason?  
6 MR. WOYCHESHYN: Absolutely. Ten  
7 minutes?  
8 MR. RODRIGUEZ: Sure.  
9 ---Short recess at 2:16 p.m.  
10 ---Upon resuming at 2:29 p.m.  
11 BY MR. WOYCHESHYN:  
12 233 Q. So back on the record.  
13 Mr. Shields, do you acknowledge you're still under  
14 oath?  
15 A. Yes.  
16 234 Q. So do I have it right that, as of  
17 today, you don't know where Xela banks?  
18 A. That's correct.  
19 235 Q. The best person to ask would be  
20 Mr. Korol?  
21 A. Yes.  
22 236 Q. Can you ask him and have him --  
23 ask him where Xela currently has any bank accounts?  
24 U/A A. Yes.  
25 237 Q. And ask him for the branch

		Page 54			Page 56
1	location of any bank accounts, the account numbers		1	249	Q. Okay, and is it still in
2	and the current balances in those bank accounts.		2		operation?
3	U/A A. Okay.		3		A. As far as I know, but I can't
4	238 Q. You don't have access to any bank		4		honestly say.
5	accounts that Xela had?		5	250	Q. And it would be a Xela subsidiary?
6	A. No.		6		A. I don't know that either for sure.
7	239 Q. And can you ask Mr. Korol for		7	251	Q. Okay. Do you talk about it at
8	production of the monthly bank statements for Xela		8		Xela board meetings -- or when you did have Xela
9	for the past five years?		9		board meetings, let me put it that way, did you
10	U/A A. Yes.		10		talk about --
11	240 Q. And ask him for a copy of Xela's		11		A. That was very preliminary at that
12	cheque-book for the last five years?		12		time when we had it, so -- it was -- we talked
13	U/A A. Yes.		13		about it, but, you know, we didn't have a -- they
14	241 Q. I take it that, in the course of		14		had some reports of what they were doing, and it
15	your time with Xela, there's been a lot of related		15		was just in the early stages of it beginning.
16	party transactions; that is, money being sent from		16	252	Q. Okay. The note 8 to the financial
17	Xela to other related companies?		17		statements as of May 31, 2015 suggest that Xela had
18	A. More the other way around. Other		18		advanced \$2.4 million to Greenpack Guatemala. I
19	related companies to Xela.		19		take it you don't know anything about that?
20	242 Q. Right. I take it that, as far as		20		A. No. Not realistically, no.
21	you knew, any related party transactions, whether		21	253	Q. Can you ask Mr. Korol what
22	it would be Xela lending money to its related party		22		that -- or what those advances for \$2.4 million
23	or the related party lending money to Xela, that		23		were for?
24	those related party loans would be unsecured?		24	U/A	A. Okay.
25	A. That's true.		25	254	Q. And as part of the request for a
		Page 55			Page 57
1	243 Q. And that, for the most part,		1		list of any monies owed to Xela from related
2	non-interesting bearing?		2		companies, I would like you to ask Mr. Korol for
3	A. That's true. I believe.		3		management's position on the likelihood on
4	244 Q. I'm not trying to trick you. I		4		collecting on those amounts.
5	think in the financial statements it looks like the		5	U/A	A. Okay.
6	IRS required that interest be paid on a loan with		6	255	Q. Note 8 for the financial
7	Fresh Quest, but other than that, I think the loans		7		statements for Xela for the year ended May 31, 2015
8	were interest free -- or the related party		8		also suggests that there was an investment in
9	transactions were interest free.		9		International Finance Bank of just over a million
10	A. You know more about it than I do.		10		dollars.
11	245 Q. Do you recognize the company name		11		Did Xela, as of May 31, 2015, have
12	Empresas Arturo International?		12		shares in International Finance Bank?
13	A. I've heard of it, yeah. I don't		13		A. We had an investment there, I do
14	remember where it fits in the scenario.		14		remember that. I don't know what for.
15	246 Q. Okay. I would like you to ask		15	256	Q. Who would be the best person to
16	Mr. Korol for a current listing of amounts		16		answer that question?
17	receivable by Xela from any of its related		17		A. Mark Korol.
18	companies.		18	257	Q. Can you ask Mr. Korol what the
19	U/A A. You mean the current balance?		19		nature of the investment was that Xela had in
20	247 Q. Yes. Do you recognize the name		20		International Finance Bank as of May 31, 2015?
21	Greenpack Guatemala?		21	U/A	A. Okay.
22	A. Yes.		22	258	Q. And if the investment continues to
23	248 Q. What is that entity?		23		this day, what the current investment is?
24	A. It's an entity that makes plastic		24	U/A	A. Okay.
25	bags.		25	259	Q. And if the investment is by way of

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1 equity investment in shares, if I could ask you to  
2 ask Mr. Korol to produce a copy of the share  
3 certificates?  
4 U/A A. Okay.  
5 260 Q. I take it, sir, to your knowledge,  
6 in the past five years Xela has not paid any  
7 creditors outside of the ordinary course of  
8 business?  
9 A. Yes, as far as I know.  
10 261 Q. Can you ask Mr. Korol?  
11 A. I'm not involved in that  
12 day-to-day operations.  
13 262 Q. Can you ask Mr. Korol if he has  
14 any information that's different than that?  
15 U/A A. Okay.  
16 263 Q. Now, I know about the redemption  
17 request for the preferred shareholders. Leaving  
18 that aside, do you know of any shareholder loans  
19 that Xela has?  
20 A. No.  
21 264 Q. Can you ask Mr. Korol if there are  
22 any shareholder loans?  
23 U/A A. Okay.  
24 265 Q. And ask him to provide particulars  
25 of any shareholder loans that were made or paid in

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1 the last five years?  
2 U/A A. Okay.  
3 266 Q. I take it Xela has a corporate  
4 credit card?  
5 A. I don't know.  
6 267 Q. Can you ask Mr. Korol?  
7 U/A A. Okay.  
8 268 Q. And if there are any Xela credit  
9 cards, I would like to know the account numbers,  
10 the balance, who has signing authority over the  
11 credit cards and copies of the credit card  
12 statements for the last five years.  
13 U/A A. Okay.  
14 269 Q. Other than Margarita and the  
15 amounts ordered by the courts up in Ontario against  
16 Xela and any related party, do you know of any  
17 other creditors of Xela?  
18 A. No.  
19 270 Q. Can you ask Mr. Korol for a list  
20 of Xela's creditors?  
21 A. Okay.  
22 271 Q. And also ask Mr. Korol what the  
23 status of any creditor claims is?  
24 A. Okay.  
25 272 Q. Whether any of Xela's creditors

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1 are secured creditors?  
2 A. Okay.  
3 273 Q. And note 6 of the financial  
4 statements for Xela for the year ended May 31,  
5 2015, under the heading Bank Indebtedness, states  
6 that the facility is secured by a guarantee  
7 provided by a related party, as well as a general  
8 security agreement over all present and future  
9 personal property.  
10 Do you know who the related party is  
11 that provided a guarantee?  
12 A. No.  
13 274 Q. Can you ask Mr. Korol, please?  
14 U/A A. Okay.  
15 275 Q. And then ask Mr. Korol for a copy  
16 of the general security agreement referred to in  
17 note 6 of the financial statements for the year  
18 ended May 31, 2015?  
19 U/A A. Okay.  
20 276 Q. And for any secured debts of Xela,  
21 I would like you to ask Mr. Korol for production of  
22 any other security agreements, the identification  
23 of the security holder, and the current status of  
24 the secured debt.  
25 U/A A. Okay.

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1 277 Q. Are you aware of any other  
2 judgments against Xela other than Margarita's?  
3 A. No.  
4 278 Q. Can you ask Mr. Korol if he is  
5 aware of any other judgments?  
6 U/A A. Yes.  
7 279 Q. Do you know whether Xela has any  
8 cars, any vehicles?  
9 A. No.  
10 280 Q. Can you ask Mr. Korol, please?  
11 U/A A. Yes.  
12 281 Q. If there are any vehicles, I would  
13 like the make, year, model, license plate number,  
14 the vehicle identification number, and the --  
15 whether there's any encumbrance on the vehicle,  
16 please, if you can ask those questions of  
17 Mr. Korol.  
18 U/A A. Okay.  
19 282 Q. I take it that other than what  
20 would be listed on Xela's financial statements, you  
21 wouldn't be aware of any other assets that Xela  
22 has, is that fair?  
23 A. Yeah, I don't know of any.  
24 283 Q. If you could ask Mr. Korol for a  
25 list of Xela's current assets, which include any

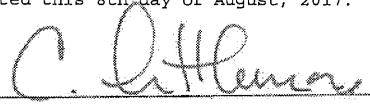


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<p>1 accounts receivable, equipment, furniture, please? 2 U/A MR. RODRIGUEZ: Okay. 3 BY MR. WOYCESHYN: 4 284 Q. If you could ask Mr. Korol, 5 please, whether Xela is part of any trust 6 agreement, whether Xela owns any bonds, whether 7 there are any mortgages payable to Xela, whether 8 Xela is owed any monies under any other loan 9 agreement? 10 U/A A. Okay. 11 285 Q. I would also like an undertaking 12 for you to discuss with Mr. Gutierrez the following 13 request, which is I'm going ask for an undertaking 14 from the company not to remove any assets that it 15 currently has in Ontario, not to remove any of 16 those assets outside of the jurisdiction without 17 providing my office with 20 business days notice. 18 A. I'm not sure I quite understand 19 what you're saying. 20 286 Q. What I would like you to do, sir, 21 is speak to Mr. Gutierrez and see if the two of 22 you, as the board members, can agree that any 23 assets that Xela has in Ontario, you or anyone else 24 at the company will not cause those assets to leave 25 Ontario without providing my office with 20</p>	Page 63	<p>1 including the branch location, the account numbers 2 and the balance in those Xela subsidiary bank 3 accounts. 4 A. Okay. 5 MR. RODRIGUEZ: Can you clarify that 6 for me, Jason? What do you mean by Xela 7 subsidiary? You're talking about bank accounts of 8 the subsidiary? 9 BY MR. WOYCESHYN: 10 294 Q. Yes. So any subsidiary that is 11 directly or indirectly wholly owned by Xela, I 12 would like to know the location, the account 13 numbers and the balance of those entities' bank 14 accounts. Understood? 15 U/A MR. RODRIGUEZ: Yes. 16 BY MR. WOYCESHYN: 17 295 Q. Do you know whether Xela is a 18 beneficiary under any insurance policy, life 19 insurance policy? 20 A. No. 21 296 Q. Can you ask Mr. Korol? 22 U/A A. Yes. 23 297 Q. And if Xela is, can you produce a 24 copy of the policy, please? 25 U/A A. Okay.</p>	Page 65
<p>1 business days notice. 2 U/A A. Okay. 3 287 Q. Do you know whether Xela owns any 4 real estate? 5 A. No. 6 288 Q. Can you ask Mr. Korol? 7 A. I doubt it, but I don't know. 8 289 Q. Sorry, I missed that. 9 A. I don't know. 10 290 Q. Can you ask Mr. Korol, please? 11 U/A A. Okay. 12 291 Q. And if it does, to provide a 13 listing of all real estate holdings. I need an 14 okay or a no. 15 U/A MR. RODRIGUEZ: Yes. 16 THE DEPONENT: Yeah. 17 BY MR. WOYCESHYN: 18 292 Q. Can you ask Mr. Korol whether 19 Fresh Quest still has a bank account with money in 20 it? 21 U/A A. Okay. 22 293 Q. I asked you had about Xela's bank 23 accounts earlier. I would also like you to ask 24 Mr. Korol for a listing of any Xela subsidiaries 25 bank accounts, regardless of where they're located,</p>		<p>1 298 Q. I take it that Mr. Korol is the 2 one that deals with Xela's corporate tax returns? 3 A. Yes. 4 299 Q. I would like you to ask him to 5 provide me with Xela's corporate tax returns for 6 the years 2011 to 2016. 7 U/A A. Okay. 8 300 Q. And I would like any schedules to 9 those tax returns, please. 10 U/A A. Okay. 11 301 Q. And then if you could also ask 12 Mr. Korol to provide any notices of assessment 13 received from the Canada Revenue Agency for Xela 14 for the tax years 2011 to 2016. 15 U/A A. Okay. 16 302 Q. Who is the best person to ask 17 about the litigation that Xela is involved with in 18 other jurisdictions? Would that be Juan or 19 Mr. Korol? 20 A. Probably Juan. 21 303 Q. Okay. If you can ask Mr. Korol 22 the following questions, please? Since October 23 2015, has Xela sold any assets worth more than 24 \$10,000? 25 Second, since October 2015, has Xela</p>	

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1 transferred any assets worth more than \$10,000, and  
2 third, since October 2015, has Xela moved any  
3 assets it owned in Ontario from Ontario to another  
4 jurisdiction, and if the answer to any of those  
5 three questions is yes, I would like to know what  
6 was transferred, when it was transferred, how much  
7 was transferred, and where the asset or funds were  
8 transferred to.  
9 U/A A. Okay.  
10 304 Q. If you give me two minutes, I just  
11 want to check my notes, but I think we're done.  
12 Just give me two minutes, please.  
13 A. Okay.  
14 ---Discussion off the record  
15 MR. WOYCHESHYN: Subject to the  
16 advisements, and if there are any refusals that  
17 arise from those advisements and any additional  
18 document production, those are all my questions.  
19 Thank you, Mr. Shields, for your time.  
20 THE DEPONENT: Thank you. I appreciate  
21 it.  
22  
23 ---Whereupon, the examination concluded  
24 at 2:55 p.m.  
25

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1 REPORTER'S CERTIFICATE  
2  
3  
4 I, CINDY LITTLEMORE, CSR, Certified  
5 Shorthand Reporter, certify;  
6 That the foregoing proceedings were  
7 taken before me at the time and place therein set  
8 forth, at which time the witness was put under oath  
9 by me;  
10 That the testimony of the witness  
11 and all objections made at the time of the  
12 examination were recorded stenographically by me  
13 and were thereafter transcribed;  
14 That the foregoing is a true and  
15 correct transcript of my shorthand notes so taken.  
16  
17  
18  
19 Dated this 8th day of August, 2017.  
20  
21   
22  
23 NEESON COURT REPORTING INC.  
24 PER: CINDY LITTLEMORE, CSR  
25

<b>\$</b>	<b>107</b> 25:4	<b>139</b> 30:9	<b>171</b> 37:8	<b>20</b> 7:1,16 28:5 50:14 51:19,24 62:17,25
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<b>\$100,000</b> 48:10	<b>109</b> 25:11	<b>140</b> 30:11	<b>173</b> 37:18	<b>201</b> 45:8
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<b>\$2.4</b> 56:18,22	<b>11.7</b> 47:11	<b>142</b> 30:20	<b>175</b> 38:2	<b>2012</b> 8:2
<b>\$26,168,125</b> 50:15	<b>110</b> 25:14	<b>143</b> 31:1	<b>176</b> 38:6	<b>2015</b> 8:15 11:10 16:7,23,24 22:16 42:11 45:14,22 47:10 48:9,18 49:7, 11 50:13,19 51:7,19 52:12,21,24 56:17 57:7,11,20 60:5,18 65:23,25 66:2
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<b>\$4,000</b> 8:23	<b>112</b> 25:24	<b>145</b> 31:14	<b>178</b> 39:3	<b>202</b> 45:14
<b>\$4.25</b> 11:11	<b>113</b> 26:2	<b>146</b> 31:17	<b>179</b> 39:14	<b>203</b> 45:17
<b>\$400</b> 31:4	<b>114</b> 26:5	<b>147</b> 31:22	<b>18</b> 7:10	<b>204</b> 46:4
<b>\$5</b> 34:8	<b>115</b> 26:11	<b>148</b> 32:2	<b>180</b> 39:20	<b>205</b> 46:7
<b>\$5.2</b> 11:23	<b>116</b> 26:19	<b>149</b> 32:10	<b>181</b> 39:25	<b>206</b> 46:11
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<b>\$8.4</b> 45:23	<b>118</b> 26:25	<b>150</b> 32:20	<b>183</b> 40:13	<b>208</b> 47:6
<b>\$800,000</b> 11:17	<b>119</b> 27:4	<b>151</b> 32:23	<b>184</b> 40:17	<b>209</b> 47:9
<b>\$90,000</b> 48:11	<b>12</b> 6:16 13:1,11 41:9,10	<b>152</b> 33:12	<b>185</b> 40:19	<b>21</b> 7:19
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<b>---short</b> 53:9	<b>122</b> 27:18	<b>155</b> 33:25	<b>188</b> 41:11	<b>212</b> 47:21
<b>---upon</b> 53:10	<b>123</b> 27:21	<b>156</b> 34:4	<b>189</b> 42:3	<b>213</b> 48:5
<b>---whereupon</b> 66:23	<b>124</b> 28:2	<b>157</b> 34:12	<b>19</b> 7:13	<b>214</b> 48:8
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<b>1</b> 5:4	<b>126</b> 28:11	<b>159</b> 34:19	<b>191</b> 42:10	<b>216</b> 48:16
<b>10</b> 6:9 29:9	<b>127</b> 28:14	<b>16</b> 7:4	<b>192</b> 42:16	<b>217</b> 49:7
<b>100</b> 23:22	<b>128</b> 28:18	<b>160</b> 34:24	<b>193</b> 42:24	<b>218</b> 49:10
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<b>233</b> 53:12	<b>266</b> 59:3	<b>299</b> 65:4	<b>45</b> 12:5	<b>70</b> 18:4
<b>234</b> 53:16	<b>267</b> 59:6	<b>2:16</b> 53:9	<b>46</b> 12:9	<b>71</b> 18:8
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# TAB V

THIS IS EXHIBIT "V" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Court File No. CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

BETWEEN:

**MARGARITA CASTILLO**

Applicant  
(Moving Party)

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents  
(Respondents on Motion)

**NOTICE OF MOTION  
(Refusals and Undertakings, Returnable February 1, 2018)**

The applicant, Margarita Castillo (“**Margarita**”), will make a motion to the court on February 1, 2018 at 10:00 a.m. or soon after that time as the motion can be heard, at 393 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard

in writing under subrule 37.12.1 (1) because it is (insert one of consent, unopposed or made without notice);

in writing as an opposed motion under subrule 37.12.1 (4);

orally.

1. **THIS MOTION IS FOR:**

- (a) An order requiring Juan Guillermo Gutierrez (“**Juan**”), Carmen S. Gutierrez (“**Carmen**”, as executor of the Estate of Juan Arturo Gutierrez), and Calvin Shields (“**Shields**”, as representative of Xela Enterprises Ltd.) (collectively, the “**Judgment Debtors**”) to answer all outstanding undertakings and all questions improperly refused during their examinations in aid of execution held, respectively, on July 25, 26 and 27, 2017, as summarized in the Consolidated Chart of Refusals and Undertakings set out in Schedule “A” to this Notice of Motion, within thirty days of the date of the order;
- (b) An order requiring each of the Judgment Debtors to re-attend at his or her own expense at a date and time that may be agreed upon between counsel to answer all questions and to provide additional documentary disclosure as may arise from answers provided subsequent to the date of their respective examinations (whether as a result of the order or otherwise);
- (c) An order granting the applicant her costs of this motion; and
- (d) Such other relief as this Honorable Court considers just and necessary.

2. **THE GROUNDS FOR THE MOTION ARE:**

*The Judgment Debt*

- (a) By judgment dated October 28, 2015, The Honourable Mr. Justice Newbould ordered the respondents, Juan, Juan Arturo Gutierrez (since deceased and now



represented by the executor of his estate) and Xela Enterprises Ltd. to pay Margarita \$4,250,000.00 for her 100 common shares held in the respondent, Tropic International Limited, with interest at the rate of 2% per year commencing as of the date of the judgment (the "**Judgment**");

- (b) By order dated December 21, 2015, The Honourable Mr. Justice Newbould ordered the respondents (other than 696096 Alberta Inc.) to pay Margarita \$889,858.21 for costs, disbursements and expert fees, with interest at the rate of 2% per year commencing as of the date of the order;
- (c) By order dated December 30, 2016, the Ontario Superior Court (Divisional Court) dismissed an appeal of the Judgment and cost order, and awarded Margarita \$76,096.47 for the costs of the appeal, with interest at a rate of 2% per year commencing on January 30, 2017;
- (d) By order dated March 27, 2017, the Court of Appeal for Ontario dismissed a motion for leave to appeal and ordered the respondents (other than 696096 Alberta Ltd.) to pay costs to Margarita in the amount of \$1,500;

***Examinations in Aid of Execution***

- (a) Rule 60.18(2) authorizes the examination of the Judgment Debtors in relation to:
  - (i) The reason for nonpayment or nonperformance of the order;
  - (ii) The debtor's income and property;
  - (iii) The debts owed to and by the debtor;

- (iv) The disposal the debtor has made of any property either before or after the making of the order;
  - (v) The debtor's present, past and future means to satisfy the order;
  - (vi) Whether the debtor intends to obey the order or has any reason for not doing so; and
  - (vii) Any other matter pertinent to the enforcement of the order;
- (b) Juan was examined in aid of execution on July 25, 2017. He refused 20 questions ("refusals" as referenced herein include questions taken "under advisement" and not answered within 60 days), and gave 41 undertakings;
  - (c) Carmen was examined in aid of execution on July 26, 2017. She refused 56 questions, and gave 47 undertakings;
  - (d) Shields was examined in aid of execution on July 27, 2017. He refused 53 questions, and gave no undertakings;

***Outstanding Refusals and Undertakings***

- (e) On August 24, 2017, the applicant delivered to the Judgment Debtors a refusals and undertakings chart listing the 129 questions refused and 88 undertakings given as described above;
- (f) As of the date of scheduling this motion, on October 23, 2017, the applicant had not received answers to any of the 129 questions refused or 88 undertakings given;

- (g) On November 17, 2017, the Judgment Debtors delivered to the applicant preliminary refusals and undertakings charts providing no answers, but giving reasons for the refusal of 57 questions;
- (h) On November 30, 2017, the Judgment Debtors delivered to the applicant completed refusals and undertakings charts, providing answers for the first time to several questions, but maintaining refusals or providing incomplete answers for many other questions, and leaving 28 undertakings fully unanswered (with the designation, “pending”);
- (i) On December 6, 2017, the Judgment Debtors delivered an updated version of the refusals and undertakings chart arising from Shields examination, which corrected the inadvertent omission of an attachment;
- (j) Upon reviewing the Judgment Debtors’ refusals and undertakings charts, and in effort to simplify and expedite resolution of this motion, the applicant has reduced its own charts of outstanding refusals and undertakings chart to a single consolidated chart concerning 104 questions (including 40 questions answered with undertakings), grouped by issue as follows:
  - (i) Questions answered as “pending”, or with the indication that “further inquiries are being made” (37, including 28 questions initially answered with undertakings);

- (ii) Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship (22);
- (iii) Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is “pending” (12, including 10 questions initially answered with undertakings);
- (iv) Questions concerning information that a person being examined as the estate trustee of a deceased debtor may have learned independently of their status as estate trustee (8);
- (v) Questions concerning a debtor’s spending after an order requiring the payment of money was issued against them (7);
- (vi) Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries (5);
- (vii) Questions concerning property purchased or paid for by the debtor for the benefit of a related party (4);
- (viii) Questions asked of one Judgment Debtor which concern the disposal of assets by another Judgment Debtor (3);
- (ix) Questions concerning the identification and valuation of property currently owned by the debtor (2);

- (x) Undertakings which appear to be unanswered due to inadvertence, and without a reason for refusal (2);
- (xi) Questions concerning access to a corporate debtor's auditor (1);
- (xii) Questions concerning the movement of debtor assets from inside of Ontario to outside of Ontario (1);

***Legislative Provisions***

- (k) Rules 1.04, 3.02, 31.07, 34.10, 34.12, 34.15, 57 and 60.18 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (l) Such further and other grounds as counsel may advise and this Honourable Court may permit.

3. **THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) Affidavit of Amberlea Anderson sworn December 19, 2017;
- (b) Judgment of Mr. Justice Newbould dated October 28, 2015;
- (c) Order of Mr. Justice Newbould dated December 21, 2015;
- (d) Order of the Ontario Superior Court (Divisional Court) dated December 30, 2016;
- (e) Order to Continue dated January 12, 2017; and
- (f) Order of the Court of Appeal for Ontario dated March 27, 2017.

December 19, 2017

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Fresh Quest, Inc., Juan Guillermo Gutierrez, and  
Carmen S. Gutierrez, as Executor of the Estate of  
Juan Arturo Gutierrez.

ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 (COMMERCIAL LIST)

BETWEEN:

MARGARITA CASTILLO

Applicant  
 (Moving Party)

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
 FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
 and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Respondents  
 (Respondents on Motion)

**CONSOLIDATED UNDERTAKINGS AND REFUSALS CHART**

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
J299	64	To look for and produce vehicle permit of Mr. Gutierrez' third vehicle – BMW 2002 TI from 1975.	[U/T] – Pending.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J310	65	To check records to see how much money Mr. Gutierrez owes his friend Mr. Koutsaris for storing his vehicles.	[U/T] – Pending.	
J358	72	To provide details of Mr. Gutierrez's two boats, including make, year, model, and other identifying information.	[U/T] – Pending.	
J430	84	To advise of the precise current balance of Mr. Gutierrez' RSPs.	[U/T] – Pending.	
J449	87-88	To provide Mr. Gutierrez' personal investment/brokerage statements to show the performance of the RSP over the past 3 years.	Pending.	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 6 years, or alternatively, the past 2 years.	Pending.	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 2 years.	[U/T] – Pending.	
J609	114	To advise of payments made to Mr. Gutierrez' gardener over the past year.	[U/T] – Pending.	
J612	114	To advise of payments made to Mr. Gutierrez' pool cleaner over the past year.	[U/T] – Pending.	



Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J613	114-115	To provide a copy of the contract with the new pool company providing cleaning services.	[U/T] – Pending.	
J620	116	To provide any bills or invoices for cleaning services at Mr. Gutierrez' home and cottage.	[U/T] – Pending.	
J627	117	To provide any bills or invoices from snow removal company providing services to Mr. Gutierrez.	[U/T] – Pending.	
J630	118	To provide any invoices from person paid in the winter to put bubblers in the boathouse for the past year.	[U/T] – Pending.	
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>				
C32	12	To produce any documents that Mrs. Gutierrez has filed in her capacity as executor for the Estate.	[U/T] – Pending.	
C36	13	To produce copy of Arturo's secondary will.	Pending.	
C116	27	To advise if any of the liabilities on Exhibit B have changed between September 19, 2016 and July 26, 2017.	[U/T] – Pending.	
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority over for 2015 and 2016.	[U/T] – Pending.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority for five years before his death.	Pending.	
C131	30	To advise if Mrs. Gutierrez has filed any tax returns on behalf of the Estate.	[U/T] – Pending.	
C131	30	To produce any tax returns filed by Mrs. Gutierrez on behalf of the Estate.	Pending.	
C132	30	To produce any tax filings provided to or received from the CRA on behalf of the Estate, including, but not limited to the terminal tax return, any T1s, T3s and the clearance certificate.	[U/T] – Pending.	
C244	54-55	To provide the licence plate numbers of all vehicles listed on Exhibit D.	[U/T] – Pending.	
C244	55	With respect to Exhibit B, to advise whether the buy-out of the 2013 Mercedes-Benz SL550R convertible has actually been done or whether if they continue to pay out the lease per monthly basis, it will total \$33,000.	[U/T] – Pending.	
C256	57	With respect to the boat that was not listed on the statement of assets, to make inquiries and advise when the boat was bought, how much was paid for it, the make, year, model and value of it.	[U/T] – Pending.	

Issue #1: Questions answered as 'pending', or with the indication that 'further inquiries are being made'				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C270	59	To produce the monthly statements for the Estate's bank account since it was opened until the end of July 2017.	Pending.	
C288	63	With respect to Exhibit D, to advise if there is a similar document for Arturo's secondary estate. If so, to produce the document.	[U/T] – Pending.	
C289	63	To the extent there is no asset list for the secondary estate, to advise if Arturo had any registered investments such as a Registered Investment Fund.	[U/T] – Pending.	
C289	63	If so, to advise with what bank and at what address he had those registered accounts, the balance at the time of his passing.	[U/T] – Pending.	
C289	63	To advise where the money came from to contribute to the registered investments.	[U/T] – Pending.	
C289	63	If investments were listed in Arturo's name at the time of his death and Gutierrez' counsel's position is that they do not form part of the Estate, to provide Gutierrez' counsel's position as to why they do not form part of the estate	[U/T] – Pending.	
C289	64-65	To provide personal investment/ brokerage statements for the five years preceding Arturo's death.	Pending.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C289	64-65	To provide personal investment/ brokerage statements for years 2015 and 2016.	[U/T] – Pending.	
C324	73	In the period October 2015 and June 2016, to advise if Arturo sold any assets that were worth more than a thousand dollars or transferred any assets worth more than a thousand dollars.	[U/T] – Pending.	
C327	74-75	With respect to Exhibit B and the reference to \$8,800, to explain what the amount relates to.	[U/T] – Pending.	
C331	76	To advise whether any of the liabilities other than liability number two on Exhibit B is subject to a security interest.	[U/T] – Pending.	
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>				
S176	38	To ask Mr. Korol for: ... 4. A list of all salaries for any employee of a Xela subsidiary in the past five years. ...	Refused with respect to indirect subsidiaries. ... 4. Further inquiries are being made. ...	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S303	65-66	<p>To ask Mr. Korol the following:</p> <ol style="list-style-type: none"> <li>1. Since October 2015, has Xela sold any assets worth more than \$10,000?</li> <li>2. Since October 2015, has Xela transferred any assets worth more than \$10,000?</li> <li>3. Since October 2015, has Xela moved any assets it owned in Ontario from Ontario to another jurisdiction?</li> </ol> <p>If the answer to any of the three questions is yes, to advise what was transferred, when it was transferred, how much was transferred and where the assets or funds were transferred to.</p>	<p>Mr. Korol is not aware of Xela having sold any assets worth more than \$10,000 from October 2015 until he ceased being an officer of Xela in December 2016, apart from the IFB shares which were sold in or around December 2015, as discussed in response #32.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred from October 2015 until he ceased being an officer of Xela in December 2016, would have been cash, as evidenced by the bank statements which have been provided.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred outside of Ontario from October 2015 until he ceased being an officer of Xela in December 2016, were the IFB shares and cash payments, as evidenced by the bank statements which have been provided.</p> <p>Further inquiries are being made.</p>	

Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>			
C198	45	To advise if Mrs. Gutierrez recalls taking out a mortgage with TD on the condominium.	Refused. Relevance.
C199	45	To confirm that the mortgage is for \$2.4 million.	Refused. Relevance.
C200	45	To confirm that the interest on the mortgage is prime plus 10%.	Refused. Relevance.
C201	45	In the period 2013 to June 2016, to advise who made payments on the mortgage.	Refused. Relevance.
C204	46	To advise of the current amount owing on the condominium mortgage.	Refused. Relevance.
C205	46	To advise if the mortgage is current or in default.	Refused. Relevance.
C206	46	To advise of the monthly payments on the condominium.	Refused. Relevance.
C207	46	To advise when the last monthly payment was made.	Refused. Relevance.
C208	46	To advise of the property taxes on the condominium.	Refused. Relevance.
C209	46-47	To advise if the property taxes are current or in default.	Refused. Relevance.

<b>Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship</b>			
<b>Question No.</b>	<b>Page No.</b>	<b>Specific question</b>	<b>Answer or precise basis for refusal</b>
C211	47	To advise of the approximate value of the condominium.	Refused. Relevance.
C212	47	To advise if the condominium has been appraised since it was purchased and, if so, to produce copy of appraisal.	Refused. Relevance.
C214	48	To the extent there are any other real estate owned jointly by Arturo at the time of his death, to advise what that real estate is and where it is located.	Refused. Relevance.
C292	66-67	To advise if there were any appliances, furniture or art bought for the condominium since 2011, or alternatively, since 2015	Refused. Relevance.
C292	67	To provide a listing of those items if they exist, when they were bought and how much they were bought for.	Refused. Relevance.
C295	68	To advise what kind of watch Arturo owned at the time of his passing.	Refused. Relevance.
C296	68	To advise if Arturo had any rings at the time of his passing.	Refused. Relevance.
C297	68	To advise if Arturo had any gold bars at the time of his passing.	Refused. Relevance.
C298	68-69	To advise if Mrs. Gutierrez and/or Arturo have any collections of silver.	Refused. Relevance.
C299	69	To advise if they had any chinaware collection.	Refused. Relevance.

Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
C300	69	To advise if they had any book collections.	Refused. Relevance.
C301	69	To advise if Arturo had any collection of model cars.	Refused. Relevance.

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J87	26	To produce records regarding group RSP through Xela that totaled approximately \$7,000.00.	[U/T to "make best efforts to get that information"] - Mr. Gutierrez does not currently have any documents relating to this item in his possession.
J175	42	To advise how much money Mr. Gutierrez has given to his mother since July 2016.	[U/T to "review records"] - Since July 2016, Mr. Gutierrez has supplied nominal amounts to his mother to cover her basic living expenses as she has no income and did not receive any distribution of funds from the estate upon Arturo's death. Juan is not aware of the exact amount.
J231	52-53	To advise if Mr. Gutierrez remembers anything else which he paid for on behalf of Xela.	[U/T] - Mr. Gutierrez recalls paying some legal fees on behalf of Xela and advancing funds to Xela which he recalls was used to pay employee salaries and office rent on behalf of Xela. [No further detail provided]



Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J232	53	With respect to the DX Financial mortgage, which Mr. Gutierrez used to pay for Xela expenses, to advise what those expenses were.	[U/T] - Mr. Gutierrez recalls paying some legal fees on behalf of Xela and advancing funds to Xela which he recalls was used to pay employee salaries and office rent on behalf of Xela. [No further detail provided]	
J318	67	To provide a copy of Mr. Gutierrez' 2012 Porsche lease agreement.	[U/T] – There is no current lease agreement. The lease was terminated in October 2017. Prior to the termination of the lease, the monthly payments were approximately \$1,100 amount.	
J421	83	To provide any transfers of funds from Mr. Gutierrez to his children from October 2015 to present.	[U/T] - Mr. Gutierrez's best recollection is that during this time period he provided some financial assistance to his daughter Lisa, whose husband was diagnosed with cancer, but he is not aware of the specific amounts.	
J477	92	To provide details of any artwork in Mr. Gutierrez' house that is worth \$1,000 or more.	[U/T] - Mr. Gutierrez does not own any artwork in house that is worth \$1,000 or more.	
J552	104	To advise how many days Mr. Gutierrez spent outside of Canada in 2015 and 2016.	[U/T] - Mr. Gutierrez does not recall.	
J562	106	To review records and advise of Mr. Gutierrez' travel rewards points balance with each of Aeroplan and American Airlines.	[U/T] – Mr. Gutierrez states that his travel rewards points balance is approximately 101,000	

<b>Issue #3:</b> Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J655	121-122	To review bank statements to see if Mr. Gutierrez has transferred any assets worth more than a thousand dollars since October 2015.	[U/T] - Mr. Gutierrez does not believe that any assets worth more than \$1,000 have been transferred, apart from regular bill payments and other payments already disclosed, since October 2015.	
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>				
S283	61-62	To ask Mr. Korol for a list of Xela's current assets which include accounts receivable, equipment and furniture.	Mr. Korol has obtained a copy as of December 31, assets which include accounts receivable, 2016. Please see enclosed at Tab I.  [Enclosure is a "Fix Assets Summary" only listing the book value of three line items: "furniture & fixtures", "leasehold improvement" and "exact software"]	
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	Refused for indirect subsidiaries. [Separate issue]  Based on Mr. Korol's knowledge, he believes that Xela International Inc. has bank accounts at the same locations as Xela. He believes that the remainder of the Xela's direct subsidiaries do not have bank accounts. [No further details provided]	

Issue #4: Questions concerning information that a person being examined as estate trustee of a deceased debtor may have learned independently of their status as estate trustee			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
			Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>			
C215	49	With respect to page 10 of Exhibit F (Arturo's primary will), to advise if Arturo had a Florida residence.	Refused. Relevance.
C216	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Refused. Relevance.
C218	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Refused. Relevance.
C219	50	If Mrs. Gutierrez did travel to Florida with Arturo in 2014, 2015 or 2016, to advise where she stayed.	Refused. Relevance.
C220	50	To advise if Mrs. Gutierrez owns any other real estate in her personal capacity.	Refused. Relevance.
C221	50	If Mrs. Gutierrez does own any other real estate in her personal capacity, to advise what it is, where it is located, when it was bought and how it was paid for.	Refused. Relevance.
C221	50	To advise if Mrs. Gutierrez owned any real estate solely in her name in the five years before Arturo's passing. If so, to advise where was it located, when was it bought and how was it paid for.	Refused. Relevance.

<b>Issue #4:</b> Questions concerning information that a person being examined as estate trustee of a deceased debtor may have learned independently of their status as estate trustee			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
C274	60-61	With respect to Mrs. Gutierrez' personal account, to advise of the account number and current balance and produce monthly account statements since January 2011 or in the alternative, since October 2015.	Refused. Relevance.
			Disposition by the Court

<b>Issue #5:</b> Questions concerning a debtor's spending after an order requiring the payment of money was issued against them			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J243	55	To ask Mr. Gutierrez' wife how much it cost to repair the stone wall entering their garage at 2 Gordon Road.	Refused. Relevance.
J328	68	To provide a copy of Mr. Gutierrez' son, Thomas', 2013 Mini-Cooper lease agreement, alternatively, to advise of monthly lease payments for Thomas' 2013 Mini-Cooper.	Refused. Relevance.
J341	70	To provide a copy of Mr. Gutierrez' wife's 2012 Audi lease agreement, alternatively, to advise of monthly lease payments for Mr. Gutierrez' wife's 2012 Audi.	Refused. Relevance.
J552	104	To produce a copy of Mr. Gutierrez' passport and NEXUS card.	Refused. Relevance.
			Disposition by the Court

<b>Issue #5: Questions concerning a debtor's spending after an order requiring the payment of money was issued against them</b>			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>			
C210	47	Between October 2015 and Arturo's passing, to advise if there was any work done to the condominium – e.g. renovations.	Refused. Relevance.
C274	60	To provide the bank account number of the TD bank account that was formerly a joint account with Mrs. Gutierrez and Arturo and the current balance of that account and to produce monthly statements in that joint account since January 2011, alternatively since October 2015.	Refused. Relevance.
C283	62	To advise when the last cheque was drawn on the joint account, to whom the cheque was payable, the amount and to whom it was given.	Refused. Relevance.

<b>Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries</b>			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S120-121	27	To make inquiries and advise if Mr. Shields is on the board or an officer of any other Xela wholly-owned subsidiary (direct or indirect), other than Lisa SA.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S176	38	To ask Mr. Korol for: 1. A current listing of all directors and officers for any Xela subsidiary, whether directly or indirectly owned. 2. A list of any amounts paid to all directors of Xela and any Xela subsidiary in the past five years. 3. A current listing of all employees for any Xela subsidiary, whether owned directly or indirectly. 4. A list of all salaries for any employee of a Xela subsidiary in the past five years. 5. Production of the minute book for any Xela subsidiary, whether subsidiary is directly or indirectly owned.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries, subject to issue noted under separate heading above]	
S200	45	To ask Mr. Korol to provide all financial statements for Xela's subsidiaries for the years 2011 to 2016.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	
S201	45	If consolidated financial statements were prepared for Xela or any of its subsidiaries for the years 2011 to 2016, to ask Mr. Korol to produce those.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	

Issue #7: Questions concerning property funded or paid for by the debtor for the benefit of a related party				
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J345	70	To provide the VINs for the 2013 Mini Coop and 2012 Audi SUV.	Refused. Relevance.	
J417	82	To provide Wencke's personal bank account numbers or any bank accounts held in her name in Ontario.	Refused. Relevance.	
J417	82	To advise of the current balances of any of Wencke's personal bank accounts in Ontario.	Refused. Relevance.	
J504	95-96	To provide details of Wencke's life insurance policy, meaning the name of the insurance company, the policy number, amount of policy, beneficiaries, the cash surrender value and premiums.	Refused. Relevance.	

<b>Issue #8: Questions asked of one Judgment Debtor which concern the disposal of assets by another Judgment Debtor</b>			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>			
C143	33	To advise how much money Juan Gutierrez has given Mrs. Gutierrez since Arturo's death.	Refused. Relevance.
C143	33-34	To advise how much money Juan Gutierrez has transferred to Mrs. Gutierrez since Arturo's death, when he did those transfers, how the transfers were done, whether by cheque or electronic transfer or cash and to what account those funds were deposited.	Refused. Relevance.
C143	34	To advise if Juan Gutierrez or Xela have paid any of Mrs. Gutierrez' bills since Arturo's death, what bills those were, when they were paid and how they were paid.	Refused. Relevance.

<b>Issue #9: Questions concerning the identification and valuation of property currently owned by the debtor</b>			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J509-511	96-97	To produce a copy of Mr. Gutierrez' will.	Refused. Relevance.



Issue #9: Questions concerning the identification and valuation of property currently owned by the debtor			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>			
C214	48	To the extent Arturo jointly owned any real estate other than the condo as a tenant in common at time of his death, to advise what that real estate is and where it is located.	Refused. Relevance.

Issue #10: Undertakings which appear to be unanswered due to inadvertence, and without a reason for refusal			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>			
C149	36	To provide the estimated value of Arturo's shares of 696087 Alberta Ltd.	[U/T] - [Inadvertently omitted from earlier refusals chart delivered to respondents]
C149	36	To produce any CRA Notices of Assessment for 2015.	[U/T] - [Attachments included CRA Assessments only for 2011-2014]

Issue #11: Questions concerning access to a corporate debtor's auditor			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S198	44	After Mr. Shields speaks with Juan Gutierrez, to provide a waiver to allow Bennett Jones to speak directly to Deloitte regarding Xela's financial affairs.	Refused. Relevance.

Issue #12: Questions concerning the movement of debtor assets from inside of Ontario to outside of Ontario			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S286	62-63	For Mr. Shields to speak with Mr. Gutierrez and advise if they can agree that any assets that Xela has in Ontario, that they will not cause those assets to leave Ontario without providing Bennett Jones with 20 business days' notice.	Refused. Relevance.

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**  
Respondents

Court File No.: CV-11-9062-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**REFUSALS AND UNDERTAKINGS CHART**

**BENNETT JONES LLP**  
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Toronto ON M5X 1A4

**William A. Bortolin (#65426V)**  
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Lawyers for the Applicant (Moving Party),  
Margarita Castillo

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**  
Respondents

**349**

Court File No.: CV-11-9177-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**NOTICE OF MOTION**

**BENNETT JONES LLP**  
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Toronto ON M5X 1A4

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Lawyers for the Applicant (Moving Party),  
Margarita Castillo

**TAB W**

THIS IS EXHIBIT "W" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

MARGARITA CASTILLO  
Applicant

-and-

XELA ENTERPRISES LTD. et al.  
Respondents

Court File No.: CV-11-9062-00CL

February 1, 2018

W. Bortolin for the Applicant (moving party)

M. Mendelzon for the Respondent

For oral reasons given, ruling on undertaking and request for endorsement on check marked as schedule "A" to this endorsement. Unless the Applicant agrees otherwise, the three individuals examined shall re-attend to answer their undertakings and other questions ordered answered and all proper questions arising from their answers.

The respondents shall pay the costs of this motion fixed at \$3,000, payable within 30 days.

Charles (Master Coakham)

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)

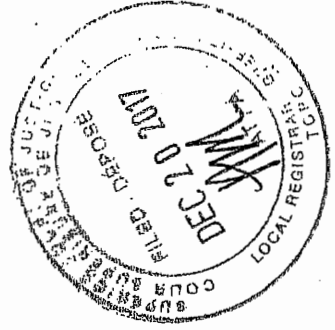
Proceeding commenced at Toronto

MOTION RECORD  
(Refusals and Undertakings, Returnable February 1, 2018)

BENNETT JONES LLP  
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Lawyers for the Applicant (Moving Party),  
Margarita Castillo



*Schedule A to endorsement on motion record dated February 1, 2018. E. E. (Master Graham)*

Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

MARGARITA CASTILLO

Applicant  
(Moving Party)

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Respondents  
(Respondents on Motion)

**CONSOLIDATED UNDERTAKINGS AND REFUSALS CHART**

(Updated January 31, 2018)

Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
J299	64	To look for and produce vehicle permit of Mr. Gutierrez' third vehicle - BMW 2002 TI from 1975.	[U/T] - Pending. <i>Question in issue 1 shall be answered within 15 days, i.e. by March 19, 2018.</i>	<i>All answer to the</i>



Issue #1: Questions answered as 'pending' or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J310	65	To check records to see how much money Mr. Gutierrez owes his friend Mr. Koutsaris for storing his vehicles.	[U/T] - Pending.	
J358	72	To provide details of Mr. Gutierrez's two boats, including make, year, model, and other identifying information.	[U/T] - Pending.	
J430	84	To advise of the precise current balance of Mr. Gutierrez' RSPs.	[U/T] - Pending.	
J449	87-88	To provide Mr. Gutierrez' personal investment/brokerage statements to show the performance of the RSP over the past 3 years.	Pending.	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 6 years, or alternatively, the past 2 years.	Pending.	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 2 years.	[U/T] - Pending.	
J613	114-115	To provide a copy of the contract with the new pool company providing cleaning services.	[U/T] - Pending.	
J620	116	To provide any bills or invoices for cleaning services at Mr. Gutierrez' home and cottage.	[U/T] - Pending.	

Issue #1: Questions answered as 'pending', or with the indication that 'further inquiries are being made'				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J627	117	To provide any bills or invoices from snow removal company providing services to Mr. Gutierrez.	[U/T] – Pending.	
J630	118	To provide any invoices from person paid in the winter to put bubblers in the boathouse for the past year.	[U/T] – Pending.	
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>				
C32	12	To produce any documents that Mrs. Gutierrez has filed in her capacity as executor for the Estate.	[U/T] – Pending.	
C36	13	To produce copy of Arturo's secondary will.	Pending.	
C116	27	To advise if any of the liabilities on Exhibit B have changed between September 19, 2016 and July 26, 2017.	[U/T] – Pending.	
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority over for 2015 and 2016.	[U/T] – Pending.	
C131	30	To advise if Mrs. Gutierrez has filed any tax returns on behalf of the Estate.	[U/T] – Pending.	
C131	30	To produce any tax returns filed by Mrs. Gutierrez on behalf of the Estate.	Pending.	

Issue #1: Questions answered as "pending" or with the indication that "further inquiries are being made"					
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court	
C132	30	To produce any tax filings provided to or received from the CRA on behalf of the Estate, including, but not limited to the terminal tax return, any T1s, T3s and the clearance certificate.	[U/T] – Pending.		
C244	54-55	To provide the licence plate numbers of all vehicles listed on Exhibit D.	[U/T] – Pending.		
C244	55	With respect to Exhibit B, to advise whether the buy-out of the 2013 Mercedes-Benz SL550R convertible has actually been done or whether if they continue to pay out the lease per monthly basis, it will total \$33,000.	[U/T] – Pending.		
C256	57	With respect to the boat that was not listed on the statement of assets, to make inquiries and advise when the boat was bought, how much was paid for it, the make, year, model and value of it.	[U/T] – Pending.		
C270	59	To produce the monthly statements for the Estate's bank account since it was opened until the end of July 2017.	Pending.		
C288	63	With respect to Exhibit D, to advise if there is a similar document for Arturo's secondary estate. If so, to produce the document.	[U/T] – Pending.		

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C289	63	To advise where the money came from to contribute to the registered investments.	[U/T] – Pending.	
C289	64-65	To provide personal investment/brokerage statements for the five years preceding Arturo's death.	Pending.	
C289	64-65	To provide personal investment/brokerage statements for years 2015 and 2016.	[U/T] – Pending.	
C324	73	In the period October 2015 and June 2016, to advise if Arturo sold any assets that were worth more than a thousand dollars or transferred any assets worth more than a thousand dollars.	[U/T] – Pending.	
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>				
S176	38	To ask Mr. Korol for: ... 4. A list of all salaries for any employee of a Xela subsidiary in the past five years. ...	Refused with respect to indirect subsidiaries. ... 4. Further inquiries are being made. ...	

Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S303	65-66	<p>To ask Mr. Korol the following:</p> <ol style="list-style-type: none"> <li>1. Since October 2015, has Xela sold any assets worth more than \$10,000?</li> <li>2. Since October 2015, has Xela transferred any assets worth more than \$10,000?</li> <li>3. Since October 2015, has Xela moved any assets it owned in Ontario from Ontario to another jurisdiction?</li> </ol> <p>If the answer to any of the three questions is yes, to advise what was transferred, when it was transferred, how much was transferred and where the assets or funds were transferred to.</p>	<p>Mr. Korol is not aware of Xela having sold any assets worth more than \$10,000 from October 2015 until he ceased being an officer of Xela in December 2016, apart from the IFB shares which were sold in or around December 2015, as discussed in response #32.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred from October 2015 until he ceased being an officer of Xela in December 2016, would have been cash, as evidenced by the bank statements which have been provided.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred outside of Ontario from October 2015 until he ceased being an officer of Xela in December 2016, were the IFB shares and cash payments, as evidenced by the bank statements which have been provided.</p> <p>Further inquiries are being made.</p>	

Issue #1: Questions answered as 'pending' or with the indication that 'further inquiries are being made'

Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017				
C198	45	To advise if Mrs. Gutierrez recalls taking out a mortgage with TD on the condominium.	Refused. Relevance.	<i>Shall be answered</i>
C199	45	To confirm that the mortgage is for \$2.4 million.	Refused. Relevance.	"
C200	45	To confirm that the interest on the mortgage is prime plus 10%.	Refused. Relevance.	"
C201	45	In the period 2013 to June 2016, to advise who made payments on the mortgage.	Refused. Relevance.	<i>Respondent agrees to answer</i>
C204	46	To advise of the current amount owing on the condominium mortgage.	Refused. Relevance.	<i>Repeals upheld</i>
C205	46	To advise if the mortgage is current or in default.	Refused. Relevance.	"
C206	46	To advise of the monthly payments on the condominium.	Refused. Relevance.	"
C207	46	To advise when the last monthly payment was made.	Refused. Relevance.	"
C208	46	To advise of the property taxes on the condominium.	Refused. Relevance.	"
C209	46-47	To advise if the property taxes are current or in default.	Refused. Relevance.	"

Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship.			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
C211	47	To advise of the approximate value of the condominium.	Refused. Relevance.
			Disposition by the Court <i>Repeal upheld</i>

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is pending.			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J87	26	To produce records regarding group RSP through Xela that totaled approximately \$7,000.00.	[U/T to "make best efforts to get that information"] - Mr. Gutierrez does not currently have any documents relating to this item in his possession.
J175	42	To advise how much money Mr. Gutierrez has given to his mother since July 2016.	[U/T to "review records"] - Since July 2016, Mr. Gutierrez has supplied nominal amounts to his mother to cover her basic living expenses as she has no income and did not receive any distribution of funds from the estate upon Arturo's death. Juan is not aware of the exact amount.
J231	52-53	To advise if Mr. Gutierrez remembers anything else which he paid for on behalf of Xela.	[U/T] - Mr. Gutierrez recalls paying some legal fees on behalf of Xela and advancing funds to Xela which he recalls was used to pay employee salaries and office rent on behalf of Xela. [No further detail provided]
			Disposition by the Court <i>Question answered -&gt; Follow up questions are appropriate.</i> <i>Deponent should make best efforts to particularize the answers.</i> <i>Question answered -&gt; Follow up questions are appropriate.</i>

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answers "pending"	Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
	J232	53	With respect to the DX Financial mortgage, which Mr. Gutierrez used to pay for Xela expenses, to advise what those expenses were.	[U/T] - Mr. Gutierrez recalls paying some legal fees on behalf of Xela and advancing funds to Xela which he recalls was used to pay employee salaries and office rent on behalf of Xela. [No further detail provided]	<i>Dependent shall provide the amount paid as expenses.</i>
	J318	67	To provide a copy of Mr. Gutierrez' 2012 Porsche lease agreement.	[U/T] - There is no current lease agreement. The lease was terminated in October 2017. Prior to the termination of the lease, the monthly payments were approximately \$1,100 amount.	<i>The lease from 2012-2017 shall be provided.</i>
	J421	83	To provide any transfers of funds from Mr. Gutierrez to his children from October 2015 to present.	[U/T] - Mr. Gutierrez's best recollection is that during this time period he provided some financial assistance to his daughter Lisa, whose husband was diagnosed with cancer, but he is not aware of the <u>specific amounts</u> .	<i>Dependent shall make best efforts to particularize the amount.</i>
	J477	92	To provide details of any artwork in Mr. Gutierrez' house that is worth \$1,000 or more.	[U/T] - Mr. Gutierrez does not own any artwork in house that is worth \$1,000 or more.	<i>Question answered.</i>
	J552	104	To advise how many days Mr. Gutierrez spent outside of Canada in 2015 and 2016.	[U/T] - Mr. Gutierrez does not recall. <i>the number of days precisely or, if unable to do so, shall provide his best approximation.</i>	<i>Dependent shall state</i>
	J562	106	To review records and advise of Mr. Gutierrez' travel rewards points balance with each of Aeroplan and American Airlines.	[U/T] - Mr. Gutierrez states that his travel rewards points balance is approximately 101,000	<i>Dependent shall specify how many points with each airline.</i>



Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"

Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J655	121-122	To review bank statements to see if Mr. Gutierrez has transferred any assets worth more than a thousand dollars since October 2015.	[U/T] - Mr. Gutierrez does not believe that any assets worth more than \$1,000 have been transferred, apart from regular bill payments and other payments already disclosed, since October 2015.	<i>The Deponent shall confirm whether or not any assets were or were not transferred.</i>
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>				
S283	61-62	To ask Mr. Korol for a list of Xela's current assets which include accounts receivable, equipment and furniture.	Mr. Korol has obtained a copy as of December 31, assets which include accounts receivable, 2016. Please see enclosed at Tab I. [Enclosure is a "Fix Assets Summary" only listing the book value of three line items: "furniture & fixtures", "leasehold improvement" and "exact software"]	<i>Deponent has made the enquiry and provided the answer as received. Undertaking answered.</i>
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	Refused for indirect subsidiaries. [Separate issue] Based on Mr. Korol's knowledge, he believes that Xela International Inc. has bank accounts at the same locations as Xela. He believes that the remainder of the Xela's direct subsidiaries do not have bank accounts. [No further details provided]	<i>Deponent shall follow up with Mr. Korol re: account numbers and balance.</i>
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>				
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority for five years before his death, or alternatively, for 2015 and 2016.	Please find enclosed the credit card statements which were able to be located at Tab A [Enclosed are two statements for May 15, 2013 - June 14, 2013 and June 15, 2013 - July 14, 2013] <i>what steps were taken to</i>	<i>Deponent shall advise</i>

Issue #4: Questions concerning information that a person being examined as estate trustee of a deceased debtor may have learned independently of their status as estate trustee.				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>				
C216	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Refused. Relevance.	<i>Same as C 218.</i>
C218	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Refused. Relevance.	<i>Shall be answered.</i>
C219	50	If Mrs. Gutierrez did travel to Florida with Arturo in 2014, 2015 or 2016, to advise where she stayed.	Refused. Relevance.	<i>Shall be answered.</i>
C220	50	To advise if Mrs. Gutierrez owns any other real estate in her personal capacity.	Refused. Relevance.	<i>Shall be answered.</i>
C221	50	If Mrs. Gutierrez does own any other real estate in her personal capacity, to advise what it is, where it is located, when it was bought and how it was paid for.	Refused. Relevance.	"
C221	50	To advise if Mrs. Gutierrez owned any real estate solely in her name in the five years before Arturo's passing. If so, to advise where was it located, when was it bought and how was it paid for.	Refused. Relevance.	"

Issue #4: Questions concerning information that a person being examined as estate trustee of a deceased debtor may have learned, independently of their status as estate trustee			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
C274	60-61	With respect to Mrs. Gutierrez' personal account, to advise of the account number and current balance and produce monthly account statements since January 2011 or in the alternative, since October 2015.	Refused. Relevance.
			<i>shall be answered.</i>

Issue #5: Questions concerning a debtor's spending after an order requiring the payment of money was issued against them			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J243	55	To ask Mr. Gutierrez' wife how much it cost to repair the stone wall entering their garage at 2 Gordon Road.	Refused. Relevance.
J328	68	To provide a copy of Mr. Gutierrez' son, Thomas', 2013 Mini-Cooper lease agreement, alternatively, to advise of monthly lease payments for Thomas' 2013 Mini-Cooper.	Refused. Relevance.
J341	70	To provide a copy of Mr. Gutierrez' wife's 2012 Audi lease agreement, alternatively, to advise of monthly lease payments for Mr. Gutierrez' wife's 2012 Audi.	Refused. Relevance.
J552	104	To produce a copy of Mr. Gutierrez' passport and NEXUS card.	Refused. Relevance. <i>Passport paper shall be copied and provided with passport number and bar</i>

*Withdrawn code retracted.*

Issue #5: Questions concerning a debtor's spending after an order requiring the payment of money was issued against them			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017			
C274	60	To provide the bank account number of the TD bank account that was formerly a joint account with Mrs. Gutierrez and Arturo and the current balance of that account and to produce monthly statements in that joint account since January 2011, alternatively since October 2015.	Refused. Relevance. <i>Shall be produced from January, 2011 to June 24, 2016 (date of Arturo Gutierrez's death).</i>
C283	62	To advise when the last cheque was drawn on the joint account, to whom the cheque was payable, the amount and to whom it was given.	Refused. Relevance. <i>The last cheque - Cs Particular shall be provided as the last cheque drawn before June 24, 2016.</i>

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017			
S120-121	27	To make inquiries and advise if Mr. Shields is on the board or an officer of any other Xela wholly-owned subsidiary (direct or indirect), other than Lisa SA.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]

*Shall be answered. Applicant shall not disclose information provided to anyone else, and specifically not to co-respondents in action no. CV-11-9177, other than for enforcement of her judgment in their action. The respondent shall be provided with copies of any material filed that make use of any such information.*

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S176	38	To ask Mr. Korol for: 1. A current listing of all directors and officers for any Xela subsidiary, whether directly or indirectly owned. 2. A list of any amounts paid to all directors of Xela and any Xela subsidiary in the past five years. 3. A current listing of all employees for any Xela subsidiary, whether owned directly or indirectly. 4. A list of all salaries for any employee of a Xela subsidiary in the past five years. 5. Production of the minute book for any Xela subsidiary, whether subsidiary is directly or indirectly owned.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries, subject to issue noted under separate heading above]	See S/20 - 121
S200	45	To ask Mr. Korol to provide all financial statements for Xela's subsidiaries for the years 2011 to 2016.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	/ /
S201	45	If consolidated financial statements were prepared for Xela or any of its subsidiaries for the years 2011 to 2016, to ask Mr. Korol to produce those.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	/ /

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	Refused with respect to indirect subsidiaries. [Answer provided for direct subsidiaries]	See S120 - S121

Issue #7: Questions concerning property funded or paid for by the debtor for the benefit of a related party				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
J345	70	To provide the VINs for the 2013 Mini Coop and 2012 Audi SUV.	Refused. Relevance.	<i>This is caught by the order at 1328 and 1341 to preserve the assets.</i>
J417	82	To provide Wencke's personal bank account numbers or any bank accounts held in her name in Ontario.	Refused. Relevance.	
J417	82	To advise of the current balances of any of Wencke's personal bank accounts in Ontario.	Refused. Relevance.	<i>Revised upheld</i>
J504	95-96	To provide details of Wencke's life insurance policy, meaning the name of the insurance company, the policy number, amount of policy, beneficiaries, the cash surrender value and premiums.	Refused. Relevance.	<i>11</i>
			<i>Should be provided by J. G. Gutierrez</i>	<i>is a temporary under the policy.</i>

Issue #8: Questions asked of one Judgment Debtor which concern the disposal of assets by another Judgment Debtor				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017				
C143	33	To advise how much money Juan Gutierrez has given Mrs. Gutierrez since Arturo's death.	Refused. Relevance.	<i>Shall be answered</i>
C143	33-34	To advise how much money Juan Gutierrez has transferred to Mrs. Gutierrez since Arturo's death, when he did those transfers, how the transfers were done, whether by cheque or electronic transfer or cash and to what account those funds were deposited.	Refused. Relevance.	"
C143	34	To advise if Juan Gutierrez or Xela have paid any of Mrs. Gutierrez' bills since Arturo's death, what bills those were, when they were paid and how they were paid.	Refused. Relevance.	"

Issue #9: Questions concerning the identification and valuation of property currently owned by the debtor				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
J509-511	96-97	To produce a copy of Mr. Gutierrez' will.	Refused. Relevance.	<i>Shall be produced with name of beneficiary and executor/trustee redacted.</i>
From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017				

Issue #10: Undertakings which appear to be unanswered due to inadvertence, and without a reason for refusal			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017			
C149	36	To provide the estimated value of Arturo's shares of 696087 Alberta Ltd.	[U/T] - [Inadvertently omitted from earlier refusals chart delivered to respondents]
			<i>Should be answered by March 19, 2018.</i>

Issue #11: Questions concerning access to a corporate debtor's auditor			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017			
S198	44	After Mr. Shields speaks with Juan Gutierrez, to provide a waiver to allow Bennett Jones to speak directly to Deloitte regarding Xela's financial affairs.	Refused. Relevance. <i>Reversed</i>
			<i>Upheld</i>



Issue #12: Questions concerning the movement of debtor assets from inside of Ontario to outside of Ontario				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017				
S286	62-63	For Mr. Shields to speak with Mr. Gutierrez and advise if they can agree that any assets that Xela has in Ontario, that they will not cause those assets to leave Ontario without providing Bennett Jones with 20 business days' notice.	Refused. Relevance.	<i>Refused upheld.</i>

# TAB X

THIS IS EXHIBIT "X" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

SUPERIOR COURT OF JUSTICE

CASTILLO, MARGARITA

Applicant

XELA ENTERPRISES LTD.  
TROPIC INTERNATIONAL LIMITED  
FRESH QUEST, INC.  
696096 ALBERTA LTD.  
GUTIERREZ, JUAN GUILLERMO  
CARMEN S. GUTIERREZ, AS EXECUTOR OF THE  
ESTATE OF JUAN ARTURO GUTIERREZ

Respondents

M O T I O N

BEFORE MASTER A. T. GRAHAM  
on February 1, 2018 at TORONTO, Ontario

APPEARANCES:

W. Bortolin  
M. Mendelson

Counsel for Applicant  
Counsel for all Defendants



1.  
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THURSDAY FEBRUARY 1, 2018

5 With respect to the questions in issue 1 in the consolidated undertakings and refusals chart provided to the Court this morning by counsel for the Applicant and moving party, it is acknowledged by the Respondents on the motion that these are all undertakings to which answers have not yet been provided or to which complete answers have not yet been provided. Given that the  
10 examinations from which these questions arise were held in late July of 2017, so more than six months ago, all answers to these questions shall be answered within 45 days and specifically by March 19, 2018.

15 With respect to the question at issue 10, this is an undertaking which was not included in the original chart, but which the Respondents acknowledge was given as an undertaking and this  
20 question also shall be answered by March 19, 2018.

25 These are my rulings with respect to the questions at issue number 2 in the consolidated chart provided by the Applicant's counsel today. The questions relate to property in which the deceased debtor Juan Arturo Gutierrez previously had an interest, but allegedly no longer owns by reason of disposal to Carmen Gutierrez, his widow and also the Executor of his estate. Counsel for the  
30 Applicant has referred me to the decision of Master Dash in *J.G. Young and Son Limited*, [2002] OJ No. 4203 and particularly paragraphs 18 and 19.

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The Court, in those paragraphs, essentially states that the Judgment Creditor has a right to test whether or not a Judgment Debtor has a proprietary interest in a property, and the Applicant submits that in this case it can test whether or not Carmen Gutierrez has an interest in the property.

With respect to the questions at 198, 199 and 200 of the examination of Carmen Gutierrez, these questions relate to a mortgage that was taken out in 2013 when Juan Arturo Gutierrez was still alive, and in that event are relevant, and also because they deal with an asset that he owned while the litigation was pending and from which he took money out by way of a mortgage in 2013. So those three questions; 198, 199 and 200 shall be answered.

The remaining questions, 2004 through 2009 and 2011 relate to the current status of the mortgage, as well as the status of the property taxes on the condominium property and the approximate value of the condominium. At question 197 of the transcript, counsel for the Respondents states that the condominium is not an asset of the estate and accordingly the questions relating to the current status of the condominium property are not relevant. Although I accept, based on the law cited from J. G. Young and Sons, that the examining party, the Judgment Creditor has the right to test the assertion with respect to whether the estate has a proprietary interest in

## 3.

## Rulings on Refusals - Graham, Master

5 the property, none of the questions challenged go to that issue. The questions are all based on an assumption that the estate has an interest in the property without challenging or dealing with the premise that it does not.

10 It would have been appropriate to ask questions with respect to whether or not the estate had an interest in the property, but to ask the questions being addressed right now without challenging the current status of the property is to put the cart before the horse. The foundation for these questions has not been laid, notwithstanding the fact that the Judgment Creditor could have done so by putting before the Court documents with respect to the ownership of the property in question. But absent a proper foundation, these are not proper questions and the refusals are upheld. Thank you Madam Reporter.

20 With respect to the questions at issue 2, during argument counsel for the Respondents conceded that the question 201 should be answered and I so order that it be answered.

25 The rulings which follow are with respect to issue number 3 which are questions for which the answers provided are incomplete or non-responsive, but for which no refusal was asserted. With respect to the question at J87 Mr. Juan Guillermo Gutierrez was asked for records to confirm the amount of an RSP. The answer was that he doesn't have any

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documents relating to the item in his possession. He has provided an answer to the question and while there certainly could appropriately be follow up questions, the question as asked has been answered. So I've endorsed, "question answered; follow up questions are appropriate".

With respect to question J175, when asked at his examination how much he helped his mother financially since the death of Juan Arturo Gutierrez, Juan Guillermo Gutierrez gave a vague answer with respect to the financial help provided. He was asked to review his records and advise how much he's provided to his mother since July of 2016. The answer given is as vague as the answer already given and it isn't a satisfactory answer. The statement that he is not aware of the exact amount isn't a reason to provide some reasonable estimate at a minimum. Accordingly Juan Guillermo Gutierrez shall make best efforts to particularize the amounts given to his mother since July of 2016.

With respect to questions 231 and 232, question 231 is similar in character to question 87 and for the same reason, I find that it's been answered, but that follow up questions are appropriate. With respect to question 232, the question is different. It was asking what certain expenses were, which I read to be what amounts did you pay by way of expenses. So with respect to question

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Rulings on Refusals - Graham, Master

232 the Deponent shall provide the amounts paid as expenses for employee salaries and office rent.

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With respect to question 318, the Respondents submit that because there's no current lease agreement they don't have to produce it. The thrust of all of the questions and the obligation to answer questions is in relation to the disposal of property before or after the Judgment. This relates to the disposal of property by way of payments on a 2012 lease. The fact that the lease was terminated in October 2017 does not mean that the lease doesn't have to be produced. Accordingly, Mr. Gutierrez shall do so.

With respect to question 477, we're dealing with the assets of the Deponent, Juan Guillermo Gutierrez. He gave an undertaking to advise how many pieces of art he would have worth over a thousand dollars in his house. His answer is he doesn't own any artwork in the house that's worth a thousand dollars or more. The question has been answered.

With respect to question 552, when asked how many days he'd spent out of the country in 2015 and 2016, Mr. Gutierrez said that he'd have to count the days, but he didn't know for sure and undertook to do so. The answer given following the discovery was that he does not recall the number of days which is essentially the same answer that he gave. Notwithstanding his

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## Rulings on Refusals - Graham, Master

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undertaking to make best efforts to state the number of days, the question has not been answered and the Deponent shall state the number of days precisely or if unable to do so shall provide his best approximation.

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The question related to travel reward points with American Airlines and Aero Plan, the answer given is for a single number of points. The Deponent shall specify how many points he has with each of the two airlines.

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J655, the Deponent already essentially provided his belief on his examination. The question was for him to confirm his recollection by looking at bank statements, and the answer given to the undertaking is that he didn't believe that any assets worth more than a thousand dollars had been transferred. This answer is no more definitive than the answer he already gave. Accordingly, the Deponent Mr. Gutierrez shall confirm whether or not any assets were or were not transferred.

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All right, so moving onto the questions for Mr. Shield's examination. Question S283 on the examination of Calvin Shields: Mr. Shields made the inquiry that he undertook to make and provided the answer that he received in response. The undertaking has been answered.

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With respect to the question at S294, the answer given does not address the account numbers and the

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Rulings on Refusals - Graham, Master

balance in the Xela subsidiary bank accounts. Accordingly the Deponent shall follow up with Mr. Crowell to specifically request that information.

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All of the questions under issue number 4 are objected to on the basis that they are directed to Carmen Gutierrez in her capacity as an individual, as opposed to in her capacity as Executor of the Estate of Juan Arturo Gutierrez. The main issue is whether she should have to answer questions essentially asked of her in her personal capacity. The Respondents rely on the decision of the Court of Appeal in *Canadian Imperial Bank of Commerce v. Sutton*, 34 OR (2<sup>nd</sup>) 482, and in particular at paragraph 8. In paragraph 8 of the decision the Court states that caution should be exercised by the Court, before which an application to examine someone other than a Judgment Debtor is made, so that persons who are strangers to the litigation are not unduly harassed by examinations. Specifically, the relatives of a Judgment Debtor or a stranger should not be ordered to be examined unless the Judgment Creditor has exhausted all means available before resorting to an application of this kind.

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The wording of the rule leaves it to the discretion of the Court to make an order where a difficulty arises in the execution or enforcement of a Judgment. In the case before me there is no motion under Rule 60.18(6) for an order for the examination of any person who may have knowledge

## Rulings on Refusals - Graham, Master

5 of the financial affairs of the Debtor. Rather, the questions are being asked of Carmen Gutierrez during the course of her examination as Executor of the Estate of Juan Arturo Gutierrez. And as indicated, the objection in this case is that the questions are not being put to her in that capacity.

10 In these circumstances it is appropriate that the questions be answered by Carmen Gutierrez irrespective of the capacity in which she is being examined in aid of execution. Firstly, the undue harassment of which the Court of Appeal warns in *CIBC v. Sutton* is not a factor where she is already being examined in her capacity as Executor, and she is not being asked to attend a separate examination to which she would not otherwise be subject. Further, if there was another individual who was the Executor of the estate, that individual could have been asked to make reasonable inquiries of Carmen Gutierrez in relation to her knowledge of her husband's affairs, given the fact that they were married for over 62 years and she acknowledged during her examination that her husband was her sole source of support during their married life.

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30 Specifically at question 74 of her examination, she acknowledged that she depended on Arturo's income throughout their marriage and the only source of income came from Arturo. Accordingly these questions are all appropriately asked of

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Carmen Gutierrez in her personal capacity. With respect to the relevance of the questions, questions 218 and 219 relate to whether Mrs. Gutierrez travelled to Florida with Arturo in 2014, 2015 or 2016 and if she did so in 2014, 2015, or 2016 before his death, where did they stay. These questions are asked in the context of earlier questions of whether in 2014 Arturo Gutierrez had a Florida residence which Mrs. Gutierrez was not able to answer. The questions are directed to the possibility of Arturo Gutierrez owning property in Florida during those years, 2014 through 2016, which are the years immediately before and immediately after the Judgment against him, and certainly well after the litigation was commenced. Accordingly those questions 218 and 219 are relevant and shall be answered.

The balance of the questions at C220, the two questions at C221 and at C274 all relate to whether Carmen Gutierrez owned any other real estate in her personal capacity, subsequent questions inquire as to if she does, where it's located, when it was bought and how it was paid for, and then finally, to produce account statements from her bank since January of 2011 or in the alternative, since October 2015. So with respect to question 220 and the two questions at 221, given that Mrs. Gutierrez's sole source of income during her 62 year marriage to Arturo Gutierrez was Arturo Gutierrez, it's plausible to

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5 think that if she owned any other real estate that it could have been purchased by Arturo Gutierrez, which would amount to transfers of property or dispositions of property by Arturo Gutierrez. Accordingly questions C220 and the two questions at C221 are relevant and shall be answered.

10 With respect to the bank account information sought at question C274, the litigation had been ongoing since 2011 and so her sources of income, or sources of deposits to the account, would plausibly have been from her husband, and would fall into the category of disposals of property on the part of Arturo Gutierrez. Question C274 shall be answered.

15 With respect to the questions at issue 8, which are questions asked of Carmen Gutierrez with respect to the possible transfer of property to her from her son Juan Gutierrez, as I ruled with respect to the questions under issue 4, as she is being examined as Executor in any event, it is not unduly onerous for her to at the same time answer questions about her knowledge regarding the transfer of funds to her from her son, Juan Gutierrez. Accordingly, these questions shall be answered.

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30 The questions at issue 5, asked of Juan Guillermo Gutierrez, relate to his spending in relation to repairs to a stone wall at his home and lease payments on vehicles for his son and wife. The

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payment for the stone wall, it appears was in 2016 before his own account was frozen and his wife assumed payment of the family expenses.

Accordingly the payment falls within the scope of property disposed of by Juan Guillermo Gutierrez as a Debtor. Similarly, the lease payments that he's paying on his son's vehicle referred to at question 328 and his wife's vehicle at question 341, he was paying from 2012 in relation to his wife's vehicle and 2013 in relation to his son's vehicle. Accordingly these payments would be property that he was disposing of before the Judgment. The questions at 243, 328 and 341 must therefore be answered.

With respect to question 552, counsel for the Applicant withdraws the motion with respect to a copy of Mr. Gutierrez's Nexus card. With respect to his passport, counsel for Mr. Gutierrez expresses a legitimate concern that the passport number and bar code not be included, and counsel for the Applicant accepts those limitations. Accordingly the passport pages shall be copied and produced with the passport number and bar code redacted.

With respect to the second part of issue 5, questions asked of Carmen Gutierrez, it's acknowledged that the activity in the joint account prior to Arturo Gutierrez's death on June 24, 2016 is relevant and that in that regard there's no issue with respect to the capacity in which Carmen Gutierrez is asked to answer the



12.

Rulings on Refusals - Graham, Master

5 questions. Accordingly with respect to question 274 the information sought shall be produced from January 2011, being the month in which the application was issued, to June 24, 2016, being the date of Arturo Gutierrez's death.

10 For question C283, particulars of the last cheque as requested shall be provided with respect to the last cheque drawn before June 24, 2016.

15 Under issue 7, with respect to the questions at J417, the personal bank account numbers held by Guillermo Gutierrez's wife and the current balances in any of those accounts, do not or would not reflect any disposal of property on the part of Guillermo Gutierrez either before or after the Judgment against him. Accordingly they're not relevant and the refusals are upheld.

20 At question J504, the question refused relates to a life insurance policy carried by Guillermo Gutierrez's wife. The premiums for that policy were previously paid from the joint account held by Guillermo Gutierrez and his wife, so it was essentially Mr. Gutierrez making the payments. 25 The questions is for the details on that life insurance policy and specifically the name of the insurance company, the policy number, the amount of the policy, the beneficiaries, the cash surrender value and the premiums. Given that it's 30 ambiguous as to whether Mr. Guillermo Gutierrez is in fact the beneficiary of this policy, I'm

13.

Rulings on Refusals - Graham, Master

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ordering that he make best efforts to obtain a copy of the policy and for counsel for the Respondents to inform the Applicant whether or not he's a beneficiary under the policy. If he's a beneficiary under the policy, the policy, if obtainable from Ms. Gutierrez, shall be produced and if not, it need not be produced.

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What follows are my rulings with respect to the questions at issue number 6, which is essentially whether the Respondent and Judgment Debtor Xela Enterprises Ltd. is required to disclose information concerning their subsidiary companies; both direct and indirect subsidiaries. I accept based on the decision in *Yaiguaje v. Chevron Corp*, 2013 ONSC 2527, that there can be no execution against the subsidiary of a company against which the Judgment has been obtained. But that is not what the Applicant on its motion seeks. It's important to keep in mind that the scope of the examination in aid of execution under Rule 60.18(2) is as noted by Justice Charron as she then was in *Lauzier v. Ranger*, 1995 OJ No. 1943. In this case the Applicant seeks evidence with respect to the value of the direct and indirect subsidiaries of Judgment Debtor, Xela Enterprises Ltd, which would in turn affect the value of the assets of Xela itself. Further, the Applicant is also entitled to know about the possible movement of assets from Xela to its subsidiary companies, whether they be direct or indirect subsidiaries. The information sought does sufficiently relate to

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## Rulings on Refusals - Graham, Master

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both the value of Xela Enterprises Ltd. and to the possible flow of assets and property from Xela to its direct and its indirect subsidiaries such that these questions at issue 6 must be answered.

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Given the concern with respect to the related litigation in action CV-119177, the information provided pursuant to this ruling shall not be communicated by the Applicant, Margarito Castillo to anyone else, and specifically not to the Co-Defendants in the action CV-119177.

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This is my ruling with respect to issue 9, which is a request for a copy of the will of the Respondent Juan Guillermo Gutierrez. This will could plausibly refer to specific items of property owned by Mr. Gutierrez and is relevant irrespective of the questions that the Applicant was able to ask of Mr. Gutierrez. However, the will shall be produced subject to the redaction of the names of beneficiaries and executors/trustees redacted.

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The question at issue 11 is a request to provide a waiver to allow the Applicant's counsel to speak directly to Deloitte, regarding Xela's financial affairs. Deloitte is presumably their accountant. There is no obligation on the part of Xela to do this, and in fact what the Applicant is essentially trying to do is to get an order under Rule 60.18(6) without actually bringing a motion for such an order, which would have to be brought

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Rulings on Refusals - Graham, Master

on a notice to Deloitte. So the refusal at question S198 is upheld.

5 The next question argued is under issue 12 and the Applicant seeks Xela Enterprises' agreement not to cause any assets to leave Ontario without providing the Applicant's counsel with 20 days' notice. The obligations of Xela Enterprises with respect to the movement or any restriction of movement of its assets in Ontario exists outside 10 any such undertaking that the Applicant is seeking and is therefore not appropriately the subject of an order on its motion. So the refusal at question S286 is also upheld.

15 Counsel for the Respondents submits that the parties examined in aid of execution, or at the very least Carmen Gutierrez, be allowed to answer the questions ordered answered in writing. Given that there may well be follow up questions arising from answers given to the questions ordered answered, all three individuals examined shall re-attend to answer their undertakings and questions 20 ordered answered and all proper questions arising from their answers. This does not preclude the parties agreeing otherwise, but the Judgment Debtors are ordered to re-attend to answer 25 questions.

30 Counsel for the Respondents requested an order that the Applicant pay for the costs of the further examinations. Given that the further

Rulings on Refusals - Graham, Master

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examinations are required, it's a consequence of questions ordered answered on this motion. I am not prepared to make an order that the Applicant pay those costs. They may pay the costs of the examination at first instance, but those costs would be recoverable as part of the examination in aid of execution and collection procedures in the normal course.

With respect to costs, on reviewing the materials prepared by the parties and the costs outlines, and taking into account the fact that the parties did prepare factums and that it took an entire day to argue the motion, the costs of the motion on a one hundred percent basis could reasonably be six thousand dollars. My rough calculation of the relative degrees of success is that the moving party, the Applicant, was about 75 percent successful, and the Respondent was about 25 percent successful. Subtracting the 25 percent success from the 75 percent success results in a net success of 50 percent. On that basis I calculate the recoverable costs by the Applicant at three thousand dollars. Therefore the Respondent shall pay the costs of the motion fixed at three thousand dollars payable within 30 days.

...WHEREUPON THESE PROCEEDINGS WERE CONCLUDED

17.  
Certification

**FORM 2**  
**Certificate of Transcript**  
***Evidence Act, Subsection 5(2)***

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I, Maggie Underhill, certify that this document is a true and accurate transcript of the recording of MARGARITA CASTILLO V. XELA ENTERPRISES LTD., et al in the Superior Court of Justice held at 393 University Avenue, TORONTO, ON, taken from Recording No. 4899-604-20180201-092423-10-GRAHAMAND.dcr, which has been certified in Form 1.

20  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of an Authorized Person  
Maggie Underhill  
ACT ID: 5524867222  
1-855-443-2748  
munderhilltranscripts@vptranscription.com

25  
\*This certificate does not apply to the Ruling which has been judicially edited.

30

**TAB Y**

THIS IS EXHIBIT "Y" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



ONTARIO  
 SUPERIOR COURT OF JUSTICE  
 (COMMERCIAL LIST)

MARGARITA CASTILLO

Applicant  
 (Moving Party)

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
 FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
 and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez

Respondents  
 (Respondents on Motion)

**CONSOLIDATED UNDERTAKINGS AND REFUSALS CHART**

(March 20, 2018)

Issue #1: Questions answered as 'pending', or with the indication that 'further inquiries are being made'				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017				
J299	64	To look for and produce vehicle permit of Mr. Gutierrez' third vehicle – BMW 2002 TI from 1975.	Please see enclosed USB.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J310	65	To check records to see how much money Mr. Gutierrez owes his friend Mr. Koutsaris for storing his vehicles.	The balance owing is \$80,000 to MLV Leasing	
J358	72	To provide details of Mr. Gutierrez's two boats, including make, year, model, and other identifying information.	Formula 230- 1995 (this boat was owned by Arturo but stored at Mr. Gutierrez's cottage) Master craft x 9 - 2005	
J430	84	To advise of the precise current balance of Mr. Gutierrez' RSPs.	\$565,075.82 with TD \$14,479.51 with RBC Balances at Dec 31, 2017	
J449	87-88	To provide Mr. Gutierrez' personal investment/brokerage statements to show the performance of the RSP over the past 3 years.	6.31 % return over last 3 years. Please enclosed USB	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 6 years, or alternatively, the past 2 years.	Please see enclosed USB	
J576	108	To provide credit card information for all credit cards for which Mr. Gutierrez has signing authority over the past 2 years.	Mr. Gutierrez has three personal cards, Visa, Amex and MasterCard.	
J613	114-115	To provide a copy of the contract with the new pool company providing cleaning services.	Mr. Gutierrez does not have a contract with the pool cleaning company.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J620	116	To provide any bills or invoices for cleaning services at Mr. Gutierrez' home and cottage.	Mr. Gutierrez does have any invoices or bills for cleaning services. Cleaning services total approximately \$2000/year.	
J627	117	To provide any bills or invoices from snow removal company providing services to Mr. Gutierrez.	Please see enclosed USB.	
J630	118	To provide any invoices from person paid in the winter to put bubblers in the boathouse for the past year.	No expenses were incurred for bubblers over past year.	
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>				
C32	12	To produce any documents that Mrs. Gutierrez has filed in her capacity as executor for the Estate.	No further documents have been filed with the Court.	
C36	13	To produce copy of Arturo's secondary will.	Please see enclosed USB.	
C116	27	To advise if any of the liabilities on Exhibit B have changed between September 19, 2016 and July 26, 2017.	Chubb Edwards was paid \$797.22 Humphries was paid for funeral \$24,389.90 CRA Tax liability increased by re-assessment by \$15,856,954	

Issue #1: Questions answered as "pending"; or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority over for 2015 and 2016.	Executor has looked at the residence and has not found anything more. Requests are being made to the credit card companies and a response is pending.	
C131	30	To advise if Mrs. Gutierrez has filed any tax returns on behalf of the Estate.	Yes	
C131	30	To produce any tax returns filed by Mrs. Gutierrez on behalf of the Estate.	See enclosed USB	
C132	30	To produce any tax filings provided to or received from the CRA on behalf of the Estate, including, but not limited to the terminal tax return, any T1s, T3s and the clearance certificate.	See enclosed USB	
C244	54-55	To provide the licence plate numbers of all vehicles listed on Exhibit D.	See enclosed USB	
C244	55	With respect to Exhibit B, to advise whether the buy-out of the 2013 Mercedes-Benz SL550R convertible has actually been done or whether if they continue to pay out the lease per monthly basis, it will total \$33,000.	No buyout. Original Lease terminated.	
C256	57	With respect to the boat that was not listed on the statement of assets, to make inquiries and advise when the boat was bought, how much was paid for it, the make, year, model and value of it.	See answer to question J358.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C270	59	To produce the monthly statements for the Estate's bank account since it was opened until the end of July 2017.	Requests have been made to the bank and a response is pending.	
C288	63	With respect to Exhibit D, to advise if there is a similar document for Arturo's secondary estate. If so, to produce the document.	There is no similar document for Arturo's secondary estate.	
C289	63	To advise where the money came from to contribute to the registered investments.	The funds came from the same source used to support Margarita's lifestyle, being Arturo's salary and shareholder draws.	
C289	64-65	To provide personal investment/brokerage statements for the five years preceding Arturo's death.	Requests have been made and a response is pending.	
C289	64-65	To provide personal investment/brokerage statements for years 2015 and 2016.	Requests have been made and a response is pending.	
C324	73	In the period October 2015 and June 2016, to advise if Arturo sold any assets that were worth more than a thousand dollars or transferred any assets worth more than a thousand dollars.	Mrs. Gutierrez is not aware of any.	

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S176	38	<p>To ask Mr. Korol for:</p> <p>...</p> <p>4. A list of all salaries for any employee of a Xela subsidiary in the past five years.</p> <p>...</p>	<p>See enclosed USB. Requests have been made for further information and a response is pending.</p>
			<b>Disposition by the Court</b>

Issue #1: Questions answered as "pending", or with the indication that "further inquiries are being made"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S303	65-66	<p>To ask Mr. Korol the following:</p> <ol style="list-style-type: none"> <li>1. Since October 2015, has Xela sold any assets worth more than \$10,000?</li> <li>2. Since October 2015, has Xela transferred any assets worth more than \$10,000?</li> <li>3. Since October 2015, has Xela moved any assets it owned in Ontario from Ontario to another jurisdiction?</li> </ol> <p>If the answer to any of the three questions is yes, to advise what was transferred, when it was transferred, how much was transferred and where the assets or funds were transferred to.</p>	<p>Mr. Korol is not aware of Xela having sold any assets worth more than \$10,000 from October 2015 until he ceased being an officer of Xela in December 2016, apart from the IFB shares which were sold in or around December 2015, as discussed in response #32.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred from October 2015 until he ceased being an officer of Xela in December 2016, would have been cash, as evidenced by the bank statements which have been provided.</p> <p>Based on Mr. Korol's knowledge, he believes that the only assets transferred outside of Ontario from October 2015 until he ceased being an officer of Xela in December 2016, were the IFB shares and cash payments, as evidenced by the bank statements which have been provided.</p> <p>No further information is available.</p>	

Issue #2: Questions concerning property that a deceased debtor previously owned, but allegedly no longer owns by reason of disposal through survivorship			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>			
C198	45	To advise if Mrs. Gutierrez recalls taking out a mortgage with TD on the condominium.	She does not recall taking out a mortgage with TD
C199	45	To confirm that the mortgage is for \$2.4 million.	The mortgage outstanding is for \$950,000. The TD LOC is for \$1,195,000
C200	45	To confirm that the interest on the mortgage is prime plus 10%.	It is not Prime plus 10%. It is 10.5%.
C201	45	In the period 2013 to June 2016, to advise who made payments on the mortgage.	Arturo made the payments on the mortgage and line of credit.



Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J175	42	To advise how much money Mr. Gutierrez has given to his mother since July 2016.	<p>[U/T to "review records"] - Since July 2016, Mr. Gutierrez has supplied nominal amounts to his mother to cover her basic living expenses as she has no income and did not receive any distribution of funds from the estate upon Arturo's death. Juan is not aware of the exact amount.</p> <p>Mr. Gutierrez has no accounting of these exact amounts, He paid some bills for her when needed which he approximates are in the amount of \$100,000 to \$120,000. He has not provided her with a regular stipend since he does not have resources to do that. He has not given any money to her since July 2017.</p>
J232	53	With respect to the DX Financial mortgage, which Mr. Gutierrez used to pay for Xela expenses, to advise what those expenses were.	<p>[U/T] - Mr. Gutierrez recalls paying some legal fees on behalf of Xela and advancing funds to Xela which he recalls was used to pay employee salaries and office rent on behalf of Xela. [No further detail provided]</p> <p>\$261,593.50 was paid for Company expenses (2016) by Mr. Gutierrez.</p>

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J318	67	To provide a copy of Mr. Gutierrez' 2012 Porsche lease agreement.	[U/T] – There is no current lease agreement. The lease was terminated in October 2017. Prior to the termination of the lease, the monthly payments were approximately \$1,100 amount.  See enclosed USB.	
J421	83	To provide any transfers of funds from Mr. Gutierrez to his children from October 2015 to present.	[U/T] - Mr. Gutierrez's best recollection is that during this time period he provided some financial assistance to his daughter Lisa, whose husband was diagnosed with cancer, but he is not aware of the specific amounts.  In aggregate, approximately \$75,000 was given to his children since 2015.	
J552	104	To advise how many days Mr. Gutierrez spent outside of Canada in 2015 and 2016.	In 2015, Mr. Gutierrez estimates he was away more than half the year. In 2016, he estimates he was away for a period of approximately one week out of every 6 weeks. He believes he was outside of Canada for approximately 200 days in total during this period.  See Passport in enclosed USB.	

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
J562	106	To review records and advise of Mr. Gutierrez' travel rewards points balance with each of Aeroplan and American Airlines.	[U/T] – Mr. Gutierrez states that his travel rewards points balance is approximately 101,000 American Airlines 63507 Air Canada 44000	
J655	121-122	To review bank statements to see if Mr. Gutierrez has transferred any assets worth more than a thousand dollars since October 2015.	[U/T] - Mr. Gutierrez does not believe that any assets worth more than \$1,000 have been transferred, apart from regular bill payments and other payments already disclosed, since October 2015.  Mr. Gutierrez has not transferred any assets, apart from what was already disclosed in his examination and answers to undertakings.	

Issue #3: Questions for which the answers provided are incomplete or non-responsive, but for which no refusal is asserted and no further answer is "pending"			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	<p>Based on Mr. Korol's knowledge, he believes that Xela International Inc. has bank accounts at the same locations as Xela. He believes that the remainder of the Xela's direct subsidiaries do not have bank accounts. There were no balances at December 31, 2017.</p> <p>Requests have been made for the information regarding the indirect subsidiaries and a response is pending.</p> <p>See enclosed USB.</p>
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>			
C123	28	To provide copies of credit card statements for the credit cards over which Arturo had signing authority for five years before his death, or alternatively, for 2015 and 2016.	The Matrimonial home was searched for statements. Requests are being made to the credit card companies and a response is pending.

Issue #4: Questions concerning information that a person being examined as estate trustee of a deceased debtor may have learned independently of their status as estate trustee				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>				
C216	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Yes	
C218	49	To advise if Mrs. Gutierrez travelled to Florida with Arturo in 2014.	Yes	
C219	50	If Mrs. Gutierrez did travel to Florida with Arturo in 2014, 2015 or 2016, to advise where she stayed.	Yes, at Mariners Cove residence in Jupiter Florida	
C220	50	To advise if Mrs. Gutierrez owns any other real estate in her personal capacity.	No	
C221	50	If Mrs. Gutierrez does own any other real estate in her personal capacity, to advise what it is, where it is located, when it was bought and how it was paid for.	See answer to C220	
C221	50	To advise if Mrs. Gutierrez owned any real estate solely in her name in the five years before Arturo's passing. If so, to advise where was it located, when was it bought and how was it paid for.	No	
C274	60-61	With respect to Mrs. Gutierrez' personal account, to advise of the account number and current balance and produce monthly account statements since January 2011 or in the alternative, since October 2015.	Requests are being made to the bank and a response is pending.	

<b>Issue #5: Questions concerning a debtor's spending after an order requiring the payment of money was issued against them</b>			
Question No.	Page No.	Specific question	Answer or precise basis for refusal
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J243	55	To ask Mr. Gutierrez' wife how much it cost to repair the stone wall entering their garage at 2 Gordon Road.	The repair cost was approximately \$8,000.
J328	68	To provide a copy of Mr. Gutierrez' son, Thomas', 2013 Mini-Cooper lease agreement, alternatively, to advise of monthly lease payments for Thomas' 2013 Mini-Cooper.	Lease was terminated. See enclosed USB.
J341	70	To provide a copy of Mr. Gutierrez' wife's 2012 Audi lease agreement, alternatively, to advise of monthly lease payments for Mr. Gutierrez' wife's 2012 Audi.	Lease was terminated. See enclosed USB.
J552	104	To produce a copy of Mr. Gutierrez' passport and NEXUS card.	See enclosed USB.
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>			
C274	60	To provide the bank account number of the TD bank account that was formerly a joint account with Mrs. Gutierrez and Arturo and the current balance of that account and to produce monthly statements in that joint account since January 2011, alternatively since October 2015.	Requests are being made to the bank and a response is pending.

<b>Issue #5: Questions concerning a debtor's spending after an order requiring the payment of money was issued against them</b>			
<b>Question No.</b>	<b>Page No.</b>	<b>Specific question</b>	<b>Answer or precise basis for refusal</b>
C283	62	To advise when the last cheque was drawn on the joint account, to whom the cheque was payable, the amount and to whom it was given.	Requests are being made to the bank and a response is pending.
			<b>Disposition by the Court</b>

<b>Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries</b>			
<b>Question No.</b>	<b>Page No.</b>	<b>Specific question</b>	<b>Answer or precise basis for refusal</b>
<b>From the examination in aid of execution of Calvin Shields, as a representative on behalf of Xela Enterprises Ltd., held July 27, 2017</b>			
S120-121	27	To make inquiries and advise if Mr. Shields is on the board or an officer of any other Xela wholly-owned subsidiary (direct or indirect), other than Lisa SA.	Mr. Shields was a Director of Fresh Quest Inc and is a Director of Xela International.
			<b>Disposition by the Court</b>

Issue #6: Questions concerning property owned by a corporate debtor indirectly through wholly-owned subsidiaries				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
S176	38	To ask Mr. Korol for: 1. A current listing of all directors and officers for any Xela subsidiary, whether directly or indirectly owned. 2. A list of any amounts paid to all directors of Xela and any Xela subsidiary in the past five years. 3. A current listing of all employees for any Xela subsidiary, whether owned directly or indirectly. 4. A list of all salaries for any employee of a Xela subsidiary in the past five years. 5. Production of the minute book for any Xela subsidiary, whether subsidiary is directly or indirectly owned.	Requests for this information have been made and a response is pending.  See enclosed USB.  See enclosed USB.  See enclosed USB. Requests for this information have been made and a response is pending. Copies of the minute books are currently being obtained.	
S200	45	To ask Mr. Korol to provide all financial statements for Xela's subsidiaries for the years 2011 to 2016.	See enclosed USB	
S201	45	If consolidated financial statements were prepared for Xela or any of its subsidiaries for the years 2011 to 2016, to ask Mr. Korol to produce those.	No Consolidation was ever done	
S294	64-65	To ask Mr. Korol for a listing of any Xela subsidiaries' bank accounts, regardless of where they are located, including the branch location, account numbers and the balance in those Xela subsidiary bank accounts.	See enclosed USB. Requests have been made for this information regarding the indirect subsidiaries and a response is pending.	



Issue #7: Questions concerning property funded or paid for by the debtor for the benefit of a related party			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Juan Guillermo Gutierrez, held July 25, 2017</b>			
J345	70	To provide the VINs for the 2013 Mini Coop and 2012 Audi SUV.	Lease terminated. See enclosed USB.
J504	95-96	To provide details of Wencke's life insurance policy, meaning the name of the insurance company, the policy number, amount of policy, beneficiaries, the cash surrender value and premiums.	See enclosed USB.

Issue #8: Questions asked of one Judgment Debtor which concern the disposal of assets by another Judgment Debtor			
Question No.	Page No.	Specific question	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez, held July 26, 2017</b>			
C143	33	To advise how much money Juan Gutierrez has given Mrs. Gutierrez since Arturo's death.	See answer to J175
C143	33-34	To advise how much money Juan Gutierrez has transferred to Mrs. Gutierrez since Arturo's death, when he did those transfers, how the transfers were done, whether by cheque or electronic transfer or cash and to what account those funds were deposited.	See answer to J175

Issue #8: Questions asked of one Judgment Debtor which concern the disposal of assets by another Judgment Debtor				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
C143	34	To advise if Juan Gutierrez or Xela have paid any of Mrs. Gutierrez' bills since Arturo's death, what bills those were, when they were paid and how they were paid.	See answer to J175	

Issue #10: Undertakings which appear to be unanswered due to inadvertence, and without a reason for refusal				
Question No.	Page No.	Specific question	Answer or precise basis for refusal	Disposition by the Court
<b>From the examination in aid of execution of Carmen Gutierrez, as Executor of the Estate of Juan Arturo Gutierrez., held July 26, 2017</b>				
C149	36	To provide the estimated value of Arturo's shares of 696087 Alberta Ltd.	The Alberta 696087 company's sole asset is the XELA preference shares it holds in XELA with a redemption value of \$45,000,000. The ultimate value will be realized depending on the resolution of the AVICOLA case and or the payment of illegally retained dividends by the controlling shareholders. There has not been a valuation performed on the shares of Alberta 696087.	

**TAB Z**

THIS IS EXHIBIT "Z" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

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**From:** Martin Mendelzon <mmendelzon@groiaco.com>  
**Sent:** 17 September 2018 4:12 PM  
**To:** William Bortolin  
**Subject:** RE: Xela 1 of 2

Hi Will,

Our firm continues to represent the respondents in this matter.

It is our understanding that Juan Rodriguez resigned as an officer of Xela in or around April 2016. Please advise if you still intend to conduct a further oral examination of Cal Shields, who resides in Florida, on behalf Xela or whether your client will agree to pose further questions in writing.

I have requested available dates for Carmen's continued examination and should have some options for you shortly.

Please continue to correspond with me directly with respect to future enforcement steps.

Thank you,

**Martin Mendelzon**  
Groia & Company  
Professional Corporation ▪ Lawyers  
Direct: 416-203-4475  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

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**From:** William Bortolin [mailto:[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)]  
**Sent:** September-17-18 9:15 AM  
**To:** Martin Mendelzon  
**Subject:** RE: Xela 1 of 2

Martin,

Unless you advise me otherwise by tomorrow at noon, I will proceed on the basis that the judgment debtors are unrepresented, and will proceed accordingly by contacting them directly for all future enforcement steps.

Will



**William Bortolin**  
**Associate, Bennett Jones LLP**  
T. [416 777 6126](tel:4167776126) | F. [416 863 1716](tel:4168631716)

---

**From:** William Bortolin  
**Sent:** 05 September 2018 10:44 AM  
**To:** 'Martin Mendelzon' <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela 1 of 2

Hi Martin,

# 411

Now that we've completed the examination of Juan, are you able to advise me of date options for the examinations of Carmen (for Arturo's estate) and Juan Rodriguez (on behalf of Xela)?

Alternatively, if the debtors will be unrepresented going forward, and I need to deal with them directly, then please let me know so I can proceed accordingly.

Will



**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin  
**Sent:** 30 August 2018 9:18 AM  
**To:** 'Martin Mendelzon' <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela 1 of 2

Hi Martin,  
Understood. Thank you for letting me know.

Will



**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. 416 777 6126 | F. 416 863 1716

---

**From:** Martin Mendelzon <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Sent:** 30 August 2018 9:16 AM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** RE: Xela 1 of 2

Hi William,

Just letting you know that Juan will be attending today but I will not. He will be unrepresented.

**Martin Mendelzon**  
Groia & Company  
Professional Corporation ▪ Lawyers  
Direct: 416-203-4475  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

---

**From:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Sent:** August-24-18 11:20 AM  
**To:** [MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)  
**Subject:** RE: Xela 1 of 2

Hi Martin,

You may be aware of this already, but I just wanted to confirm that we proceeded to personally serve a notice of examination on Juan as indicated below. I'm advised by our process server that it was delivered on Wednesday last week.

Attached is a courtesy copy.

Will



**William Bortolin**  
**Associate, Bennett Jones LLP**  
T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin  
**Sent:** 03 August 2018 12:15 PM  
**To:** 'MMendelzon@groiaco.com' <MMendelzon@groiaco.com>  
**Subject:** RE: Xela 1 of 2

Martin,  
I'm following up on the below. I am having a notice of examination prepared for Juan for an examination in aid of execution on Thursday August 30<sup>th</sup> at 10am at Network Reporting, downtown.

I am happy to have you suggest another date in August if it works better for you or Juan, but otherwise we'll proceed on Monday with serving a notice of examination for the date/time above.

Will



**William Bortolin**  
**Associate, Bennett Jones LLP**  
T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin  
**Sent:** 30 July 2018 11:49 AM  
**To:** MMendelzon@groiaco.com  
**Subject:** RE: Xela 1 of 2

Hi Martin,  
Following up on the timing for the examinations, I have to push that we find a date in August, at least for Juan. I can accommodate just about anything except for the 23<sup>rd</sup>, 27<sup>th</sup> and 28<sup>th</sup>.

We're entitled to conduct the examination under the *Rules*, and it doesn't seem to me that a month-long window of time for finding dates is an unreasonable request. Particularly for Juan, who, last we've heard from him, was effectively unemployed, and didn't have money to go on globetrotting summer vacations. If that's not the case, then it's all that more reason that we need proceed promptly with an examination to update his evidence.

If you cannot suggest a date in August, then I have instructions to serve a notice of examination for a date that we'll pick.

Happy to have a call to discuss,

Will



**William Bortolin**

**Associate, Bennett Jones LLP**

T. [416 777 6126](tel:4167776126) | F. [416 863 1716](tel:4168631716)

---

**From:** William Bortolin  
**Sent:** 26 July 2018 9:35 AM  
**To:** [MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)  
**Subject:** RE: Xela 1 of 2

Hi Martin,

When we discussed who to examine on behalf of Xela, I wasn't aware that Juan Rodriguez was an officer of the company. We would like to examine him as Xela's representative. Video link is still fine, but please advise on his availability.

Will Bortolin  
Associate, Bennett Jones LLP

T: [416.777.6126](tel:4167776126) / F: [416.863.1716](tel:4168631716) / E: [bortolinw@bennettjones.com](mailto:bortolinw@bennettjones.com)  
3400 One First Canadian Place / P.O. Box 130 / Toronto, ON M5X1A4

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**From:** Martin Mendelzon <[MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)>  
**Sent:** Jul 26, 2018 8:47 AM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** Re: Xela 1 of 2

Will,

My clients are largely unavailable in August but they have good availability in September. Please let us know some dates that work for you in September and let's proceed to book the examinations.

With respect to Cal, he will be examined again on behalf of Xela. However, he is traveling for the duration of the summer and will not be back in Florida until October so let's book a day in October for his examination. It can be done via video link like last time.

We have instructions to accept service of the notices of examinations on behalf of our clients.

**Martin Mendelzon**  
Groia & Company  
Professional Corporation ▪ Lawyers  
Direct: [416-203-4475](tel:4162034475)  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

On Jul 16, 2018, at 9:48 AM, William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)> wrote:

Hi Martin,  
Sorry for not responding on Friday.



I think we still have some issues to work through, but I am happy to have received some updates on the house through Reg, which we'll need to process and get instructions with respect to. I can't say that we won't still need a 9:30 to schedule motion at some point in the near future, but at this point I'm not in a position to say that we need one, and I have not taken any steps to book one.

Setting aside the house sale, about which Jason and Reg have had some discussions, my inclination is that written questioning of Calvin and Carmen is not going to be practicable, for two reasons.

The first being that we've received a lot of new information since the last examinations, which is going to warrant a not-insignificant number of follow up questions, including of the estate trustee and the Xela representative. The inability to be able to ask further follow-up questions based on the answers received would, I anticipate, become problematic for us. It may not be a large number of follow-up questions, but we need the ability to ask them.

The second being that the track record just isn't very good with getting fulsome and timely written answers. The process from the last round of examinations went on for almost a year. I am not optimistic that I could get instructions to start that process anew.

I might be able to imagine a path to where we don't to examine Calvin in person, if Juan agreed to give answers as a Xela representative. If maybe that were supplemented with written questions to Calvin, I could imagine that working. But I say that without knowing the rationale for examining Calvin in the first round, and I'd need to think about it more. If that option is tenable from your perspective, let me know.

Will

**William Bortolin**  
**Associate, Bennett Jones LLP**  
T. 416 777 6126 | F. 416 863 1716

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**From:** Martin Mendelzon <[MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)>  
**Sent:** 13 July 2018 11:07 AM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** Re: Xela 1 of 2

Hi Will,

I am waiting to hear back from my clients on the further examinations. I have good availability in August.

With respect to Carmen and Cal, we kindly ask that your client consider the alternative of conducting their further examinations in writing. Please let us know.

Given the recent correspondence with Reginald, I assume that there is no need for the requested 9:30?

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Thanks,

**Martin Mendelzon**

Groia & Company

Professional Corporation ▪ Lawyers

Direct: 416-203-4475

mmendelzon@groiaco.com

On Jul 11, 2018, at 5:00 PM, William Bortolin <BortolinW@bennettjones.com> wrote:

Hi Martin,

Are you available on July 19<sup>th</sup> for a 9:30 before Justice McEwen? Alternatively, if the 18<sup>th</sup> works for you, I have a conflict that morning, but might be able to get out of it.

I'm awaiting your response below on scheduling of the second round of examinations-in-aid, but the more pressing purpose for the attendance would be to schedule a motion for an order granting access to 2 Gordon Road, for purposes of an appraisal (on essentially the same terms as the order we obtained, unopposed, for access to the cottage). I've been asking about this since mid-April. In early May, you resisted the request on the basis that there was an existing appraisal, and because you expected that the Bank would, in any event, be moving forward with a forced sale if the house was not sold by the end of May. However, you never produced the appraisal (which, regardless, would have been too outdated to be useful), and you have not responded to my repeated requests for an update on the status of a forced sale. It's now mid-July, and Juan remains a joint owner of the house.

Will

**William Bortolin**

**Associate, Bennett Jones LLP**

T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin

**Sent:** 10 July 2018 12:04 PM

**To:** 'Martin Mendelzon' <mmendelzon@groiaco.com>

**Subject:** RE: Xela 1 of 2

Hi Martin,

I know you were out of office the last couple weeks, so I didn't follow up on the below, but now that you're back, please let me know about my request below.

Will

**William Bortolin**

**Associate, Bennett Jones LLP**

T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin  
**Sent:** 27 June 2018 1:02 PM  
**To:** 'Martin Mendelzon' <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela 1 of 2

Hi Martin,

We are approaching the one-year anniversary of the examinations in aid of execution that Jason conducted on July 25-27 last year. In accordance with rule 60.18, we are entitled to require the judgment debtors to re-attend for further examinations in aid of execution after the one-year anniversary has passed.

I am emailing to request your cooperation in coordinating dates for each of their re-attendances, and in accepting service of the notices of examination on their behalf (since, the rule requires that they be served personally or by an alternative to personal service). I'm amenable to any dates in August.

I note that your clients were already required by Master Graham's order to re-attend to answer questions arising from their answers to undertakings, but I'm offering to forego that follow-up examination and kill two birds with one stone. Certainly most of our questions will relate to the answers we've received, but we save the trouble of a second re-attendance if we're not confined to that. I know there is sensitivity around having Carmen attend for an examination, but we don't have much of a choice with her being the estate trustee. I can only offer that we'll be efficient with our time, and not stretch it out any longer than it needs to be.

Also, just a reminder that I am waiting on a response to my email below.

Thanks,

Will

**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. [416 777 6126](tel:4167776126) | F. [416 863 1716](tel:4168631716)

---

**From:** William Bortolin  
**Sent:** 20 June 2018 4:13 PM  
**To:** 'Martin Mendelzon' <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela 1 of 2

Hi Martin,

Thank you for filling in gaps on of the answers to undertakings.

Can you give me an update with respect to the 2 Gordon Road house? We were encouraged not to appraise it on the basis that there was a prior appraisal, and on the basis that the bank would move forward with a forced sale if it didn't sell on the market by the end of the then-month (May). But I didn't receive a response to

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my requests for a copy of the prior appraisal (which in any event will be too outdated for our purposes), and I have not heard anything about the bank proceeding with its forced sale. From the online listing, it seems that the house is still up for sale.

Please let me know. Our request to coordinate a date for an appraiser still stands, unless a forced sale is definitively in progress.

Will

**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. 416 777 6126 | F. 416 863 1716

---

**From:** Martin Mendelzon <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Sent:** 15 June 2018 3:24 PM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** RE: Xela 1 of 2

Hi Will,

Please find attached the minute books responsive to undertaking S176. They will be sent in two parts.

Regards,

**Martin Mendelzon**  
Groia & Company  
Professional Corporation ▪ Lawyers  
Direct: 416-203-4475  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

---

**From:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Sent:** June-07-18 3:02 PM  
**To:** Martin Mendelzon <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela

Thank you for this Martin.

Further to your email from Tuesday, do you have an update from Mr. Korol on the Xela subsidiary minute books?

Will

**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. 416 777 6126 | F. 416 863 1716

---

**From:** Martin Mendelzon <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Sent:** 06 June 2018 3:20 PM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** RE: Xela

Will,

I have asked Juan whether one works better than the other.

Further to my email below, please find attached further documents in response to the undertakings.

Thanks,

**Martin Mendelzon**  
Groia & Company  
Professional Corporation ▪ Lawyers  
Direct: 416-203-4475  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

---

**From:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Sent:** June-06-18 12:54 PM  
**To:** Martin Mendelzon <[MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)>  
**Subject:** RE: Xela

Thank you Martin,

I've been advised that June 19<sup>th</sup> and June 21<sup>st</sup> are options for our appraiser.

Do you want to check in with Juan on which of those dates is preferable, or can I just pick one?

Will

**William Bortolin**  
*Associate, Bennett Jones LLP*  
T. [416 777 6126](tel:4167776126) | F. [416 863 1716](tel:4168631716)

---

**From:** Martin Mendelzon <[MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)>  
**Sent:** 05 June 2018 4:56 PM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** Re: Xela

Will,

Juan has advised me that any weekday after June 15 would work for the appraisal of the cottage. Please let me know what works on your end.

Thanks,

**Martin Mendelzon**

Groia & Company  
Professional Corporation ▪ Lawyers  
Wildeboer Dellelce Place  
365 Bay Street, 11th Floor  
Toronto, Ontario M5H 2V1

Tel: 416-203-4475

Fax: 416-203-9231

E-mail: [mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

From: "Martin Mendelzon" <[MMendelzon@groiaco.com](mailto:MMendelzon@groiaco.com)>  
To: "[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)" <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
Date: Tue, 05 Jun 2018 16:28:52 -0400  
Subject: Xela

Will,

Please find attached the further documents responsive to undertakings.

With respect to Carmen's personal account statements, I am advised that she will have those tomorrow at which point I will forward them to you.

With respect to Arturo's investment statements, I am advised that a request was made in March and our clients were advised that they would be sent in the mail. They still have not been received and our clients have made a follow-up request. I will let you know as soon as they hear back.

With respect to the minute books of Xela's subsidiaries, I am still awaiting an update from Mr. Korol on the status of his requests. I also hope to have that information by tomorrow to pass along.

Please let me know whether, in your view, there are any further outstanding undertakings.

I am waiting to hear back from Mr. Gutierrez with respect to available dates for the a further appraisal of the cottage, which I hope to have very shortly.

Regards,

**Martin Mendelzon**

Groia & Company  
Professional Corporation ▪ Lawyers  
Wildeboer Dellelce Place  
365 Bay Street, 11th Floor  
Toronto, Ontario M5H 2V1

Tel: 416-203-4475

Fax: 416-203-9231

| E-mail: [mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

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**TAB AA**

THIS IS EXHIBIT "AA" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



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Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

**From:** Martin Mendelzon <MMendelzon@groiaco.com>  
**Sent:** 12 October 2018 2:50 PM  
**To:** William Bortolin  
**Subject:** Re: Xela - Examination of Judgment Debtors

I plan on being there. I'll let you know if that changes.

**Martin Mendelzon**  
 Groia & Company  
 Professional Corporation ▪ Lawyers  
 Direct: 416-203-4475  
mmendelzon@groiaco.com

On Oct 12, 2018, at 12:48 PM, William Bortolin <BortolinW@bennettjones.com> wrote:

Thank you Martin,  
 We will examine Carmen on Friday, November 23 and Cal on Tuesday, November 27. The latter will be done by videoconference.  
 We will ask Justice McEwen sign an endorsement to that effect at the 9:30 on Monday. There is no need for you to attend if you do not wish to.  
 Will

**Will Bortolin**  
*Associate, Bennett Jones LLP*  
 T. 416 777 6126 | F. 416 863 1716

---

**From:** Martin Mendelzon <mmendelzon@groiaco.com>  
**Sent:** 12 October 2018 9:33 AM  
**To:** William Bortolin <BortolinW@bennettjones.com>  
**Subject:** RE: Xela - Examination of Judgment Debtors  
 Will,

I have been advised that Carmen is available on November 20, 21, 22, 23 to attend an examination. She has several medical appointments between now and then. We continue to kindly ask your client to consider written questions due to her declining health.  
 Cal is available the week of November 26 to attend via teleconference, as we did last time. My clients have not been able to locate Juan Rodriguez's resignation from April 2016 but please see the attached confirmation of officers from the same period which shows that he was no longer an officer.

**Martin Mendelzon**  
 Groia & Company  
 Professional Corporation ▪ Lawyers  
 Direct: 416-203-4475  
mmendelzon@groiaco.com

---

**From:** Martin Mendelzon [mailto:MMendelzon@groiaco.com]  
**Sent:** September-27-18 12:34 PM  
**To:** William Bortolin  
**Subject:** Re: Xela - Examination of Judgment Debtors  
 Hi William,

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I appreciate your efforts in trying to schedule this on a mutual basis. I have been attempting to get available dates but have been unable to do so as of yet.

In the event I am unable to provide dates, I am available on the 9th and 15th, out of the dates you provided below, for a 9:30.

Thanks,

**Martin Mendelzon**

Groia & Company

Professional Corporation ▪ Lawyers

Direct: 416-203-4475

mmendelzon@groiaco.com

On Sep 26, 2018, at 12:16 PM, William Bortolin <BortolinW@bennettjones.com> wrote:

Hi Martin,

I did not receive a response to my email below.

Can you advise me regarding your availability on the following dates, for a 9:30 appointment before Justice McEwen:

- Tuesday, October 2
- Tuesday, October 9
- Monday, October 15
- Friday, October 19

I still have to confirm a date with the court, but wanted to narrow down what works for both of us, first.

The purpose of the 9:30 will be to schedule a motion for directions regarding the examination of the Xela representative, as a non-resident.

I do not need any direction from the court to be able to summon Carmen for an examination, as an executor of Arturo's estate, at a date of my own choosing. But I would certainly prefer to be accommodating of her availability, and I'd like to be respectful of your prior requests that we not serve any documents directly upon her (as would be necessary without your cooperation).

I can give you until the end of the week to let me know about Carmen's availability. Failing that, I'll proceed with the unilateral option.

Will

**Will Bortolin**

**Associate, Bennett Jones LLP**

T. 416 777 6126 | F. 416 863 1716

---

**From:** William Bortolin

**Sent:** 21 September 2018 1:44 PM

**To:** 'Martin Mendelzon' <mmendelzon@groiaco.com>

**Subject:** RE: Xela 1 of 2

Hi Martin,

Please get back to me regarding potential dates for examinations of Calvin and Carmen by Tuesday.

Failing any follow up by end of day Tuesday, I'll schedule a 9:30.

Will

**Will Bortolin**

**Associate, Bennett Jones LLP**

T. 416 777 6126 | F. 416 863 1716

**From:** William Bortolin  
**Sent:** 17 September 2018 4:43 PM  
**To:** 'Martin Mendelzon' <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Subject:** RE: Xela 1 of 2

Hi Martin,

Juan Rodriguez is formally reported as an officer of the company to the Ministry, and has not been removed, despite four other changes having been registered since April 2016.

If you have a record of Mr. Rodriguez's resignation that indicates otherwise, then please let me know. Our preference is to examine someone with some level of direct engagement in Xela, so that we can have fewer questions that need to be answered by undertakings, which take 6+ months to investigate. Calvin is notionally a director, but that doesn't count for a lot if he hasn't attended a board meetings in more than two years.

If I have no other option, then I'll examine Cal, so please check on his availability. Examination by videoconference, as before, would be fine.

Will

**William Bortolin**  
*Associate, Bennett Jones LLP*  
 T. [416 777 6126](tel:4167776126) | F. [416 863 1716](tel:4168631716)

---

**From:** Martin Mendelzon <[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)>  
**Sent:** 17 September 2018 4:12 PM  
**To:** William Bortolin <[BortolinW@bennettjones.com](mailto:BortolinW@bennettjones.com)>  
**Subject:** RE: Xela 1 of 2

Hi Will,

Our firm continues to represent the respondents in this matter.

It is our understanding that Juan Rodriguez resigned as an officer of Xela in or around April 2016. Please advise if you still intend to conduct a further oral examination of Cal Shields, who resides in Florida, on behalf Xela or whether your client will agree to pose further questions in writing.

I have requested available dates for Carmen's continued examination and should have some options for you shortly.

Please continue to correspond with me directly with respect to future enforcement steps.

Thank you,

**Martin Mendelzon**  
 Groia & Company  
 Professional Corporation ▪ Lawyers  
 Direct: 416-203-4475  
[mmendelzon@groiaco.com](mailto:mmendelzon@groiaco.com)

---

**From:** William Bortolin [<mailto:BortolinW@bennettjones.com>]  
**Sent:** September-17-18 9:15 AM  
**To:** Martin Mendelzon  
**Subject:** RE: Xela 1 of 2

Martin,

Unless you advise me otherwise by tomorrow at noon, I will proceed on the basis that the judgment debtors are unrepresented, and will proceed accordingly by contacting them directly for all future enforcement steps.

Will

**TAB BB**

THIS IS EXHIBIT "BB" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.



Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

B E T W E E N:

MARGARITA CASTILLO

Plaintiff

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO  
GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the  
Estate of Juan Arturo Gutierrez

Defendants

-----  
This is the Continued Examination in Aid  
of Execution of JUAN GUILLERMO GUTIERREZ, personally  
and on behalf of the corporate Defendants herein, taken  
at the offices of Network Reporting & Mediation, 100  
King Street West, Suite 3600, Toronto, Ontario, on the  
30th day of August, 2018.  
-----

A P P E A R A N C E S:

WILLIAM BORTOLIN

Solicitor for the Plaintiff

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\*\*\*No under advisements noted in transcript\*\*\*

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JUAN GUILLERMO GUTIERREZ - 129

1 --- UPON COMMENCING AT 10:06 A.M.

2 JUAN GUILLERMO GUTIERREZ; Sworn

3 EXAMINATION BY MR. BORTOLIN:

4 664. Q. You're under oath?

5 A. Yes.

6 665. Q. And you, I assume, received the Notice  
7 of Examination requiring you to attend today?

8 A. Yes.

9 666. Q. Did you bring any documents with you  
10 there are responsive to the Notice of Examination?

11 A. No, there is no documents to bring  
12 because everything you asked for has been provided  
13 before or it does not exist.

14 667. Q. We'll get to some more specific things,  
15 although perhaps some of the things could be brought  
16 up to date, but we'll get to that when we get to that.  
17 So the general overview of what we'll be doing today  
18 is as on the last exam, you'll be asked, as Mr.  
19 Woycheshyn on the last exam did, asking about your  
20 assets, your income and your spending.

21 And you're prepared to answer questions  
22 about those things today?

23 A. I already answered all the questions  
24 before.

25 668. Q. You've advised us previously that your

1           only bank account was a joint account with your wife  
2           at TD Bank. Is that still correct?

3                   A. Yes, it is.

4   669.           Q. And is that an account to which you  
5           still have access to funds?

6                   A. No, it's actually drawn on a line when  
7           you froze it about a year ago.

8   670.           Q. Can you explain what you mean by that?

9                   A. That bank account had a line of credit  
10          as part of it, like an overdraft facility, and I was  
11          drawing on that one when you froze it last year. So,  
12          there's no availability of funds at all, besides its  
13          frozen.

14   671.           Q. And so, there are no other bank  
15          accounts of which you have access to funds from?

16                   A. I told you already no. I told you that  
17          last year; I don't have another bank account; I never  
18          had a different bank account. I only had one bank  
19          account because I didn't need another one. I just ran  
20          my affairs through one bank account. I don't know how  
21          many times I have to explain it to you for you to  
22          understand it. There's none -- no other ones.

23   672.           Q. And that will not be the last question  
24          that you hear me ask today that you've been asked  
25          before, and the reason I'm asking them is because you

JUAN GUILLERMO GUTIERREZ - 131

1 answered them last year and I'm asking them today and  
2 things could change.

3 You had RRSPs, which you provided us with  
4 account statements for. My question is have you drawn  
5 any money out of the RSPs since last July?

6 A. No. You froze all my bank accounts.  
7 I'm not like your side of the equation that I don't  
8 play by the rules, I respect the rules. I'm doing  
9 what I've been instructed to do, so I'm not touching  
10 any of my assets at all. I don't have any assets, by  
11 the way because you already took them all away.

12 673. Q. Well the RSP's that's not true; is it?

13 A. No, the RSP is the only thing is there  
14 and is untouched.

15 674. Q. So, I have your evidence then that you  
16 haven't created any new RSP's in the last year?

17 A. How would I, if you froze all my assets  
18 and took all my money away from me? I can't put  
19 anything anywhere, so the answer is no. No change  
20 from last year on any of the questions you asked me,  
21 with the exception of all the assets I had at that  
22 time that you took from me.

23 That's the only answer. The only change has  
24 been you took my cars away, you forced my house to be  
25 sold and you forced me to forfeit or sell my half of

1 the cottage; I have no assets left. So there's no  
2 changes. You can ask all the questions you want, but  
3 I'll tell you already; no changes from last time  
4 because I haven't done anything.

5 675. Q. Well I will ask the questions anyway,  
6 but I appreciate that as an overview answer and we'll  
7 see if it can help speed things up at any point today.  
8 You mentioned the house; that is the house that was  
9 sold at 2 Gordon Road, and I understand that sale  
10 closed on August 20th. Is that right?

11 A. That's correct.

12 676. Q. And I understand though that you're not  
13 required to vacate until the end of November. Is that  
14 right?

15 A. That's correct.

16 677. Q. So, where will be your primary  
17 residence from now until the end of November?

18 A. I don't know.

19 678. Q. Will it be one of either 2 Gordon Road  
20 or 174 Amber Bay Road?

21 A. Gordon Road no, because I just sold it;  
22 you just told me. I sold the house, you already told  
23 me that, so why am I going to live there after I'm  
24 supposed to leave the house when the new buyer takes  
25 over?



JUAN GUILLERMO GUTIERREZ - 133

1       679.           Q.    But my question was until they take  
2                    over.  Until they take over the house.

3                    A.    Well until then we're spending time --  
4                    I'm still in the house until November 30th.  At that  
5                    time I don't know at this point where I'm going to  
6                    live because I have no other place to go and I don't  
7                    have the money to buy another place, so I don't know  
8                    what I'm going to do.

9       680.           Q.    Can you not reside at 174 Amber Bay  
10                    Road?

11                   A.    That's my wife's property.  I  
12                    presumably can stay there.

13       681.           Q.    You don't have a plan one way or  
14                    another where you're going to stay after November?

15                    A.    No, I don't know.

16       682.           Q.    I mention 174 Amber Bay Road and we  
17                    talked about 2 Gordon Road.  Just to confirm, there's  
18                    no other residences that you own or lease?

19                    A.    I already told you last year I don't  
20                    and I know you've done all your research; you didn't  
21                    find anything because there's no other assets.  I  
22                    never had a house anywhere else, I never had any other  
23                    properties other than those two properties and you  
24                    took them away from me already, so I have no  
25                    properties, period.

1                   You can ask as many times as you want, but  
2                   there's none.

3       683.           Q.    So where did you stay last winter?

4                   A.    Last winter?  At 2 Gordon Road.

5       684.           Q.    And that's true for the past few years;  
6                   you've stayed in Toronto over the winters?

7                   A.    I work, I wasn't retired so I was  
8                   working and my place of work is here.  I travel a lot,  
9                   but I stay here.  So I live there for over 20 years.

10      685.           Q.    So no vacation homes?

11                   A.    No vacation homes.

12      686.           Q.    No timeshares or anything like that?

13                   A.    No.

14      687.           Q.    How did you get here today?

15                   A.    I drove.

16      688.           Q.    What did you drive?

17                   A.    My wife's car.  I don't have a car  
18                   because you took my cars away.

19      689.           Q.    And I think you've answered it, but I  
20                   just want to confirm so your evidence is that you do  
21                   not own or lease any motor vehicles?

22                   A.    You took my cars away and I don't have  
23                   any leases.  I had before but you took my things away,  
24                   so what else you want me to tell you?

25      690.           Q.    Just say yes or no would suffice.

JUAN GUILLERMO GUTIERREZ - 135

1           A.    I already told you.  You know it would  
2           be nice if when you talk to me you look at me, because  
3           looking at the floor, looking at the side kind of,  
4           it's kind of weird.  You talk to somebody who doesn't  
5           look at you, especially if you're asking me questions.  
6           Like, you're kind of questioning me like I'm not  
7           telling you the truth, but you don't even look at me.

8   691.        Q.    Thank you for that advice.  The  
9           question I'm asking is, and it's just a yes or no; do  
10          you own or lease any motor vehicles?

11           A.    I already told you -- you took my cars  
12          away; what else you want me to tell you?  I answered  
13          the question already.  And I'm not going to tell you a  
14          different thing, because the truth is only one.  And I  
15          told you already you took my cars away; what else you  
16          want me to say?

17                    And I know you were at the auction too when  
18          they were auctioned, so you know, so why you insist on  
19          asking the same question over and over again?

20   692.        Q.    Because I just want a yes or no answer  
21          and you're not giving me one.

22           A.    Because I already answered to you, sir.  
23          The answer is very simple; you took my cars away, so I  
24          have to drive around with my wife when she lets me use  
25          her car, or sometimes my kids.  They have their own

1 cars.

2 693. Q. I understand what you're telling me.  
3 My question is a yes or no question; do you own or  
4 lease any motor vehicles?

5 A. I already told you; you took my cars  
6 away -- that's the answer. I'm not going to give you  
7 a different answer because I'm not going to start  
8 telling you anything different than the truth. You  
9 took my cars away; you were there with my brother-in-  
10 law, enjoying every second of it when the cars were  
11 auctioned. So that's it, that's the answer. What  
12 else do you want me to say?

13 694. Q. I'm going to ask you to listen to my  
14 question closely, because it's a yes or no answer and  
15 you've yet to give me a yes or no answer. Do you own  
16 or lease any motor vehicles?

17 A. You took my cars away and you know it,  
18 you were there. Look at my eyes when you're asking  
19 me, because I'm telling you the truth. You took my  
20 cars away. What else you want me to tell? You want  
21 me to invent something?

22 695. Q. I want you to tell me yes or no whether  
23 you own or lease any motor vehicles?

24 A. I already answered that question and  
25 I'm not answering anymore times the same thing.

JUAN GUILLERMO GUTIERREZ - 137

1       696.           Q.   Well you keep telling me the same  
2            thing, I agree, but it's not a yes or no answer to my  
3            simple question; do you own or lease any motor  
4            vehicles?

5                    A.   You took my cars away.  You ask the  
6            question again and I'm going to remain quiet.  Okay?

7       697.           Q.   I'll take that as a refusal.

8       --- REFUSAL

9                    A.   Take it any way you want; I don't know  
10           what that means.  But the truth, and please make sure  
11           this is written, the truth is you took my vehicles  
12           away.  I am without a car right now, so what do you  
13           want me to say?

14                    I'm so happy for that and you're simply  
15           enjoying it -- why are you smiling?  When the cottage  
16           was auctioned you were there smiling happily, enjoying  
17           every second.  That's why you don't look at me when  
18           you're asking me questions.  Right?

19       698.           Q.   I look where I look because I'm  
20            thinking and reading my notes.

21                    A.   Are your notes on the floor?  Are your  
22            notes through the window?

23       699.           Q.   I'll ask the questions today, thank  
24            you.  Did you review the transcript from your last  
25            examination in July?

1 A. Back then, yes.

2 700. Q. When you say back then yes; what do you  
3 mean?

4 A. When I got a copy of it I read it and  
5 then I read it again.

6 701. Q. Did you have anything that you wanted  
7 to correct from that transcript that seemed wrong to  
8 you?

9 A. I don't remember. I don't have it with  
10 me. I don't remember what it said.

11 702. Q. If there was something you wanted to  
12 correct would you have communicated that?

13 A. I would've said that to Mr. Mendelzon,  
14 who was my lawyer at the time.

15 703. Q. I can go through the list, but from  
16 what you've told me it sounds like it would be a short  
17 list so I'll just ask the question generally. Is  
18 there anything that you've bought since last July  
19 other than ordinary necessities of life; food, rent  
20 and that sort of thing?

21 And I'll just give you an idea of what I'm  
22 talking about; anything like boats, jewelry, watches,  
23 pens, paintings -- anything along those lines?

24 A. No. I don't have money, you took my  
25 money away. You froze my bank accounts; how will I

JUAN GUILLERMO GUTIERREZ - 139

1 buy anything? I haven't bought absolutely anything.

2 704. Q. So no shares of a corporation, no  
3 securities or investments of any kind?

4 A. I already told you, you took all my  
5 money away. You froze my bank account, the only one I  
6 had. How would I buy anything, and I didn't buy  
7 anything. I didn't buy stuff like that before anyway,  
8 so the answer I told you already.

9 705. Q. Since last July have you become a  
10 shareholder in any new corporations?

11 A. How would I be able to do that if I  
12 don't have any money? The answer is absolutely no. I  
13 already told you I didn't buy shares, I didn't buy  
14 cars, I didn't buy -- not even clothing I bought. So,  
15 you want to ask the question again? The answer is no,  
16 I didn't buy nothing like that, so get over that --  
17 it's true.

18 706. Q. Have you become the beneficiary of a  
19 trust since last July?

20 A. Absolutely not.

21 707. Q. Have you become the trustee of a trust  
22 since last July?

23 A. No.

24 708. Q. We don't have your name on the record.  
25 You're Juan Guillermo Gutierrez?

1 A. Yes.

2 709. Q. I am showing you a document that was  
3 provided to me following your last examination. Do  
4 you recognize it?

5 A. I don't remember this document but it  
6 looks like something done when we got the second  
7 mortgage for the house.

8 710. Q. Right. And is that your signature  
9 beside applicant's signature at the bottom of the  
10 page?

11 A. Yeah, it is. And that mortgage  
12 precedes by a lot the lawsuit, the judgment, so I  
13 don't know.

14 711. Q. This is dated November 17, 2016.  
15 Correct?

16 A. What's the date -- oh, yes, 2016.

17 712. Q. That does not, you'll agree with me,  
18 come before October 2015?

19 A. It was before you froze my bank  
20 accounts and everything, you know?

21 713. Q. But it was not before the judgment.

22 A. I don't remember the date of the  
23 judgment, but I had to take this mortgage because I  
24 had no money for anything and we needed to continue  
25 living, and then you froze all my bank accounts and



JUAN GUILLERMO GUTIERREZ - 141

1 this is one of the reasons the house had to be sold  
2 too -- that mortgage was paid with -- you know when my  
3 house was sold because you guys put me in the position  
4 where I could no longer have banking relationships  
5 because your client, my sister, accused me of money  
6 laundering and all kinds of things.

7 Told the banks, the banks don't want to work  
8 with us; destroy our business, destroy the business I  
9 was running, destroy me, affected all of our  
10 executives, cost about 2000 people's jobs, by the way.

11 I hope you enjoy that when you learned that.  
12 All because of this lawsuit of you. And then I had to  
13 sell my house, and the house was very difficult to  
14 sell because the buyers that were interested they all  
15 kind of find out about this judgment, about all this  
16 thing and they didn't want to be involved.

17 So finally we got the sale, and when we get  
18 the sale 50% of the equity belongs to my wife because  
19 she owned half the house; 50% to me which was going to  
20 your side. What happened, you guys extorted my wife,  
21 it's an extortion what you did, because what happened  
22 is that you demanded that I pay \$425,000 or you  
23 wouldn't approve the sale, which would destroy the  
24 sale.

25 So we had to agree on that. So my wife

1           didn't get 50% of the equity. She suffered a severe  
2           loss because all she got was 250 when your side got  
3           425. And that was because you hold us hostage,  
4           because if we wouldn't agree on that the sale would  
5           not be able to happen.

6                       Continue smiling; I know you're enjoying  
7           this every second. You took everything away from me  
8           already. I have nothing else, nothing left for me.  
9           So I hope you're happy because I know that's what you  
10          guys wanted.

11       714.           Q.   My question was whether November 17,  
12                       2016 was before or after the judgment against you?

13                      A.   I think you know the answer -- come on,  
14                       don't play games with me.

15       715.           Q.   I thought I did too, but you told me  
16                       that this came before the judgment.

17                      A.   Don't play games with me. I told you  
18                       this mortgage was obtained for the purpose of just  
19                       paying expenses, and had nothing to do -- it was long  
20                       before the bank accounts were frozen or anything like  
21                       that.

22                               And by the way, I tried to pay this judgment  
23                       several times. I was in your office and you were  
24                       sitting there and I went to make an honest  
25                       proposition, and I sent forward more than one proposal

JUAN GUILLERMO GUTIERREZ - 143

1 -- keep smiling -- keep smiling, because I'm telling  
2 you the truth here. On more than one and you know  
3 because you were sitting on that table -- I proposed a  
4 very real solution to pay this judgment. And what did  
5 I get; insults. I got my brother-in-law, who  
6 shouldn't be there, because he wasn't part of this  
7 deal.

8 He stood up and told me, bye-bye cottage  
9 sent a clear message and that's why you were at the  
10 auction and having so much fun when it finally was put  
11 for auction, because that's what they wanted to do.  
12 They could've get the whole payment because we had the  
13 path for solution, and I proposed it seriously through  
14 a lawyer, in a very formal way.

15 Denied it, so the purpose was to force me  
16 out of the house, force my wife to lose the cottage,  
17 and took my cars away, froze my bank accounts,  
18 destroyed my reputation, so now what? Keep smiling,  
19 you're smiling because you're enjoying this or it's  
20 just that's what you're supposed to do, you know?

21 You took everything away from me, so you can  
22 ask me a million questions; I have nothing. I don't  
23 have a house, I don't have a cottage, I don't have  
24 vehicles. I don't have shares left -- I didn't buy  
25 anything new. The company I was running is completely

1 out of business now thanks to the actions of my  
2 sister. So what else you want me to do? If you want  
3 you can take my eyes, you can take my ears, you can  
4 sell my organs, if that's what you guys want to finish  
5 me completely -- that's fine.

6 But I can't give you what I don't have,  
7 okay? So, I made a proposal to Margarita more than  
8 once to solve this situation without having to fight  
9 anymore, and without any of this crap. And what she  
10 does; she says no. She says no to everything.

11 And when we sold the house she took money  
12 away from my wife, who has nothing to do with this.  
13 And you know what else she's done, she's broke my  
14 mother's heart.

15 My mother is not the day she doesn't cry  
16 because of this thing. She is completely under siege.  
17 I don't have means to support my mother and my mother  
18 has nothing -- and you keep smiling -- you're really  
19 enjoying the harm you have caused us.

20 And you guys also know that this lawsuit was  
21 all bogus from the beginning. But I never had a  
22 trial, did I? Did I have a trial? Could I speak in  
23 front of the judge? Was I cross-examined in front of  
24 the judge? The answer is no.

25 And by law, by law I have the right for a

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1 trial and you know it, and Mr. Leon and Woycheshyn  
2 know very well. Everybody has according to the law  
3 the right to a trial. Summary judgments are only  
4 valid in the cases of non-substance, non-substantial  
5 amounts and this is a substantial amount.

6 In the cases of agreement by the parties --  
7 was no agreement; we were demanding a trial. And the  
8 third one is in the case of uncontroverted evidence.  
9 In this case was zero uncontroverted evidence. All  
10 the evidence was controverted, because nothing my  
11 sister said was true.

12 And we told our side, she told her side;  
13 nothing balanced, how in hell would anybody be able to  
14 tell the truth from reading two documents that are  
15 just letters, without looking at the eyes and the  
16 faces of who you are cross-examining?

17 How can a judge make a decision of this  
18 magnitude? You know, he destroyed a lot of lives, a  
19 lot of lives with this action. And we never had our  
20 trial. I never had an opportunity to tell my case in  
21 front of a judge.

22 716. Q. Are you finished?

23 A. Of course you guys were very successful  
24 in keeping that from happening, but that is the truth.  
25 I never had the opportunity to tell my side of the

1 story. My dad who was accused of being senile; the  
2 judge never, never heard my dad talking to find out  
3 that he wasn't senile. My dad was a very generous  
4 man. Anything, everything my sister has come from my  
5 dad.

6 Your fees came from money that my cousins  
7 gave her, and you know what that money came from?  
8 From the dividends of our companies down south. And I  
9 told that in my first cross-examination on the case;  
10 and that was never in front of the judge, it was never  
11 in front of anybody.

12 All this is a big conspiracy, part of a much  
13 bigger case that's been fought down in South America  
14 and Guatemala precisely on a very large company that's  
15 being expropriated.

16 And how did they manage to expropriate it,  
17 because your office prepared a bogus lawsuit against  
18 one of our employees in the accounting -- sorry in the  
19 IT department and our IT guy was a junior person in  
20 the IT, stole information from our computer service  
21 and gave it to my sister's husband, Ricardo, to avoid  
22 being sued in a lawsuit that Mr. Woycheshyn drafted  
23 knowing there was nothing in it.

24 But this young kid, a 30-year-old guy was so  
25 scared that he stole the information and gave it to

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1           you. And what did you guys do? You put that as an  
2           annex on the lawsuit that my sister filed against my  
3           father and myself and the company, which had  
4           absolutely nothing to do with anything she was  
5           arguing, and even included information that was  
6           covered by attorney-client privilege and your lawyers  
7           should know that.

8                        You didn't care; you put it there. And why  
9           did you put it there, so a Guatemalan lawyer could  
10          come to the record, take copies of it and use it in  
11          Guatemala as an excuse. And you know what is  
12          happening now; all of those exclusions or  
13          expropriations are being reverted by the courts over  
14          there, because following the course of the law  
15          everything has been proven that we were right and they  
16          were wrong.

17                       And that is the whole thing. And this whole  
18          conspiracy was cooked in your office and you know  
19          that. I don't know if you know that, but Jason  
20          Woycheshyn and Jeffrey Leon, absolutely they cooked  
21          it. So, you guys know everything. You know I have  
22          nothing left.

23                       The objective of this was to destroy my  
24          father and destroy me so the other guys in Guatemala  
25          who own two thirds of the business could take our

1 third of the business for them.

2 717. Q. Are you finished?

3 A. Yeah, for now. But I'm just telling  
4 you facts, facts that I was never allowed to tell in  
5 front of a judge. And I want to ask one confirmation  
6 right now.

7 718. Q. No.

8 A. You said that I'm going to get a copy  
9 of this transcript. Did you say that when we started?

10 719. Q. Yes.

11 A. So, when am I going to get it?

12 720. Q. I don't know.

13 A. How long does it take to have a  
14 transcript made? A week?

15 721. Q. We'll discuss this later ---

16 A. No, no, no.

17 722. Q. The function -- no, stop talking.

18 A. Listen, I'm not a lawyer so do not come  
19 with me with all this technical crap. You have to  
20 tell me I'm going to get one, yes, I want to know  
21 when.

22 723. Q. I don't have to answer that question.  
23 Here's how today works ---

24 A. Yes, you have to.

25 724. Q. Here is how today works; I ask



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1 questions, you answer those questions.

2 A. I already answered your question.

3 725. Q. You have not answered any of my  
4 questions.

5 A. Of course I did.

6 726. Q. You have spoken an awful lot, but you  
7 have answered exactly none of my questions.

8 A. I exactly answered. I told you I have  
9 no assets, I told you I didn't buy nothing. I told  
10 you I don't have any bank accounts. I also told you  
11 why and I also told you the reasons that we are here,  
12 and I'm going to keep telling you everything that you  
13 should know, if you don't know it, because you're just  
14 in the firm, maybe you don't know all the stuff that  
15 your superiors have cooked and done improperly.

16 But the damages you have incurred, made us  
17 incurred -- forget only economical, the emotional  
18 damage that my dad, you know, my dad died -- my dad  
19 died accused by his daughter of oppression when every  
20 penny she has came from my father.

21 She has a house because my father bought it  
22 for her. You know, when my brother-in-law split from  
23 the family business when he stopped working in my  
24 father's business, at that time my sister had a  
25 mortgage.

1                   And my dad to protect her paid her mortgage.  
2                   Gave her the money to pay the mortgage. And you know  
3                   where that money came from? He came to me and asked  
4                   me to mortgage my house to get the money for that.  
5                   And I lost my house now to that mortgage -- and you  
6                   keep smiling.

7           727.           Q.    You can keep accusing me of smiling,  
8                   I'm not smiling. Here's how today works; I ask  
9                   questions, you answer questions. I don't know what  
10                  question you thought you were just answering, but why  
11                  don't we just start over with me asking questions and  
12                  you answering them. Can we do that?

13                  A.    You have to tell me when I'm going to  
14                  get my transcript. If not, we're going to be here all  
15                  day. Until you tell me that I'm not going to answer  
16                  any more questions.

17           728.           Q.    Okay, then I'll ask them all and you  
18                  can refuse them all. I'm going to ask the questions.  
19                  This document that I put in front of you, we may as  
20                  well mark it as Exhibit 1, an application, information  
21                  to DX Financial Canada Ltd., dated November 17, 2016.  
22                  That's Exhibit number 1.

23           --- EXHIBIT NO. 1: Application/Information DX Financial  
24                  (Canada) dated November 17, 2016.

25                  BY MR. BORTOLIN:

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1       729.           Q.    We were talking about the date of this  
2                    document earlier, but what I wanted to take you to --  
3                    in it was where you stated "assets" on this document.  
4                    Where it says "Cash in which bank, \$50,000 TD" does  
5                    that correspond to the joint account we talked about  
6                    earlier?

7                    A.    It's the only bank account I ever had.

8       730.           Q.    So, yes?

9                    A.    I think it's an obvious answer; it's  
10                   the only bank account I've had -- yes, that's the only  
11                   account I have. It cannot be in anywhere else.

12       731.           Q.    The real estate line, I'm guessing that  
13                   includes 2 Gordon Road and 174 Amber Bay Road. Is  
14                   that right?

15                   A.    I assume so. I don't know for sure, I  
16                   have to check the numbers; I don't remember them off  
17                   the top of my head on that date.

18       732.           Q.    Would there be anything else that it  
19                   could've included as of November 17, 2016?

20                   A.    No, nothing else. I don't have another  
21                   asset.

22       733.           Q.    And the vehicles line item that says  
23                   \$300,000; we talked about the vehicles being sold  
24                   earlier. There's no other vehicles included in that  
25                   that you still have?

1                   A.    No, not that I know.  You guys took all  
2                   my cars away.  The only car we have in our garage  
3                   right now is my wife's car, okay?  So I don't have  
4                   another car that I know.

5       734.           Q.    And what does other assets 3 million  
6                   dollars; what did that refer to?

7                   A.    I think that's just an estimation on  
8                   the preferred shares I had in the company.  Now you  
9                   can scrap that because that company is worth nothing  
10                  now.

11       735.           Q.    By the company you mean Xela?

12                  A.    Yes.

13       736.           Q.    So, as of November 17, 2016 you were  
14                  expecting value in those shares that you no longer  
15                  expect?

16                  A.    Yes.  I can't expect any more value  
17                  after what my sister did to the company, you know?  
18                  You know my sister published for five consecutive days  
19                  in newspapers in Guatemala that I was a dishonest  
20                  person, a thief, a money launderer -- all kinds of  
21                  unspeakable things.  And you know about that too  
22                  because we shared it with you and nothing happened.  
23                  Right?

24                  And after that, how do you expect the  
25                  company to be worth anything; I was the president of

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1 the company. And she also accused all our executives  
2 of money laundering in 2011, a case that has been  
3 dismissed because it was bogus and complete  
4 fabrication. But when all that stuff happened the  
5 value of the company disappeared. You can't run a  
6 company that way.

7 737. Q. So when all the stuff you just  
8 described happening you said 2011, so this statement  
9 is dated November 2016 and you thought the company had  
10 value in November 2016?

11 A. At that time we still thought that it  
12 had value -- I thought, but obviously I was wrong,  
13 because now I know that the company right now is  
14 completely inexistence; we no longer operate.

15 738. Q. So what has brought you to the  
16 realization between November 2016 and now? What is  
17 the new information you've received that's convinced  
18 you the company's not worth anything?

19 A. I have no office, we have no money.  
20 The company is -- all our business is pretty much  
21 gone. The only -- we don't have a business running,  
22 so you tell me is a company that doesn't operate  
23 anymore, that doesn't have any property, because the  
24 company doesn't own land, doesn't own buildings,  
25 doesn't own houses, doesn't own an office. A company

1           that doesn't operate at all has any value?

2       739.           Q.    I was going to come to this later, but  
3           it does have subsidiaries; doesn't it?

4           A.    Well the only subsidiaries that  
5           potentially are worth something are in the middle of  
6           that litigation down in Central America, the one that  
7           Margarita, my sister, was aiding with this whole case.

8           And the money that's paid your fees from  
9           came from that also. In the case, as I stated before,  
10          it was fabricated by a Guatemalan lawyer, a Guatemalan  
11          accountant who is her nephew, Mr. Leon, Mr. Woycheshyn  
12          and my sister and her husband in your office, and  
13          another lawyer named Catherine Kay from Stikeman  
14          Elliott came into that meeting; she admitted it in the  
15          cross-examination at the beginning of this case, and  
16          she was in the meeting and admitted being in that  
17          meeting where they agreed on how the fees were going  
18          to be paid to Bennett Jones and to Stikeman Elliott,  
19          and the money was coming from a credit, a loan that my  
20          sister got from a bank named Granai Thompson or GTC  
21          Bank in Guatemala.

22          My sister in her cross-examination confirmed  
23          that she got a four million dollar loan from them,  
24          without any guarantees other than her signature. You  
25          know, in Guatemala it's illegal to have loans without

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1 security. No bank in the world will give somebody who  
2 is not a resident, doesn't have any assets, doesn't  
3 have a bank account, and had no relationship with that  
4 bank in her whole life, and hasn't lived in the  
5 country for 30 years wouldn't get a four million  
6 dollar loan on her signature. And she did.

7 How did they get it? They took money that  
8 belonged to our company that was being withheld  
9 illegally by one of the companies that is part of the  
10 litigation in Central America. They took that money,  
11 put it in a bank account, get a GIC and gave it as a  
12 back-to-back for the four million dollar loan, which  
13 was used to pay fees to Bennett Jones. And that was  
14 agreed on your office.

15 740. Q. My question was what you learned  
16 between November 2016 and today to convince you that  
17 the Xela shares or that Xela was worth nothing. And I  
18 didn't hear you tell me anything that you learned  
19 between November 2016 and today to convince you that  
20 Xela was worth nothing. Did I miss something?

21 A. Yeah, the company no longer exists.  
22 November 2016 we were still in the office. We still  
23 were hoping to be able to get things resolved. We  
24 were still trying to rescue our business from the  
25 crisis it was in, but it was not possible.

1       741.           Q.    And what you're talking about rescuing  
2                    the business, are you talking about resolving the  
3                    litigation with your cousin regarding Avicola?

4                    A.    Repeat the question?

5       742.           Q.    And when you talk about trying to  
6                    resolve things, are you talking about resolving the  
7                    Avicola issue?

8                    A.    Resolving with whom?

9       743.           Q.    With whomever.  We've talked about this  
10                   before; you've given testimony about it before, about  
11                   the expected value of settling litigation with your  
12                   cousin.

13                   A.    Obviously for Xela resolving the case  
14                   with the cousins would have allowed Xela to pay the  
15                   judgment.  But Xela can't pay the judgment because  
16                   it's a completely unviable operation; it has no  
17                   business.  And the case has not been settled -- has  
18                   not been resolved yet.

19       744.           Q.    What I was just getting at was the  
20                   expectation that you had or the hope that you had in  
21                   2016 that Xela could turn things around, and what I  
22                   was asking is if that was based on optimism about  
23                   resolving things with respect to Avicola?

24                   A.    In 2016, around this time my optimism  
25                   was to be able to rescue our business operations by



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1 being able to raise any financing to try to get our  
2 operations back going. We had an absolute  
3 impossibility to raise any money because of these  
4 lawsuits, and because of this judgment, and because of  
5 my sister's publications in 2015, and because  
6 everything else she's told everybody.

7 She just talks to people and knows everybody  
8 and they all hear the most horrible things about my  
9 dad and myself and the company. So, she made the  
10 business totally unviable, and in December 2016 we  
11 were forced to close our office.

12 You know? And then I did have some cash, as  
13 you can see there, but guess what; I had to pay legal  
14 fees that Xela couldn't pay. I had to pay the  
15 settlement to the landlord. All the money came from  
16 personal money that we had at the time. That's why we  
17 have nothing left.

18 That's why I have a negative balance in my  
19 bank account when you froze it last year. I was  
20 trying to rescue the business from the damage your  
21 side did, and failed; I couldn't do it. It was  
22 impossible. The banks would not finance us; no  
23 investors would want to work with any of our projects  
24 because nobody wants to get involved in the middle of  
25 this kind of situation.

1                   So, this is like committing suicide. That's  
2                   why last year I came up with a proposal. We have a  
3                   possibility now that we didn't have a year ago, but we  
4                   had it at the beginning of this year, and still very  
5                   viable to recover some dividends that would come from  
6                   the case with the cousins.

7                   Margarita didn't want to hear about it. As  
8                   a matter fact you were there. She told me we were  
9                   never going to win that. She told me that day, in  
10                  front of you and Jeffrey Leon, who was on an iPad  
11                  connection, because he was on a beach somewhere, and I  
12                  ---

13       745.           Q.    I want to pause you. No, I want to  
14                  stop you, because what you're ---

15                  A.    Let me finish the question. You asked  
16                  me a question; I'm going to finish it.

17       746.           Q.    You're describing a settlement meeting,  
18                  and that's privileged.

19                  A.    What happened is that in that meeting  
20                  she told me there's no way, no way you're going to be  
21                  able to win against the cousins. There's no way  
22                  you're going to collect a penny from them. That's  
23                  what she told me, so then she knows we are totally  
24                  unviable.

25       747.           Q.    I'm going to ask you generally to stick

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1 to the questions that I'm asking you. I'm going to  
2 ask that again, and I'm especially going to ask you  
3 not to volunteer information that's subject to  
4 settlement privilege. So, I will focus my questions  
5 and not try to make you tell me anything that's  
6 privileged, but I'm going to particularly ask you not  
7 to talk about settlement privilege conversations.

8 Turn to another document that was also  
9 provided to us following your last examination. This  
10 was provided in response to questions about amounts  
11 paid to you on account of your father's shareholder  
12 loan to Xela.

13 A. M'hmm.

14 748. Q. Do you recognize this?

15 A. This I don't recognize this paper.  
16 This, I don't know who prepared it, but...

17 749. Q. I will tell you that I received it from  
18 your lawyers as an answer to an undertaking about a  
19 question with respect to the precise amounts that you  
20 received on account.

21 A. This must have come from an accounting  
22 somewhere.

23 750. Q. But you haven't seen this before?

24 A. I don't remember seeing this form. I  
25 probably seen it -- I know the numbers, more or less.

1 I know what I got and I don't get.

2 751. Q. It's the numbers I'm curious to ask  
3 about. So, you estimated that the shareholder loan  
4 amounts you received were about 20 to 27,000 a month  
5 when you were last examined in July. But over this  
6 period of time, from October 2015 to August 2016 that  
7 it would total probably a little over \$200,000.

8 Looking at it here, the columns total  
9 \$659,000, so I'm hoping you can help me understand  
10 that discrepancy?

11 A. Well, I really don't know what the  
12 numbers are without looking at the context. I didn't  
13 prepare this document, so I cannot answer about this  
14 document because it's not a document that I prepared  
15 myself, so I don't know the context of these numbers.  
16 So I can't answer that.

17 752. Q. Well I thought I just provided you with  
18 the context, which is that it was a question about the  
19 shareholder loan.

20 A. I understand what you're saying, I  
21 understand what you're saying, the context is you got  
22 this document on an undertaking. But, the dates and  
23 numbers; I don't know what these numbers and dates  
24 refer to. I have to see the complete information.

25 753. Q. So this chart was provided on behalf of

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1 you as an answer to a question that was put to you.  
2 So, if you can't explain to me what this chart means  
3 who can?

4 A. Maybe Mr. Mendelzon put this chart -- I  
5 don't know who -- I could explain any of these things  
6 if I had the context, but how can I tell you? It says  
7 for example 25th of March 2016, \$207.92. Do you  
8 remember what you spent on the 25th of March of 2016;  
9 if you get something for \$200? How would I remember  
10 just from looking at dates and numbers and be able to  
11 answer questions on that?

12 754. Q. Well that wasn't the question that I  
13 asked you though; my question was about the total  
14 numbers.

15 A. Well the same thing applies. The thing  
16 is that a lot of things were paid through me at that  
17 time because the company, as I say, was not viable at  
18 one point. But I cannot tell you what each of these  
19 is, and I cannot tell you what the exact amount is.

20 But I can tell you the company owed me a lot  
21 of money, because I did sell my Tropic shares to the  
22 company in exchange of preference shares. I didn't  
23 get a penny for that. Like I worked very hard for  
24 that company and I went long periods of time without  
25 even collecting salary because we had no cash flow.

1                   So when there was cash flow I would get re-  
2                   compensated for the times that I didn't collect. I  
3                   haven't received a penny from the company since around  
4                   October -- I don't know the date -- in 2016. On the  
5                   contrary; I have paid bills for the company since  
6                   then.

7       755.           Q.    So when you were examined last July you  
8                   could remember the approximate amounts that you  
9                   received on account of this loan. And I'll tell you,  
10                  this was described to us as Arturo's loan and these  
11                  amounts being gifted to you from Arturo on account of  
12                  the loan. Is that right?

13                  A.    Yes. That's correct, and there was  
14                  also some money owed to me from money that I had put  
15                  in in the past. I don't remember the exact numbers  
16                  for that.

17       756.           Q.    So that wasn't the context of the  
18                   question that this was supposed to be answering, but  
19                   are you describing it to me now that some of this  
20                   money is probably not on account of Arturo's loan and  
21                   it was money that was separately owed to you?

22                  A.    No, I'm not sure. I can't tell you,  
23                  because I don't recognize the specific numbers. I  
24                  can't tell you, you know, I really don't know.

25       757.           Q.    Setting aside the specific numbers,

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1 your advice previously was guessed \$20-\$27,000 a month  
2 in amounts on account of this loan totaling about  
3 \$200,000 over this period of time since we described  
4 October 2015 to August 2016. Is it possible that you  
5 were mistaken and the actual number is 660,000?

6 A. I don't think so. I only got what I  
7 got on a monthly basis, so there may be other accounts  
8 that were -- I don't know what these numbers are. How  
9 can I answer this, if I don't even know these numbers?

10 758. Q. Well I can't tell you what the numbers  
11 that your counsel provided on your behalf to me mean.  
12 So, I will ask you for an undertaking to make whatever  
13 inquiries you have to make to figure out who made this  
14 chart and what these numbers are, to describe to me --  
15 -

16 A. I already answered the question -- I  
17 don't know what it is, and I cannot ask anybody else,  
18 because the people who worked at the time in the  
19 company no longer work there. So, I don't know what  
20 these numbers are, unless you give me -- unless I have  
21 the context.

22 759. Q. I'm asking. You gave it to me.

23 A. Well then you have the answer already.

24 760. Q. Well no, my question is ---

25 A. See, if I gave it to already then you

1 already know the answer.

2 761. Q. No, I don't know the answer. Having it  
3 is not answering my question. My question is to  
4 understand what it means and how to reconcile it with  
5 the answer that you gave that this was supposed to  
6 support. You gave the answer that you received about  
7 \$200,000. This is \$660,000.

8 A. That's what I was receiving on a  
9 regular basis. These numbers, I don't recognize this  
10 number. I see numbers -- numbers are numbers. I  
11 don't know what these numbers exactly mean, and what  
12 they were for. Unless I know what they were for I  
13 cannot answer the question.

14 Now if you're asking me if I got more money  
15 from the company, the answer is no, I didn't get more  
16 money from the company than there was the normal  
17 payments until the company had no more money to pay  
18 me.

19 And then, in order to be able to continue  
20 operations, continue paying rent, continue paying the  
21 salaries of the employees, I withdrew from the payroll  
22 and from all these collections. And from there on I  
23 got nothing else from the company.

24 And you can see what -- the last day I got  
25 something was like August last year.



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1       762.           Q.   Well, that wasn't a response to the  
2                   question. The question was specifically over this  
3                   period of time, that's why it cuts off. So, I  
4                   understand you don't know the answer. I hear you on  
5                   the fact you don't know the answer. My request is for  
6                   an undertaking to you to inquire through your counsel,  
7                   I assume, because your counsel assisted in preparing  
8                   this, but to inquire ---

9                   A.   I don't have counsel now because I  
10                   can't afford counsel.

11       763.           Q.   How this total reconciles with the  
12                   answer you gave in your prior testimony, that the  
13                   amounts you received totalled approximately \$200,000?

14                   A.   I already answered -- I don't know  
15                   these answers.

16       764.           Q.   My question wasn't whether you knew, it  
17                   was whether you would undertake to make inquiries to  
18                   find out the answer.

19                   A.   I don't know what undertaking means, so  
20                   I'm not going to commit to anything, because I don't  
21                   want to be stabbed in the back by you guys, with all  
22                   these technical things that I don't know. I'm not a  
23                   lawyer and I can't afford one right now, so I'm here  
24                   answering your questions in good faith.

25                   And I'm telling you what I know, and I can't

1 tell you what I don't know.

2 765. Q. Okay, I will not use the word  
3 undertaking if that makes it more difficult. I'm  
4 asking if you will make inquiries about how this  
5 number on this chart reconciles with the evidence you  
6 gave previously and to advise me of what you learned  
7 from those inquiries.

8 A. I will attempt to find out.

9 MR. BORTOLIN: Thank you.

10 --- UNDERTAKING

11 BY MR. BORTOLIN:

12 766. Q. Do you still have the job title of  
13 being president and CEO of Xela?

14 A. Yes.

15 767. Q. But I take it from your evidence that  
16 you're not doing any work in that capacity?

17 A. Sorry, I was taking a note.

18 768. Q. I take it from your evidence that  
19 you're not doing any work in the capacity of president  
20 and CEO of Xela?

21 A. There's no activity -- I'm just there.

22 769. Q. Did you say you're just there?

23 A. Well the company is not liquidated, so  
24 the company has to have a president -- somebody there,  
25 so the company is still alive but it's not

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1 operational; is totally lacking operations, hoping  
2 that we can resolve the case down south one day. And  
3 then that might bring life back. But there's no  
4 operations. We're not buying, we're not selling  
5 anything, we're not producing anything.

6 770. Q. And you're describing Xela or the  
7 entire Xela family of companies?

8 A. I'm describing Xela and its companies.

9 771. Q. And just to give that some context ---

10 A. I'm describing what I know, because by  
11 the way I just want to state on the record that I'm  
12 not here to answer any questions about the company,  
13 because I'm here to answer questions about myself.

14 772. Q. Understood.

15 A. And that was the only thing you  
16 summoned me here for.

17 773. Q. Right.

18 A. And I'm here to answer your questions  
19 about myself. If you're going to ask questions about  
20 the company, I'm not going to answer anything.

21 774. Q. I'm going to ask questions and they  
22 were asked last time and they were answered; there was  
23 no refusal to these questions last time about your  
24 role within those companies and your employment status  
25 -- that is what those questions are directed towards;

1           you, not specifically the company.

2                       I'm about to bring a new document -- before  
3           I do, I just want to make sure I don't forget to mark  
4           the document entitled JGG Drawings, October 2015 to  
5           August 2016 as an exhibit, number 2.

6           --- EXHIBIT NO. 2: JGG Drawings, October 2015 to August  
7           2016.

8           BY MR. BORTOLIN:

9           775.           Q.    And these I promise I will -- you have  
10          copies already, otherwise I would've provided you with  
11          copies again after the examination. Now, the document  
12          I'm going to show to you is one that was marked as  
13          Exhibit L to your last examination. And do you  
14          recognize this as an organizational chart for Xela?

15                       A.    I'm not going to answer any questions  
16          about Xela, because I'm not here in the capacity as  
17          president of Xela or a representative of Xela. I'm  
18          here only in the capacity of myself. So ask me  
19          questions about what I do, what performance I've done,  
20          but I'm not going to answer any questions pertaining  
21          to the company.

22          776.           Q.    And I promise my follow-up questions  
23          are going to be specifically about you and your role  
24          in these companies. I just want to clarify for the  
25          record, when I say Xela I didn't define what I meant

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1 by that. I meant Xela Enterprises Ltd. You  
2 understand that's what I was referring to earlier?

3 A. Yes.

4 777. Q. And that's the company that you're a  
5 president and CEO of?

6 A. Correct.

7 778. Q. And so, I've referred you to an  
8 organizational chart and you didn't want to answer if  
9 you recognized it. But, the questions I'm going to  
10 ask you, if it makes you willing to answer the  
11 question, the question I'm going to ask you about your  
12 role within these companies, so on that basis will you  
13 acknowledge for me that you recognize this  
14 organizational chart?

15 A. I refuse to answer that question,  
16 because I'm not here to answer anything that has to do  
17 with the company or its business.

18 --- REFUSAL

19 779. Q. And again, my questions are going to be  
20 directed towards your role in these companies.

21 A. Okay, ask me your questions. But I'm  
22 not going to recognize or not recognize this paper you  
23 gave me, because I'm not here on the representation of  
24 the company, so I'm not going to make any statements  
25 that pertain to the corporation.

1       780.           Q.    I'm going to ask you to look at this  
2                    chart and tell me if you recognize any of these  
3                    companies as ones of which you are an officer or  
4                    director?

5                    A.    I'm an officer and director of Xela  
6                    Enterprises.

7       781.           Q.    Anything else?

8                    A.    No.  I'm of Xela only, and I was in  
9                    Tropic International also.  I'm not in any of the  
10                   other companies.

11       782.           Q.    You're also an officer and director of  
12                    Xela International; are you not?

13                    A.    Yes.

14       783.           Q.    So ---

15                    A.    That one?  That's what I said; I'm of  
16                    Xela and Tropic.  And none of the other companies you  
17                    have in that paper I have role of director or officer  
18                    or anything.

19       784.           Q.    I'm going to show you a document.  This  
20                    is not one that you provided to me, but it is one that  
21                    was provided as an answer to an undertaking by Calvin  
22                    Shields.  It is entitled "Directors Xela and  
23                    Subsidiaries"?  And I understand that this was not  
24                    provided as an answer to questions that you were asked  
25                    on your last exam.  But it does identify companies of

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1           which you are an officer and director.

2                       So my question is whether you were involved  
3           at all in preparing this document.

4                       A.    My answer is very simple; I'm not going  
5           to answer any questions that have to do with the  
6           company. I'm not going to answer any questions that  
7           are related with the testimony of anybody else. I'm  
8           here to answer for myself.

9                       And I'm telling you I'm not a director of  
10          any other company right now, other than Xela and  
11          Tropic.

12       785.            Q.    And I think it's fair and directly  
13          responsive to that to ask you if you were involved in  
14          preparing a document that identifies which companies  
15          you, as an individual, are an officer or director of?

16                       A.    No.

17       786.            Q.    The answer is no, you were not  
18          involved?

19                       A.    I was not involved in preparing this  
20          document. I never saw it before. This comes from the  
21          examination of a third person, and I wasn't present,  
22          so I cannot answer or comment on anything he might've  
23          said or not.

24       787.            Q.    Right and I'm not asking you to comment  
25          on what he said; I'm asking -- it describes things

1 about you and I'm asking for your evidence,  
2 specifically because you didn't give this evidence;  
3 I'm asking for your evidence whether it's true or not  
4 as it relates to you. And what I specifically want to  
5 turn your attention to in this is on the second page  
6 there's a company, Empresas Arturos International  
7 (Barbados). You've not opened the document?

8 A. I'm not going to answer any questions  
9 that relate to the company or the testimony or the  
10 evidence presented by anybody else. I already told  
11 you that I'm only a director and executive on the  
12 Xela's companies, the two Xelas and on Tropics and not  
13 on others.

14 In the past, years back, I was in some  
15 companies but not anymore. I haven't been a director  
16 for a long time.

17 788. Q. How many years back?

18 A. I don't remember, but as I said I'm not  
19 going to answer any questions about his testimony or  
20 about his evidence or about the business, and that's  
21 final. I'm not going to answer any of those  
22 questions.

23 789. Q. Again, my questions are about you.

24 A. I already answered. I am not the  
25 director of any company that is not Xela Enterprise,



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1 Xela International or Tropic.

2 790. Q. And so, you're telling me you are not  
3 the VP of Finance of Empresas Arturos International?

4 A. I am not.

5 791. Q. Have you ever been the VP Finance of  
6 Empresas Arturos International Barbados?

7 A. I've been on the board of that company  
8 years ago, but not anymore.

9 792. Q. How many years' ago?

10 A. I don't remember, but it's a long time  
11 ago.

12 793. Q. Well, I don't know what your definition  
13 of a long time ago is. Can you please say three  
14 years, five years, 10 years?

15 A. I don't know. Listen, since this  
16 lawsuit came up and since my sister accused me of  
17 money laundering; she published a letter for five  
18 consecutive days in all newspapers in Guatemala,  
19 saying that I am a money launderer; how can I be on  
20 the board of any companies without causing harm to  
21 those companies? I withdrew from all my positions in  
22 every company except from the Xela companies and  
23 Tropic.

24 794. Q. So, if you're describing things that  
25 happened in 2011, your guess would be you stopped

1           being a director sometime around 2011?

2                   A.    I don't know, I don't remember.  And  
3           I'm not going to answer issues of the companies.  I  
4           told you that, so you can't insist, but if you ask me  
5           that question again I'm not answering.

6   795.           Q.    Well, I'm not here to argue with you,  
7           but let me again explain because I appreciate you  
8           don't have the benefit of counsel here with you today  
9           to advise you on whether to answer questions, whether  
10          they're appropriate questions or not.

11                   And with that in mind I'm trying to be  
12          careful to ask only appropriate questions.  The reason  
13          that I'm asking about your role as an officer and  
14          director of these companies, is because it relates to  
15          your employment and money you may be making as an  
16          officer or director of these companies.

17                   A.    Those companies never paid me anything.

18   796.           Q.    Never at any point in time?

19                   A.    No.

20   797.           Q.    And when we say those companies?

21                   A.    Any company -- the only company that  
22          paid me ever was Xela Enterprises.  At one point, I  
23          don't remember if Xela International at one point may  
24          have made some payment to me, but it would be part of  
25          the same package.

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1       798.           Q.    And you are not -- I take it, because  
2                    you've been clear about it -- an officer or director  
3                    of any of the Xela subsidiaries. Do you have any  
4                    effective ability to tell them what to do?

5                    A.    No. By the way, I'm going to clarify  
6                    that -- I never did, not even when I was on some  
7                    boards. I was never president of any of those  
8                    companies, and all those companies have their own  
9                    management and their own businesses, and they were  
10                    subsidiaries but they were not run from Xela.

11                    We had very clear lines of commandment, and  
12                    the people are presidents and directors they run the  
13                    companies.

14       799.           Q.    And again, I want to frame this as  
15                    relevant. The reason I'm asking is the relevance of  
16                    this that I'm getting towards is whether you had any  
17                    ability to control the funds of the Xela subsidiaries,  
18                    so just to give you that background as to why I'm  
19                    asking that question; why it's relevant to you.

20                    As Xela, could you not have changed the  
21                    officers and directors of any of those subsidiaries at  
22                    any time, if you disagreed with what they were doing?

23                    A.    I'm not going to answer corporate  
24                    questions, because I don't know what you're trying to  
25                    fabricate here. The answer is I wasn't telling them

1 exactly what to do. I was just running Xela, and Xela  
2 is the one who paid me. I never got any money from  
3 any of the subsidiaries, and that's all I'm going to  
4 tell you. I'm not running the companies, and I was --  
5 I'm not going to answer any more questions on the  
6 company because I already told you -- you called me  
7 here to answer questions about me, not about the  
8 business.

9 --- REFUSAL

10 BY MR. BORTOLIN:

11 800. Q. And we've been over that many times,  
12 and again what I was getting at was whether you had  
13 the ability to control the subsidiaries, including the  
14 money that they controlled -- that's what I'm getting  
15 at. I'm not ---

16 A. I already answered you, no. What else  
17 you want me to say? You want me to yell? I'll yell.  
18 The answer is no. I don't control the cash of the  
19 companies. That's why we have a Board of Directors  
20 and that's why we have a structure for managers.

21 We're professional company; we have  
22 shareholder meetings every quarter, everything was  
23 transpiring. My sister was a member of the board.  
24 Her husband was a member of the board before her, and  
25 she sat in the board when he was a member; she was

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1 sitting in the board as a guest invited by my father  
2 so they would know everything.

3 They know already all the answers. They  
4 know perfectly well; we were transparent and we ran  
5 these businesses very clean and transparent, according  
6 to the rules, like everything else we do; by the book.  
7 And by playing by the book then people like you guys  
8 that don't play by the book, managed to get a judgment  
9 against us without allowing us to have a trial, you  
10 know?

11 And that's illegal here in Canada; it's  
12 against my human rights. I have the right to be in  
13 front of a judge, how many times did I have that  
14 chance in this case? Zero. And how many times we ask  
15 for that chance? Hundreds of times -- I don't know  
16 how many times.

17 And how many times your side of the equation  
18 opposed it; every single time. So I'm not going to  
19 answer any more questions because I know what you're  
20 trying to do; you're trying to trap me in something  
21 and I'm not going to play that game.

22 Ask me questions about my personal  
23 situation, and what has changed since July to date;  
24 that's all I'm going to answer. You ask me any other  
25 questions you can take them as a refusal as of now.

1           801.           Q.    I'm not being sneaky at all, I'm being  
2                            very, very explicit to you about the purpose of my  
3                            questions, which is to determine whether you  
4                            personally have the ability to access or control funds  
5                            of the Xela subsidiaries?

6                            A.   I already told you no, so what else you  
7                            want?  What else you want?

8           802.           Q.    Right, that's an answer.  And I'm  
9                            testing you on that because you've told me that you  
10                           can't do that and that seems difficult to accept,  
11                           because you're the president and CEO of the parent  
12                           company; you must have some ability to control the  
13                           subsidiaries -- that's what I'm suggesting to you.

14                           A.   Listen, you can imagine whatever you  
15                           want to imagine.  I'm not that kind of administrator;  
16                           I was never, okay?  And I'm not going to answer more  
17                           questions about how the business operated, because as  
18                           I told you already, you asked me that question and I  
19                           told you.  I was not -- I never tell them what to do  
20                           and I'm not going to answer your questions anymore on  
21                           that line.

22                           So, if you want to ask them, just dictate  
23                           the questions so they are all on the record and you  
24                           can put no to all of them for the refusal.  If you're  
25                           going to ask me anything that has to do with business.

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1           You summoned me here, and the summons is  
2           very clear, it says, on the quality of Juan Gutierrez  
3           personally, not in my quality or my position in the  
4           company. So I'm not answering questions about the  
5           company, period.

6           --- REFUSAL

7           803.           Q.    It is your source of employment. It is  
8           a potential source of income and assets to you. I'm  
9           entitled to ask questions about it; you can refuse  
10          them, that's fine. What I just want and I will move  
11          on from this shortly, but I just want to get  
12          clarification on what your evidence was and what you  
13          were going to tell me.

14                    You were willing to tell me that you have  
15                    not exercised any control over the subsidiaries. And  
16                    I want to understand if it's your evidence that you  
17                    didn't because you couldn't or it's your evidence that  
18                    you didn't because that's just not the type of person  
19                    you are?

20                    A.    That's not how we run the businesses,  
21                    and I'm not going to answer this question again  
22                    because I already did.

23           804.           Q.    Well, I gave two alternative  
24           explanations for your answer and I think you gave me  
25           the answer that you didn't because that's just not

1 something you would do. Is the right?

2 A. You're going to twist this any way you  
3 want, so why do you keep asking the same question? I  
4 already told you, I already answered the question. I  
5 wasn't telling anybody what to do exactly. We draw  
6 the lines in the Board of Directors like a company  
7 should be run, transparently, and the managers and the  
8 directors and the presidents of the subsidiaries run  
9 their businesses and they report to us.

10 And I just make sure that they are doing  
11 their job. And this is the last time I tell you, I am  
12 not going to answer again because you're trying to  
13 trick me into something here, and I'm not a lawyer; I  
14 don't know what you're trying to do, but I can see  
15 this why you asked me without even looking me in the  
16 eye.

17 You ask looking everywhere else but my eyes,  
18 and when I'm answering you the question at least have  
19 the decency and respect to look at me when I'm  
20 answering, because I'm telling you the truth. I'm  
21 looking at you in the eyes, and the answer is no, I  
22 wasn't telling them what to do with the money.

23 I wasn't directing that way, that's not how  
24 we run the business. And this is the last time I say  
25 and the last time I'm going to answer anything that



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1           you ask me that has to do with the company, the  
2           subsidiaries or this chart or anything else, that has  
3           to do with the business or somebody else's testimony.

4       805.           Q.    My questions are directed towards your  
5           source of assets or income. I'm trying to determine  
6           whether the Xela subsidiaries are a potential source  
7           of assets and income over which you have control.  
8           You're telling me that you -- whether or not you have  
9           that control you don't exercise it. Is that right?

10                    A.    I already answered the question.

11       806.           Q.    I'm just trying to get a simple answer  
12           because you keep -- you give me ---

13                    A.    No, because you're trying to trick me  
14           into something, I'm not stupid. I'm not going to fall  
15           into your tricky questions; I know how you guys  
16           operate. I've suffered through that before, okay? I  
17           was cross-examined by Jason last time. I was cross-  
18           examined by Leon on a prior time.

19                    And I know exactly how you play. And I know  
20           how it reads in the text. It doesn't read the way it  
21           happened on the table. That's why I am mentioning  
22           when you don't look at me in the eye I mention it,  
23           because anybody who's going to read this transcript is  
24           going to read words. It's not going to read  
25           reactions, and you're being sneaky in your questions

1 and you know that.

2 So I'm not answering any more. I told you,  
3 I already answered the question when you read the  
4 transcript you're going to see I answered the question  
5 the first time you asked it. So, I'm not going to say  
6 anything else, because you're trying to make me say  
7 things so find me in a little contradiction somewhere;  
8 I'm not going to give you that pleasure, because the  
9 answer is only one and I already gave it. So I'm not  
10 saying anything else about this.

11 --- REFUSAL

12 807. Q. You haven't answered my question, but  
13 I'll take it as a refusal. We referred ---

14 A. It's not a refusal, so I object to that  
15 term because I answered the question.

16 808. Q. We'll agree to disagree. We referred  
17 several times to subsidiaries ---

18 A. So make sure that my objection is on  
19 the record.

20 809. Q. She records everything. We referred to  
21 the subsidiaries several times. You refused to  
22 acknowledge when I put in front of you an  
23 organizational chart of the subsidiaries. I can list  
24 them one-by-one without reference to the chart, but I  
25 would like it to be quicker and easier if we can just

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1 agree to refer to this chart as setting out Xela  
2 subsidiaries. We agree to that?

3 A. Not agree to that, because I don't know  
4 what you're trying to do.

5 810. Q. I'm trying to make the record clear,  
6 because ---

7 A. I know what you're trying to do; you're  
8 trying to trick me into something. Okay?

9 811. Q. Stop interrupting me when I'm asking  
10 questions, please?

11 A. No. Stop trying to trick me with your  
12 silly little manoeuvres, you know? I'm not going to  
13 answer questions about the company -- you ask me about  
14 me personally. And I don't have shares in any of  
15 those companies, okay?

16 I don't even have common shares of Xela, if  
17 that's your question, I only have ---

18 812. Q. It wasn't a question.

19 A. Okay? So I don't have any assets. You  
20 took my house, my cars, my cottage from me; you left  
21 my whole family on the street now. Destroyed our  
22 company, the business that I was running with all  
23 these fake allegations and insults, you know other  
24 allegations that we were laundering money? All these  
25 things that your lawyers, your law firm supported my

1 sister doing. And you got paid with money that was  
2 taken from one of the subsidiaries of this company,  
3 and that's how you got paid and maybe you don't even  
4 know that, but Jeffrey Leon certainly did. And so did  
5 Jason Woycheshyn, you know? If I miss-pronounce his  
6 name I apologize, because I don't know how to  
7 pronounce it.

8 But the truth of the matter is they know  
9 exactly how this case evolved; it's a fabrication and  
10 you were successful. You were successful because my  
11 lawyers were not successful in persuading the judge to  
12 give us a fair trial.

13 We never had a trial. I never had an  
14 opportunity to be in front of a judge and tell my side  
15 of the story, nor did my dad. My dad will never have  
16 that chance now; he's dead two years' now.

17 813. Q. My question, which I was trying to  
18 finish, was that we referred several times to Xela  
19 subsidiaries. I am referring mainly to the  
20 organizational chart that was marked as Exhibit L to  
21 your last examination, and you will refuse to  
22 acknowledge the document, so I'll mark it for what's  
23 called identification, which means you're not  
24 admitting anything about it, as Exhibit A.

25 --- EXHIBIT NO. A: Organizational Chart regarding Xela

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1 and subsidiaries.

2 BY MR. BORTOLIN:

3 814. Q. And I am referring to an answer to  
4 undertaking received from Calvin Shields entitled  
5 "Directors Xela and Subsidiaries", which I will mark  
6 for identification as Exhibit B.

7 --- EXHIBIT NO. B: Directors Xela and Subsidiaries.

8 BY MR. BORTOLIN:

9 815. Q. And my question is, when you referred  
10 to subsidiaries what companies are you talking about?  
11 You don't have to refer to these documents if you  
12 don't want to; when you referred to Xela subsidiaries,  
13 what companies are you talking about?

14 A. I'm not going to answer any more  
15 questions about the company. I'm here to respond  
16 about my assets, about my personal situation, about my  
17 ability to pay this judgment. That's what I'm here  
18 for, not to answer questions about the companies.

19 816. Q. Right, and that is exactly what my  
20 question is directed towards; your ability to get  
21 assets ---

22 A. I don't have any shares of those  
23 companies.

24 817. Q. Stop interrupting me while I'm asking  
25 these questions.

1                   A.    No, no, listen; stop this game.  You're  
2                   asking me the same question over and over and I  
3                   already told you; I don't control those companies.  I  
4                   don't have shares in those companies and look at me  
5                   when I'm answering, so you know I'm telling you the  
6                   truth, don't look at the paper.

7                   I don't control those companies and I don't  
8                   have shares in those companies; I cannot cash those  
9                   companies for my personal -- I have nothing, so what  
10                  else do you want me to tell you?

11       818.           Q.    I've moved on from asking that  
12                  question.  My question now is just to clarify for the  
13                  record when we talked about those companies and those  
14                  subsidiaries what companies are we talking about?  And  
15                  I want to refer to those companies as being the ones  
16                  listed in front of you.

17                  A.    I'm not going to refer to this because  
18                  -- I'm not answering on the company's behalf, period.  
19                  Do you want me to tell you in Spanish, maybe you  
20                  understand it that way?  I'm sorry, but asking the  
21                  same question over and over again and I already  
22                  answered it, so move on.

23       819.           Q.    My question which you have not answered  
24                  is, you gave several answers referring to subsidiaries  
25                  and I asked questions referring to subsidiaries.  I

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1 explained I'm referring to the ones listed in these  
2 documents that I marked for identification as Exhibit  
3 A and B. You gave me answers and they're important  
4 answers.

5 You've repeated them many, many times, but I  
6 just want to know that we're talking about the same  
7 thing. When you say those subsidiaries or those  
8 companies that we're talking about the same companies.

9 If you don't want to refer to these  
10 documents then just tell me when you say those  
11 companies what do you mean?

12 A. I'm not going to answer questions about  
13 the business, period. I refuse to answer that  
14 question.

15 820. Q. This was a question about which  
16 companies you control and had access to money from.  
17 That is the purpose for my question.

18 A. Xela Enterprises and Xela  
19 International, that's it. I already know that. I  
20 already told you I don't know how many times. It's  
21 the only companies I'm director of.

22 821. Q. So you mentioned Xela International.  
23 To the extent that Xela International has money or has  
24 assets, you have some ability to control those?

25 A. We don't have anything basically. The

1           company is pretty much out of business. I'm just  
2           trying to do what I can to keep it alive, with the  
3           hope that we will be able to resolve the -- I'm not  
4           going to answer anymore. You're getting me to say  
5           things on the company side; I'm not going to answer  
6           about the company.

7                        You see, that's why I'm telling you you are  
8           tricking me, so this is zip, no more. I'm not going  
9           to tell you any more things that have to do with the  
10          names of companies, performance of companies,  
11          relationship between companies, who directed --  
12          nothing with the company.

13                       Ask me about my personal, fine. Anything  
14          else you're wasting our time here; I'm not going to  
15          tell you anything because I don't have to, because I  
16          came here to answer questions about myself not about  
17          the company.

18          --- REFUSAL

19          822.           Q.    And I understand that you're in a  
20          position where you don't have counsel here, and I'm  
21          taking that as an obligation on my part to be  
22          responsible in the questions that I'm asking to make  
23          sure that they're not inappropriate to ask you.

24                        The questions that I've asked about what  
25          roles you have in which subsidiaries, you may not



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1 recall it, but last July we went through this entire  
2 chart marked as an exhibit and identified which of the  
3 company's you were an officer or director of while  
4 your counsel was sitting there and there was no  
5 objection to those questions. I'm not trying to trick  
6 you or ask something inappropriate by asking about it  
7 now. Why don't we take a 10-minute break?

8 A. Why don't we don't take any breaks and  
9 just finish this thing?

10 823. Q. We're not close to being finished.

11 A. Well then, continue.

12 824. Q. I would like to take a 10-minute break.

13 A. I don't want to take a break, please,  
14 please continue. Why do we have to take a break and  
15 waste our time; just continue.

16 825. Q. We're going to take a break.

17 --- A BRIEF RECESS (11:17 A.M.) ---

18 --- UPON RESUMING (11:32 A.M.) ---

19 CONTINUED EXAMINATION BY MR. BORTOLIN:

20 826. Q. I want to move on from what we just  
21 talked about, but I just want to tie off one point to  
22 make sure we're clear on it. You were very clear to  
23 me that you had not received any money directly from  
24 the Xela subsidiaries. I just want to make sure that  
25 your evidence is also that you haven't received any

1 kind of indirect money, for example paying expenses  
2 for you or anything like that from Xela subsidiaries,  
3 other than the ones you described from Xela and Xela  
4 International?

5 A. No.

6 827. Q. That's correct that you haven't  
7 received anything?

8 A. No, I haven't received anything. I  
9 told you that already.

10 828. Q. And I just want to be clear, direct or  
11 indirect, just so there's no confusion there. What  
12 has been your source of income over the past year,  
13 since last July?

14 A. I have none.

15 829. Q. Just to take an example of something  
16 like gas for a car; how does that get paid for?

17 A. From my wife's savings and also from my  
18 mother's help.

19 830. Q. And so, things like food and water,  
20 meals; is that the same answer?

21 A. Yes. The answer is I don't have any  
22 source of revenue, so right now I'm not paying for  
23 anything myself -- I can't.

24 831. Q. You don't have any employment outside  
25 of the Xela family of companies?

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1 A. No.

2 832. Q. You testified last July also about  
3 getting some support from your wife's savings. The  
4 evidence you gave was that she hasn't been doing any  
5 work for a very long time. Do you remember giving  
6 that evidence?

7 A. She does jobs -- she works part-time  
8 sometimes, like she does her own -- she's an interior  
9 designer, so she does some designs from time to time.

10 833. Q. And that's what I want to understand,  
11 because the last time you testified in July your  
12 evidence was she hadn't worked in a very long time,  
13 but then we asked you to let us know if you recalled  
14 any differently.

15 And further to that undertaking we received  
16 an explanation that she was self-employed as an  
17 interior designer, selectively working on a project-  
18 to-project basis. And so I'm just trying to reconcile  
19 those two things.

20 Is your evidence that she's been actually  
21 working continuously for a long period of time?

22 A. I'm not here to talk about her.

23 834. Q. Well I'm asking about your evidence  
24 that you gave in your answer to undertaking and I'm  
25 asking you to explain it.

1                   A.    Yeah, I already told you she's an  
2                   interior designer and she does work when she has  
3                   opportunities -- that's it.

4   835.            Q.    Right, but your evidence last July was  
5                   that she hasn't been doing any work for a very long  
6                   time.  If you want I can show you where it is in the  
7                   transcript, if it helps?

8                   A.    Yeah, I already answered the question.

9   836.            Q.    Well you're giving me two different  
10                   answers -- we've received two different answers.  One  
11                   is, she hasn't done any work in a very long time, and  
12                   then one is she works part-time.  So I'm trying to  
13                   understand which is the answer?

14                   A.    When she has an opportunity she does a  
15                   job.  I'm not answering questions on her behalf  
16                   either; she's not part of the judgment either.  So,  
17                   I'm not answering any more.  I already told you -- you  
18                   already know the answer, so why are you asking me?

19   837.            Q.    Well I'm asking because as I said I  
20                   have two different answers.  And to explain the  
21                   relevance of my question, I'm asking ---

22                   A.    No, I know what you're trying to do  
23                   here, you're trying to create some trick -- the answer  
24                   is simple.  I already gave you the answer in July and  
25                   I already gave you the answer now -- move on, next

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1 question.

2 838. Q. You're giving me two different answers,  
3 and again, you're describing ---

4 A. I'm not giving you two different  
5 answers; I told you she is self-employed as an  
6 interior designer and she does work from time to time.  
7 I didn't know when she was employed in the past or  
8 not. I'm not answering questions on her behalf; she's  
9 not here and she's not part of the judgment and has  
10 nothing to do with this.

11 839. Q. My questions are directed towards your  
12 sources of income. You told me before, last year, you  
13 told me again ---

14 A. And I already answered to you ---

15 840. Q. Stop ---

16 A. --- I haven't received anything from  
17 the company since last August, and everything that's  
18 being spent for the family survival has been coming  
19 from my wife's savings. What else you want me to tell  
20 you?

21 841. Q. Right. This is my question about your  
22 source of income ---

23 A. I don't have a source of income.

24 842. Q. You just described to me it's your  
25 wife's ---

1                   A.    I don't have a source of income, and  
2                   that's the answer.  You're asking me about my source  
3                   of income; I'm telling you I have none.  You killed  
4                   the company with your actions, so I have none.

5   843.            Q.    You're not letting me finish my  
6                   questions and that's making it difficult for the  
7                   reporter and it's making it difficult for me, and it's  
8                   making today much longer than it needs to.

9                   Let me start over; this is a straightforward  
10                  question.  You've described your wife as a source of  
11                  income for you personally, as your primary source of  
12                  income?

13                  A.    She's not giving me money, she is  
14                  paying for the expenses -- I live in the house.

15   844.            Q.    Okay, income is a poor word choice; I  
16                   take that, but the primary source from which you were  
17                   funding your daily living expenses?

18                  A.    I'm not funding daily -- she is funding  
19                  the family living expenses.  I just live in the house  
20                  now.  I have nothing; you took everything away from  
21                  me, so I can't contribute now.

22   845.            Q.    And that's what I'm getting at, and I  
23                   just want to understand and I'm being transparent  
24                   about the reason for this is that I'm trying to  
25                   reconcile your evidence about all your money coming

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1 from your wife with what your evidence was about what  
2 her own source of money is, because you also gave  
3 evidence last July that everything she has come from  
4 you, or I'll be more precise with the quote.

5 What you said and I can take you to the  
6 quote, I don't want to be sneaky about this -- it's  
7 question 173 which I'll put in front of you. The  
8 question was, "How do you help her?" Answer; Well,  
9 when she needs, because she doesn't have any source of  
10 income, so when she needs something I help her with  
11 that". And you were describing your wife there.  
12 Right?

13 A. Yeah, at that time?

14 846. Q. At that time being July of last year;  
15 July 2017?

16 A. Yeah, at that time, until you froze my  
17 bank account, until you took all my assets away.

18 847. Q. So, as of July 2017 or before July 2017  
19 your wife was relying on money from you -- now you  
20 don't have money but she has money. This is what I'm  
21 trying to understand. How it's possible that she has  
22 money that didn't come from you?

23 A. Well, you have to ask her and she's not  
24 part of this case. If you're asking about how she got  
25 the money to buy my share of the cottage, because I

1 know that's where you're going to, well she got a  
2 second mortgage on the cottage in order to be able to  
3 pay that. That's how it was done.

4 848. Q. Can you provide me with any evidence of  
5 that mortgage?

6 A. I didn't handle that mortgage; it's not  
7 my mortgage. I'm not an owner of the cottage anymore.

8 849. Q. Right, no, but from what ---

9 A. That's out of my possibility; I don't  
10 control that.

11 850. Q. From what you just described to me, the  
12 mortgage was taken out on the property to finance the  
13 purchase of your interest in the property. Is that  
14 right?

15 A. Correct.

16 851. Q. And so, when that financing was taken  
17 out you were a joint owner of the property, so I'm  
18 going to suggest to you that you must have been ---

19 A. No, you're mistaken. I was  
20 expropriated from that by you and forced into an  
21 auction, and then she negotiated a mortgage and the  
22 mortgage was -- she got the money at the time that the  
23 property became hers and then it was all done -- I  
24 don't know how but she has her lawyer and her lawyer  
25 handled the whole thing.



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1                   So, she couldn't get a mortgage until she  
2                   bought me out, because you froze the house. I  
3                   couldn't get a mortgage myself either. You already  
4                   know all this. You already know all this.

5           852.           Q.    No, I don't know what you're describing  
6                   to me. It sounds to me like what you've just  
7                   described is a Catch-22; that she couldn't get the  
8                   mortgage until she bought the house, but she couldn't  
9                   have paid for the house until she had the mortgage.  
10                  So, which one of those things came first?

11                  A.    I don't know; you have to ask her. She  
12                  got a mortgage on the cottage. The mortgage -- I  
13                  don't know how it was done because I wasn't there. I  
14                  wasn't handling it; you have to ask her lawyer, you  
15                  know? She get a mortgage from a private lender; one  
16                  of my sons helped her do all that.

17                  And then, I don't know how they documented;  
18                  I wasn't part of it. I didn't handle it.

19           853.           Q.    So I'll just make sure I understand  
20                   your evidence. Is that you did not sign any papers in  
21                   support of a mortgage?

22                  A.    No.

23           854.           Q.    Do you know who the private lender was?

24                  A.    No.

25           855.           Q.    And do you know what the mortgage was

1           secured against?

2                       A.   No.  I assume it's on the cottage, but  
3           I don't know.  As I told you I wasn't the one who  
4           handled that.

5   856.           Q.   And the reason I'm having trouble  
6           understanding this is because until that auction  
7           completed you were still an owner of the property.  
8           So, I'm suggesting to you that it doesn't make sense  
9           that someone could mortgage the property without you  
10          being involved.

11                   A.   I wasn't involved.  I did not sign the  
12          mortgage, if that's what you're asking.

13   857.           Q.   I did and you answered that -- that's  
14          fair.

15                   A.   I couldn't answer -- you froze me out  
16          completely, so you expropriated me from my property,  
17          okay?  Then my wife was going to lose her share, so my  
18          son arranged for her to get financing, a private  
19          lender, and the terms of the conditions that they  
20          arranged is something that she did, not me.

21   858.           Q.   And the reason that you're not telling  
22          me more than that is because you're refusing to tell  
23          me more than that, or because you don't know?

24                   A.   I already answered that question.  I  
25          told you I didn't handle that thing.  So, I cannot

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1 tell you what I didn't do, okay?

2 859. Q. Right, I understand you can't tell me  
3 what you didn't do, but and this may be a question you  
4 refuse to answer, and if so then I'll just take it as  
5 a refusal ---

6 A. I'm not refusing to answer; I already  
7 answered.

8 860. Q. Right, but my question is more to the  
9 specifics of who the private lender was and what the  
10 security was for the loan?

11 A. I wasn't -- I didn't do it, so I don't  
12 know. I can't answer the question; I already told you  
13 that.

14 861. Q. You told me you didn't do it, but I  
15 didn't know if perhaps you had talked to your wife  
16 about where she was getting this money from and  
17 learned about it that way, but you're telling me you  
18 just don't know?

19 A. I'm not going to answer that question  
20 anymore. I already told you -- you have the answer;  
21 read the answer in prior questions you have the  
22 answer. So you ask the question again and again,  
23 because I know what you're trying to do, and that's  
24 why you never look at me when you ask your questions  
25 and when I answer you look at the papers; because what

1           you're trying to do is you're trying to ask the  
2           question so many times that as I'm answering it's  
3           impossible to say the exact same words and then you're  
4           going to try to pick words to try to trick me into  
5           something.

6                        I don't have a lawyer here to protect me, so  
7           I'm protecting myself, so I'm not going to tell you  
8           more about it; I already answered your question.

9           --- REFUSAL

10          862.           Q.    There's no tricks here.  The objective  
11           is for me to understand your assets and your income  
12           and your spending.

13                        A.    My assets and my income is zero -- what  
14           else you want?

15          863.           Q.    And I'm asking questions directed  
16           towards that.  When I asked you questions right now  
17           about the mortgage, I'm testing what you're telling me  
18           that your wife is your source of income and that she  
19           provides you with money.

20                        A.    She's not my source of income.  I'm  
21           just living in the house and she's kind enough to let  
22           me live there and feed me.

23          864.           Q.    She funds your expenses.  That's fair  
24           enough.  I don't mean to misstate what you told me  
25           earlier.

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1                   A.    You see you're trying to trick me with  
2                   your statements and your questions.

3    865.            Q.    Again, I'm not trying to trick you.

4                   A.    Yes, you are.

5    866.            Q.    My questions, and I'm being very  
6                   explicit about the purpose of my question, is to  
7                   understand your source of income and I'm trying to get  
8                   -- it does not make sense to me that your wife who  
9                   doesn't have her own sources of income is able to pay  
10                  for things without any help from you, or without you  
11                  being involved.

12                  And so, when I'm asking questions about that  
13                  I'm trying to get to the bottom of how that makes  
14                  sense and how that could be true. And, it will go  
15                  quicker if you just answer the questions. A lot of  
16                  the questions I'm asking you're just not answering.

17                  A.    I'm answering very clearly to you. I  
18                  do not have a source of income. I do not have any  
19                  investments. I don't have anything else that I had in  
20                  July of last year; I lost all my assets, thanks to you  
21                  and your side of the equation, without me having the  
22                  right of a trial which is an abuse of my human rights,  
23                  by the way.

24                  This is like a Banana Republic situation,  
25                  not like Canada and I'm horrified. It horrifies me to

1 think that somebody can be put in a position I've been  
2 placed, without even having the opportunity to tell  
3 his story in front of a judge. I never had that  
4 benefit. And that is absolutely unheard of, at least  
5 not in this country.

6 And now you're trying to trick me with  
7 questions, and I already told you I have no assets, I  
8 have no income; I have no sources of income. I didn't  
9 handle my wife's mortgage and that's all I have to  
10 tell you; I cannot answer any other questions.

11 You have to ask your questions about what I  
12 know and what I do. I already told you.

13 867. Q. Right. And I understand your evidence  
14 is that you have no money, you have no assets, but  
15 it's not my job to take your word for it. So I'm  
16 trying to get to the bottom of that, because what's  
17 happened is your wife, who has no other source of  
18 income that we're aware of, came up with on very short  
19 notice \$790,000 to buy a house.

20 So, I'm trying to get to the bottom of where  
21 that money came from and whether or not -- I  
22 understand you're telling me you're not a source of  
23 it, but I'm trying to test whether that's true. So,  
24 the question to come back to where I was before ---

25 A. So you're accusing me to saying a lie?

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1 That's what you're saying?

2 868. Q. I'm cross-examining you -- that's my  
3 job.

4 A. And I tell you I don't know -- I didn't  
5 handle that. She has a property, she got a second  
6 mortgage on that property and she tried to save her  
7 house. Where do you want her to go and live; under a  
8 rock? Under the bridge at the -- you want us to go  
9 and move and live under the Gardiner Expressway?

10 You know, of course people have to find ways  
11 to go work around, and she did what she had to do. It  
12 had nothing to do with me; I didn't give her anything;  
13 I didn't sign anything; I didn't help her in any way,  
14 shape or form.

15 And I'm not going to tell you anymore. I'm  
16 not lying; I have not told you a lie, and look at me  
17 when I'm answering you because you're just looking at  
18 the wall. You know, I'm telling you the truth and  
19 you're trying to put words in me; you're trying to  
20 make me confused; you're trying to upset me asking the  
21 same question over and over again.

22 I can tell you I am very upset. I'm very  
23 upset because I worked all my life for this company,  
24 all my life. And this company fed me, my father, my  
25 sister. Everything my sister has come from this

1 business, and she did not work a single minute of her  
2 life. She got it all for nothing, okay? And then she  
3 comes and she sues us this way, and we don't get even  
4 a trial.

5 You know, I've been accused of being  
6 oppressive to my sister and you know the results; the  
7 judge ordered us to pay almost the same price that we  
8 offered her in 2010, is less than 20% difference from  
9 what the judge considered a fair price to what we  
10 offered.

11 20% difference is far from oppressive, far  
12 from oppressive. This is a complete travesty what  
13 happened here, complete travesty. And I never had a  
14 chance to sit in front of the judge and tell my truth.  
15 My dad never had a chance to tell his story.

16 You know, my dad died really sad and  
17 heartbroken from what my sister did, and she did that  
18 because she joined my cousins in a bigger quest, and  
19 your firm is part of that. So you want me to repeat  
20 this again and you're sitting yourselves in the  
21 position of strength and then extorted one of our  
22 executives, one of the junior guys in IT to steal  
23 information so my sister could give it to my cousins.

24 And that was done on your knowledge, your  
25 firm's knowledge. And then your fees were paid with



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1 money that was stolen from our company too. It was  
2 done with your knowledge. Jeffrey Leon blessed it,  
3 and he got really upset when I confronted him with it  
4 during my first cross-examination back in, I forget,  
5 2011 or '12 -- all that is true.

6 869. Q. What question do you think you're  
7 answering?

8 A. I'm just telling you I have told you  
9 the truth all the time, and you know all the answers.  
10 And I'm not going to tell you anymore. I don't have  
11 any source of income, I don't have any assets; you  
12 took my cars, you took my house, you took everything  
13 from me.

14 You destroyed my company -- not my company,  
15 the company I ran -- my father's company, completely.  
16 And now you're coming and telling me that I don't have  
17 the right to live. I don't have the right to survive,  
18 and you start questioning my wife and you don't even  
19 know.

20 You don't know what she knows and what she  
21 doesn't know, and she's not part of this judgment, and  
22 I'm not going to tell you anything about her because  
23 she's not part of this judgment. I don't have  
24 anything. So you want to continue -- you want more  
25 from me? You want me to name my organs so you can

1 sell them and Margarita can take the money?

2 That's the only thing I can give her now. I  
3 have nothing else.

4 870. Q. My questions are much more specific  
5 than that.

6 A. So you can keep asking the same  
7 question over and over again, as I said I'm not going  
8 to answer again, so you take it as refusals, if you  
9 like. I don't know what that means exactly, but do  
10 it. I'm not going to fall in your traps, okay?

11 871. Q. Let me ask a series of questions and  
12 you can either answer them or not answer them, but I'm  
13 going to ask you if you're not going to answer them,  
14 to just not answer them and not go off talking for 10  
15 minutes.

16 A. I'm going to continue telling my story  
17 because I've been forbidden from doing so since 2011.  
18 I've been accused of things I've never done by your  
19 firm, knowingly for God's sake. You know exactly what  
20 you're doing.

21 And you destroyed me, and I was an honest  
22 person. You know, I paid my sister's mortgage by  
23 mortgaging my house. What kind of heartless people  
24 are you? And then you come and question me and don't  
25 allow me to even say anything.

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1                   And you kept me from being able to talk to a  
2                   judge. Why don't we go in front of a judge and have  
3                   this decided? Why don't we go? I'm prepared to go  
4                   and tell the judge my story. I still hope that there  
5                   is justice in this country. I never took any benefit  
6                   from this company, as a matter of fact if you look at  
7                   the accounting of the withdrawals from the company, my  
8                   sister took much more money out of the company than I  
9                   ever did, and she contributed nothing.

10                   She didn't work a second in the company.  
11                   And her husband yes, worked there, but he embezzled  
12                   money from the company by using the credit card  
13                   without authorization, and that's why my father fired  
14                   him.

15                   And then your firm managed to take that off  
16                   the docket, because that was part of the original  
17                   lawsuit if you remember? And the lawsuit was this  
18                   size, like covered a bunch of issues, and it was  
19                   narrowed to the one little issue of the Tropic shares.

20                   And then we are accused, we are considered  
21                   or whatever, found to be oppressors because we offered  
22                   her a price that the judge decided was low because his  
23                   calculation was 20% difference, or less than 20%  
24                   difference.

25                   That's far from oppression; that's Banana

1 Republic type of justice, you know? So then you keep  
2 asking me questions, I'll keep telling you the story,  
3 because this is the only time in my life I had a  
4 chance to say the things and that's why I really  
5 demand to get this transcript as soon as it is  
6 physically possible.

7 872. Q. Who was the private lender that your  
8 wife used to finance the purchase of her bid in the  
9 auction for 174 Amber Bay Road?

10 A. I already answered that question.

11 873. Q. No, you haven't; please answer the  
12 question?

13 A. Go read the transcript; I already  
14 answered that question. When you read the transcript  
15 you'll find out I answered that question.

16 874. Q. I'll find out you gave me a 15-page  
17 answer that had nothing to do with my question.  
18 Please just tell me ---

19 A. I answered the question, sir.

20 875. Q. --- who is the private lender? Do you  
21 know or are you refusing to answer?

22 A. I already answered that question  
23 before. Read the transcript and you'll find out I  
24 already answered the question.

25 876. Q. Have you told me who the private lender

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1 is?

2 A. I told you the answer. I'm not going  
3 to repeat my answers anymore. Read the transcript.  
4 You're going to get a copy in due time. I answered  
5 the question the first time you asked me, and then you  
6 keep asking me the question, then I tell you my story.

7 877. Q. Exactly, you tell me your story and not  
8 answering my question.

9 A. Because I answered the first time, and  
10 then you keep with the same question and the same  
11 question and I'm not going to play your game, okay?  
12 I'm tired of games. I'm tired. You play like little  
13 lawyer -- no, I'm not going to play your games  
14 anymore. I'm fed up with it.

15 You guys destroyed me on purpose, just for  
16 money. Your firm has made -- I don't know how much  
17 money you made out of this -- money that was taken  
18 from our company. The company that now is defunct  
19 thanks for you. Thank you, I hope you enjoy it.

20 878. Q. I'm going to interpret your answer as  
21 meaning that you don't know who the private lender is.

22 A. Read the transcript; I answered the  
23 first time.

24 879. Q. Please stop interrupting me when I'm  
25 asking questions and this will go so much faster.

1           A. Listen, listen, I'm not going to let  
2           you bully me anymore. That's what you've done the  
3           whole time. The whole time that means since 2011 your  
4           firm has been bullying us all along and taking  
5           advantage of us and destroyed us. I answered the  
6           question the first time you asked it. And when you  
7           get your transcript you're going to read it and you're  
8           going to see I'm telling you the truth. I answered  
9           that question.

10       880.           Q. I request you to make inquiries of your  
11       wife as to who the private lender was?

12           A. Do what?

13       881.           Q. I request that you make inquiries with  
14       your wife to identify who the private lender was; that  
15       was the source the ---

16           A. You can request whatever you want.

17       882.           Q. I am; what's your answer?

18           A. Okay, you've requested -- fine.

19       883.           Q. What's your answer?

20           A. You have the right to request.

21       884.           Q. Right and you have the right to refuse  
22       or to say that you'll do it or to say that you'll  
23       think about it.

24           A. I'm not going to get my wife involved  
25       in this mess. She's suffered enough, okay? So, I am

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1 not going to get her involved in this thing. I'm not  
2 going to let you do that.

3 885. Q. So you're refusing. Fine.

4 --- REFUSAL

5 A. You already destroyed my family  
6 emotionally, have caused immense harm to my wife and  
7 my mother. You know my mother is scared of losing the  
8 little things she has now, because she doesn't have  
9 any income, she has debts. That's all she got.

10 And then -- listen, I'm not going to let you  
11 do that anymore. So I'm not going to answer any  
12 questions that are related to my wife or my mother.

13 886. Q. And all you have to say is I refuse to  
14 answer that question and move on. Next question; will  
15 you provide me with ---

16 A. I didn't answer ---

17 887. Q. Stop interrupting me.

18 A. No, because you are putting words on  
19 me. You're saying, you should say -- you're not going  
20 to tell me what to say -- understand? You're not  
21 going to tell me what to say. I'm telling you the  
22 truth and I'm telling you what I have to say. So,  
23 stop trying to put answers on me.

24 I didn't say what you just said now.

25 888. Q. I didn't say you said anything. You

1 can refuse my questions, you can answer them or you  
2 can say you'll think about it and answer me later.

3 A. Don't tell me what to do. You asked me  
4 a question and I answered it -- move on. Don't start  
5 trying to give me advice -- you're not my lawyer.

6 889. Q. My request was for you to inquire of  
7 your wife who was the primary lender?

8 A. And my answer was I am not going to let  
9 you draw my wife into this, so I'm not going to ask  
10 her anything about this. She's not going to be drawn  
11 into this, because she's already suffered enough.

12 890. Q. I request that you obtain a copy of the  
13 mortgage agreement that was used to fund the \$780,000  
14 bid for 184 ---

15 A. I'm not going to let you draw my wife  
16 into this mess; I have nothing to do with it, period.  
17 You already hurt her so much. You were there at the  
18 two auctions, my friend, you were there. You know,  
19 with your little smile, I presume.

20 So no, you're not going to hurt my wife  
21 anymore, I'm not going to let you do that. You  
22 destroyed me, fine. Destroyed the company, fine -- no  
23 more. No more. You have inflicted huge damages on  
24 this family, huge. Many of them are irreparable, by  
25 the way. And all because you wanted to make money and



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1 because you're playing these little games and this  
2 conspiracy thing; you got money from Panama and lend  
3 it through Guatemala so you could get your fees paid  
4 enjoy being here.

5 And on top of that you want to pretend me  
6 paying your fees for being here today -- I know that's  
7 going to come next. Right? Or not? So just ask your  
8 questions. I'm not going to tell you anything about  
9 my wife, I already told you, so your questions about  
10 that don't even ask them because I'm not answering.

11 --- REFUSAL

12 891. Q. Well, I need to ask the questions and I  
13 need you to say you're refusing to answer.

14 A. She's not part of this deal. She's not  
15 part of this deal. She's an individual, she's an  
16 independent person, she has nothing to do with my  
17 sister, has nothing to do with this case, is not part  
18 of the judgment.

19 She's free to do whatever she pleases and  
20 whatever she can do. I already told you I did not  
21 help her get the mortgage. I did not give her  
22 anything because I have nothing to give -- that's all  
23 I can tell you, period.

24 892. Q. You described earlier that there were  
25 some things that were seized and sold off like the

1 cars and your interest in the house. Apart from that  
2 action that Margarita has taken to enforce her  
3 judgment, you'll agree with me that you haven't paid  
4 any money to her directly for the judgment?

5 A. I don't have any money. I don't have  
6 any money; how could I give her any? The answer is  
7 no, I didn't give her anything because I have nothing.  
8 She took the only things I have and destroyed my only  
9 source of income. What else do you want?

10 893. Q. I'm not looking for the explanation,  
11 I'm just looking for the "yes" or "no" answer to  
12 confirm that we're on the same page.

13 A. Well, I'm giving you the explanation  
14 because I have the right to do so. Its free speech in  
15 this country, if you didn't know.

16 894. Q. At your last examination you described  
17 that you had given some money to your mother, Carmen,  
18 and they were described to us as -- or described to  
19 Mr. Woycheshyn at the last examination as not large  
20 amounts.

21 Then we asked for an undertaking as to the  
22 specific amounts and we were told it was a nominal  
23 amount. And then we received an answer that you paid  
24 Carmen's bills in the amount of \$100,000 to \$120,000  
25 since July of 2016.

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1                   Is that amount of money correct? Have you  
2                   paid approximately 100, to \$120,000 for Carmen's bills  
3                   since July of 2016?

4                   A.    I don't know. I did pay power bills,  
5                   condo maintenance bills -- I don't know; I didn't  
6                   account for all that stuff. I just helped her out as  
7                   much as I could, until you froze my account and took  
8                   everything away from me.

9                   So now I cannot even help her. So, whatever  
10                  I told you in July '17, whenever, last cross-  
11                  examination was what happened to them. And from there  
12                  on I have nothing because you froze me completely.  
13                  Nothing's changed since then, except that I have  
14                  nothing left because you took it all away from me.

15                895.           Q.    I take your evidence; you're confirming  
16                  that no money was given to Carmen after July 2017,  
17                  that's also the answer that you gave earlier in  
18                  writing. I want to focus then on the period between  
19                  July 2016 and July 2017 when 100,000 to \$120,000 was  
20                  given, and ask you to tell me as best you can what the  
21                  bills were that that money went towards?

22                  A.    I don't remember, it's too long ago all  
23                  the details. I already answered that in the last  
24                  cross-examination. Anything that happened before the  
25                  last cross-examination you have the answers already.

1       896.           Q.    These are the answers that we got from  
2                    the last cross-examination and we only got these a few  
3                    months' ago -- a little more than a few months' ago,  
4                    but in March; the answer that it was 100 to \$120,000  
5                    for bills?

6                    A.    So that's what it is.  What else do you  
7                    want?

8       897.           Q.    And my follow-up question is what  
9                    bills?  Bills for what?

10                   A.    I already told you, condo maintenance  
11                    fees, insurance for the condo and I don't know what  
12                    else expenditures she has; food, Hydro, telephone,  
13                    cable TV -- I don't know, whatever the fees she has,  
14                    the bills she has, the expenditures she has.  Like  
15                    everybody else, you know she has to eat; she has to  
16                    have electricity in her house.  She has to pay the  
17                    condo fees; otherwise she gets in trouble there.

18       898.           Q.    How much are the condo fees?

19                    A.    I don't know, I don't pay them  
20                    directly, I just gave her money.  I have no idea.  
21                    It's her apartment, not mine.

22       899.           Q.    Where would that money have come from;  
23                    a bank account?  A TD account?

24                    A.    Whatever I gave her before you froze my  
25                    bank accounts came from me.  After that I didn't give

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1 her anything.

2 900. Q. I understand it came from you, but it  
3 came from the TD bank account?

4 A. How many times do I have to answer that  
5 question? I have one bank account at the TD Bank. I  
6 opened it in 1984 and I never had another bank  
7 account.

8 901. Q. I have that evidence. My question ---

9 A. Do you need me to tell it again? Okay,  
10 so ---

11 902. Q. --- was slightly different.

12 A. So you don't have to ask again the  
13 question; I'm going to say it again. I have one bank  
14 account at the TD Bank, opened it in 1984. It's a  
15 joint account with my wife, and it's the only bank  
16 account I've ever had here in Canada since I came.

17 And I never have -- since I moved to Canada  
18 in '84 I have never had a bank account anywhere else  
19 in the world except for that one.

20 903. Q. And you're answering again a question I  
21 asked earlier, but my question now is slightly  
22 different. Its where did the money come from to pay  
23 Carmen's bills from July 2016 to July 2017.

24 A. If I gave her any money it was coming  
25 from that account, obviously it's the only account I

1 have.

2 904. Q. Thank you. That's all I was asking.

3 A. Next you're going to ask where the  
4 money came to that account; from whatever drawings,  
5 payments I got from Xela until I stopped getting money  
6 from them, from the company. After that I didn't give  
7 her anymore because I had none and the bank account is  
8 frozen.

9 905. Q. The number that we were given in your  
10 answers to undertakings of 100 to \$120,000 do you know  
11 how that number was estimated?

12 A. I don't remember that. Obviously it  
13 was looking at whatever the monies that were given to  
14 her.

15 906. Q. Can I ask you -- I'm going to ask you  
16 to please tell me what the basis of the calculation of  
17 100 to 120,000 is, and to the extent that you looked  
18 at any documents that you used to make that  
19 calculation, to provide me with copies of those  
20 documents, please?

21 A. I don't remember that. It must've been  
22 from my bank account and her receipt, asking her --  
23 no, I don't remember. How can I remember that from  
24 almost 2 years ago?

25 907. Q. This was an answer that you gave in

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1 March of this year.

2 A. I gave a lot of these answers to Mr.  
3 Mendelzon and he passed them over to you. I don't  
4 know when, I don't control that.

5 908. Q. And I'll tell you if you don't know; it  
6 was in March of this year. So, you're saying that the  
7 number came from you, and I'm asking you to advise --  
8 you don't have to do it today, you can go look back at  
9 whatever you want, but I'm asking you to advise me  
10 what that number was calculated based on, and to the  
11 extent there are any documents that you haven't given  
12 us already to provide us with copies of those  
13 documents. That's what I'm asking.

14 A. If it's a number I provided to Mr.  
15 Mendelzon was simply looking at the bank accounts and  
16 whatever bills I paid on her behalf or the money I  
17 gave her. Or it could've come from my wife's savings  
18 too, I don't know.

19 909. Q. Well, you must have known when you gave  
20 the estimate of 100 to \$120,000 what you were looking  
21 at to base that number on, so you knew at some point.

22 A. It's probably an estimation also based  
23 on -- I don't know the answer, so I'm not going to say  
24 more about it because you're trying to trick me again.

25 910. Q. I'm not trying to trick you ---

1                   A.    So I already told you I don't know the  
2                   answer. I don't know how Mr. Mendelzon put those  
3                   numbers together.

4    911.            Q.    Well you told me you gave them to him.

5                   A.    I don't even know what the document  
6                   you're talking about.

7    912.            Q.    Sure, that's fine; I can take you to  
8                   it. It's the answer to question number 175, on the  
9                   top row of this page that I'm giving you.

10                  A.    It cannot be clearer than that. It's  
11                  an estimation, and I was estimating on the different  
12                  things that she's paying or she needed money for. I  
13                  don't know more than that; I already answered the  
14                  question. It's just an estimation. Just read the  
15                  answer; it's in there very clear.

16    913.            Q.    Right and my question wasn't whether it  
17                   was an estimation. My question is what was the  
18                   estimation based on?

19                  A.    On whatever she required and whatever  
20                  she spent -- I don't know. I don't remember exactly  
21                  how that estimation was done.

22    914.            Q.    But you agree with me it was your  
23                   estimation?

24                  A.    Yeah, it's likely -- the numbers sound  
25                  like reasonable of whatever she's been needing for --



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1 I don't know what time period that covers either, but  
2 since my dad passed away I've been supporting my  
3 mother until I couldn't do it anymore because you  
4 froze me and took my assets away.

5 Before that I was supporting my mother. So  
6 that's for the period of time since my dad died.

7 915. Q. And you described to me that this  
8 number sounds reasonable sitting here today. I'm just  
9 going to suggest to you that it sounds like a lot of  
10 money for what you described those four things, like  
11 hydro bills and food and condo fees. But, your  
12 evidence is that it's reasonable?

13 A. Let me see it again, because I want to  
14 -- before I say anything I want to make it -- yeah, I  
15 cannot tell you anything different than I already  
16 said.

17 916. Q. And, just to be clear these are ---

18 A. It's just an estimation, that's what it  
19 is.

20 917. Q. Right and you've told me that many  
21 times.

22 A. I don't have any means to verify the  
23 numbers.

24 918. Q. And so, as far as you know there are no  
25 documents you looked at as the basis for making that

1 estimate?

2 A. I don't remember that -- I don't think  
3 so. Maybe there are some, but I gave you the best  
4 estimation I could do. What else you want me to do?

5 919. Q. I just want you to tell me what the  
6 estimate was based on -- that's been my question.

7 A. Well, I already told you I don't  
8 remember exactly, but it's based on whatever she  
9 needed since my dad passed away.

10 920. Q. And this is money that was given to her  
11 without -- it wasn't a loan; there's no expectation of  
12 being repaid?

13 A. No. How would I collect from my  
14 mother? You know, I'm not my sister; I'm not that  
15 type of person, you know? My mother supported me when  
16 I was a baby, took care of me all my life and she's  
17 81. So, am I going to give her money and say, pay me  
18 back? Come on? I'm not like my sister that took  
19 money from dad. All her life she never earned a  
20 penny, and then she bit him, right? She stabbed him  
21 in the back, big time.

22 921. Q. This is the Consolidated Undertakings  
23 and Refusals Chart dated March 20, 2018, because we're  
24 referring to it I'm just going to mark it as an  
25 exhibit, number 3. And I'm going to take you to

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1 another row of it.

2 --- EXHIBIT NO. 3: Consolidated List of Undertakings and  
3 Refusals from previous cross-examination of Mr. Gutierrez,  
4 dated March 20, 2018.

5 BY MR. BORTOLIN:

6 922. Q. This is labelled in the far left column  
7 as question number J-421 and the question was to  
8 provide any transfers of funds from you to your  
9 children from October 2015 to present. And you can  
10 see there what your answer was. So my question is  
11 about the \$75,000; what form did that assistance come  
12 in?

13 A. I don't exactly recollect, but her  
14 husband was diagnosed with cancer. They had a small  
15 business running; they were trying to make their life  
16 through a pizzeria that they opened on Bloor, the name  
17 of the crossing street. And they were struggling in  
18 the business when the husband got sick. My daughter  
19 was working two shifts a day, trying to keep the  
20 business running and taking care of a very ill  
21 husband.

22 They needed help to buy medicine, and  
23 sometimes they needed some money to keep the pizzeria  
24 running, so I took from whatever I had, any resources,  
25 to help her out. That's what you do for your children

1           when they are in trouble, when they are suffering.

2           923.           Q.    So, some money went to the pizzeria?  
3           What's the name of the pizzeria?

4                        A.    I don't know if money went straight  
5           into the pizzeria. I helped my daughter, sorry, to  
6           make ends meet. And that has nothing to do with my  
7           sister's issue at all. And that happened only until  
8           last year. It was in 2015 and '16, I believe.

9           924.           Q.    And the question that was asked was  
10          October 2015 to present, and the answer was since 2015  
11          -- can you be more specific then as to the time range  
12          that this money was given?

13                      A.    It was mostly at the beginning of that  
14          period of time. I don't know when the last help she  
15          received, but I couldn't do anything since you froze  
16          my bank accounts last year. You froze my only bank  
17          account, so how could I help anybody from there on?  
18          So then, anything that is there is before that. I  
19          don't remember the date you did that, but you have it  
20          on the records.

21          925.           Q.    I just want to make sure I have your  
22          best evidence about what the money went towards; it  
23          was the pizzeria and day-to-day living expenses?

24                      A.    I think it was mostly for medicine and  
25          medical treatment for my son-in-law who almost died of

1 cancer.

2 926. Q. Then, I expect ---

3 A. I would assume that if you had a son-  
4 in-law that has cancer you would do whatever you could  
5 to help your daughter. If you have any decency that's  
6 what the father does; right?

7 927. Q. I expect I know your answer, but you  
8 received nothing in exchange for the money that was  
9 given to them? No promissory note or anything like  
10 that?

11 A. Nothing. And I wouldn't expect that,  
12 you know? My daughter needed help because of her  
13 husband's illness.

14 928. Q. So, my next set of questions is along a  
15 similar line. At your last examination you advised  
16 that there was money drawn down -- we looked at it  
17 earlier; it was marked as Exhibit 1, the DS Financial  
18 Loan Application. And you advised at your examination  
19 last July that some of that money was applied towards  
20 paying Xela expenses. Do you remember that?

21 A. Yeah. It was -- some of that went for  
22 that, and some others were to support the family since  
23 I wasn't getting any income anymore.

24 929. Q. And then we asked for more specifics of  
25 how much money was applied to Xela expenses. And the

1 answer that you gave was \$261,593.50. Is that -- do  
2 you remember providing your counsel with sort of ---

3 A. I don't remember the exact number, but  
4 if that's what I answered at that occasion, that  
5 number is, most be very much firm, since it's in the  
6 accounting of the company whatever I gave it.

7 930. Q. And you told us already last July that  
8 it was used to pay employee salaries and office rent.  
9 Is that still your evidence of what that money was  
10 used to pay?

11 A. Xela was in real distress, financially.  
12 So I was forced to take that loan and use some of that  
13 money to contribute to the company's paying expenses.  
14 Exactly how it was disbursed I don't remember, but  
15 certainly it must be some payroll. It could be rental  
16 fees, some legal fees -- I don't know. I don't know  
17 for sure exactly on the detail; I would have to go and  
18 look in the accounting records. But, it was for the  
19 purpose of keeping the company alive.

20 931. Q. And the number you gave, \$261,593.50  
21 sounds very specific like someone was looking at an  
22 accounting record. Do you remember how you calculated  
23 that number?

24 A. I already told you it has -- must have  
25 come from the accounting in the company, because I

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1 don't keep accounting of that detail myself. The  
2 company accounts for every penny that goes in and out,  
3 so that must have been the source, to determine  
4 exactly how much money I put in.

5 932. Q. So there was someone at the company who  
6 calculated this number on your behalf. Who would that  
7 have been?

8 A. I don't know the date, because  
9 everybody's left the company now.

10 933. Q. But we received this answer to  
11 undertaking recently.

12 A. So, it must have been done by the  
13 accountant, I presume. I don't remember.

14 934. Q. Who is the accountant you're referring  
15 to?

16 A. I don't remember -- I don't know when  
17 the date when that information was obtained.

18 935. Q. As mentioned, this is what we marked  
19 earlier as Exhibit 3. We marked earlier as Exhibit 3  
20 the Consolidated Undertakings and Refusals Chart,  
21 dated March 20, 2018. That is where this number comes  
22 from. And, I'm pressing on this because it doesn't  
23 make a lot of sense to me. You don't know who  
24 provided that number or who could have provided that  
25 number?

1           A.    It depends on the date that the number  
2           was calculated.  Because, Mr. Mendelzon gave you that  
3           on whatever date he gave it to you.  I don't know what  
4           date he gave it to you.  That doesn't necessarily mean  
5           an exact date when we calculated.  And our employees  
6           in the company were leaving, you know, so I don't know  
7           who was doing the accounting at that exact moment.  If  
8           you give me the exact date I can tell you who might  
9           have done the numbers.

10        936.        Q.   And you gave me back your copy of the  
11        chart, but it's ---

12           A.    I don't have a copy of the chart.

13        937.        Q.   Its J-232 is where the answer is  
14        provided, on page 9 of what we marked as Exhibit  
15        number 3.  And where we're getting to is, is I want a  
16        breakdown of what's included in that number.  But I'm  
17        trying to identify where I would get that information  
18        from.  I take it that sitting here today you don't  
19        know what the breakdown of that number is?

20           A.    I don't remember it.  I don't remember  
21        what the exact breakdown it is.  The number is very  
22        precise because it was taken from the company's  
23        accounting.  Now, you're asking who calculated that  
24        from the accounting, I can tell you it could be two or  
25        three people that could have done it, but it depends



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1 on what date because all of them were leaving the  
2 company at different dates. So, I don't know who was  
3 doing it on the date that it was calculated, and I  
4 don't even know when this calculation was done.

5 938. Q. And I can't tell you that because it's  
6 an answer that -- I can tell you that it's an answer  
7 we received in March of this year. I cannot tell you  
8 when the calculation was done. But I'm going to ask,  
9 and to the extent you need to make inquiries for who  
10 calculated this number; I'm going to ask you to do  
11 that. But my question is will you provide me with the  
12 breakdown of that number; \$261,593.50?

13 A. You want a breakdown?

14 939. Q. Yes.

15 A. I will try to get it, but I can't  
16 assure you I will be able to because as you know  
17 there's nobody in the company and I'm not an  
18 accountant, so I don't know how to access the records.

19 940. Q. Fair enough and it does seem that  
20 someone had the ability to do that recently, because  
21 we received the answer recently. It's all to say if  
22 it helps you figure out ---

23 A. As I said, whenever Mr. Mendelzon gave  
24 you the answers doesn't necessarily mean that was the  
25 day when he got them from us, because we were working

1           diligently trying to answer all your questions. And  
2           as we got answers -- managed to get the appropriate  
3           answers we provided them to him. So this could have  
4           been on several different dates.

5           941.           Q.   Fair enough. This is another answer  
6           that you gave, but we don't need to turn to it if you  
7           remember this. We asked how many days you were out of  
8           the country in 2015 and 2016, and you advised about  
9           one out of every six weeks, or 200 days approximately  
10          over that period. Is that, sitting here today,  
11          consistent with your recollection?

12                    A.   Yeah, because in 2015 I spent a lot of  
13           time away. 2016 very little time, and 2017 I pretty  
14           much didn't go away at all, or this year.

15          942.           Q.   And so, I take it and we have other  
16           evidence on this, though I don't know how much we need  
17           to go through in detail, but there is a lot of  
18           spending in 2015 and 2016, and then I think we have  
19           less records going into 2017. But will you agree with  
20           me that you spent more money in 2015 and 2016 than  
21           you're describing you're spending to me now?

22                    A.   I don't understand your question. Are  
23           you talking about me personally?

24          943.           Q.   Yes, you, personally.

25                    A.   Obviously.

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1       944.           Q.    And I'm talking about it in the context  
2                   of travel.

3                   A.    Obviously I'm spending nothing now; I  
4                   don't have any money, so I'm not doing -- just paying  
5                   for survival.

6       945.           Q.    And we can go through some specifics  
7                   and we have credit card statements and things, but you  
8                   were spending more than just the necessities of life,  
9                   you'll agree with me, between, let's say, October 2015  
10                  and November 2016?

11                  A.    I don't know exactly what you mean with  
12                  that question. It's a very tricky question, because  
13                  it could mean several different things; you know?

14       946.           Q.    Sure, fair enough. We'll go through --  
15                  -

16                  A.    What is for you the necessities; you  
17                  know?

18       947.           Q.    Sure, so travel; and we've acknowledged  
19                  you were traveling one out of every six weeks?

20                  A.    For business purposes.

21       948.           Q.    For business purposes, okay. And what  
22                  were the business purposes?

23                  A.    At that time we still had a viable  
24                  business. Most of my travelling was related to the  
25                  litigation down south, which is the biggest business

1 we've had in reality.

2 949. Q. So you weren't travelling for personal  
3 reasons at all?

4 A. I don't remember. I may have one or  
5 two trips on that, but I didn't take vacations or  
6 anything. I wouldn't go to Disneyworld or the World  
7 Cup Soccer, or any of that stuff. I did attend by  
8 invitation to Super Bowl because I was invited by  
9 PepsiCo to go, and I attended to that. But other than  
10 that, I don't remember taking any vacations at all.  
11 The travelling was all related to business. Even that  
12 thing, because I was -- to build relationships.

13 950. Q. Have you been using your credit card  
14 since, let's say, starting in January 2017?

15 A. That's the only -- without a credit  
16 card you can't buy anything, basically. I don't have  
17 a bank account or anything, so yes, I buy my food with  
18 a credit card; my wife pays the credit card.

19 951. Q. And we talked about this earlier and  
20 you were very firm that your only source of money was  
21 the TD bank account.

22 A. That's not a source of money; the bank  
23 doesn't give me money. The source of money is where  
24 you get money from, and my only source of money was  
25 Xela, until stopped paying me. I don't have another

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1           one. And the bank account is where you move your  
2           money through. And I only have one bank account; I  
3           already answered that.

4           952.           Q.    And so, you've made a distinction here  
5           between Xela money and your personal bank account.  
6           When you had credit card bills would you always pay  
7           for them out of your TD joint account, or would you  
8           ever pay for them out of Xela money, if they were  
9           really business expenses?

10           A.    I never, I never, and listen to this  
11           very carefully. I never used Xela credit card for  
12           personal purpose. I never used Xela money to pay my  
13           personal credit card. Opposite to my brother-in-law  
14           who charged more than \$100,000 for personal expenses  
15           on the corporate Amex, which is what triggered all  
16           these discussions.

17                    When my father found out about that, he  
18           fired him, which is what he would do to any employee  
19           that would spend money for personal purposes without  
20           any authorization on the corporate card. I never did  
21           that. I never paid any of my credit card or personal  
22           expenses with Xela money.

23           953.           Q.    So there's two different things that  
24           I'll ask about. First I'll talk about the Xela -- you  
25           have a Xela corporate card -- you had a Xela corporate

1 card?

2 A. Every executive that travelled had one,  
3 including my brother-in-law had one. And that was  
4 used for the purposes of covering the expenses when  
5 you travel. We also used the corporate card to pay  
6 some supplies, because that had the benefit of  
7 generating points that could be used for travelling,  
8 and travel points were used to reduce travelling costs  
9 of executives, or anybody who was travelling for  
10 business purposes and that was on the corporate card.

11 954. Q. And so, is the corporate card still in  
12 existence?

13 A. No.

14 955. Q. When was that account closed?

15 A. I don't know -- long time ago.

16 956. Q. That's the corporate card. Now I'll  
17 ask you about your personal card. Was there ever an  
18 instance when Xela paid off a balance or some of a  
19 balance on your personal credit card?

20 A. Xela was never used to pay any of my  
21 personal money.

22 957. Q. So, anytime that there was a balance on  
23 your credit card, the source of money to pay down that  
24 would have been your TD bank account?

25 A. It would have been, yes. It may have

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1           been -- I don't remember it -- but could have happened  
2           that if something would happen while I'm away, that  
3           part of my compensation would have been used to pay  
4           directly, but that would be taken off my monthly  
5           payment anyway.

6           958.           Q.    Sorry describe that again?

7                        A.    I don't remember this being, but it's a  
8           possibility, since I travel so much for business,  
9           especially back before 2015.  So, it may be a  
10          possibility that at one point I was away and something  
11          had to be paid because of timing, that may have been  
12          paid -- and I'm saying maybe; I'm not saying it  
13          happened.

14                        But I just want to be clear, it could happen  
15          but if it ever happened it was deducted from my  
16          compensation package.  I never used corporate money to  
17          pay any of my personal bills -- never.

18          959.           Q.    Let's talk about the sale of 2 Gordon  
19          Road.  We covered earlier that the sale closed on  
20          August 20, 2018.  I understand it was posted for  
21          listing in August 2017.  Is that right?

22                        A.    Yes.

23          960.           Q.    And it was posted with Sotheby's?

24                        A.    Yes.

25          961.           Q.    And that was, just to confirm again;

1           that was a house in which you had a joint interest  
2           with your wife?

3                   A.    Yes.

4    962.           Q.    And did you make your best efforts to  
5           obtain the best possible purchase price for that  
6           house?

7                   A.    Absolutely.  It's the only house I  
8           have, you know?  We did our absolute best to sell it.  
9           And every time we had a possible sale people used to  
10          back away because they found out about this  
11          litigation, about this judgment thing, and people  
12          don't want to get involved with that.

13                   Also the market, as you know, since the new  
14          rules that were in place last year on the taxes for  
15          investors and things like that, the market deflated  
16          for that sector of the market.  So, we did our  
17          absolute best.  We even had to reduce the price  
18          several times in order to try to lure more people in.  
19          We did everything that was possible.

20    963.           Q.    I'm going to show you a document, and  
21           I'll tell you where we got it from.  We got it from  
22           Reginald McLean who was involved ---

23                   A.    That was provided by the realtor to the  
24           lawyer.

25    964.           Q.    Okay, so I'll show you what it is.



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1 It's entitled Listing Analysis prepared for 2 Gordon  
2 Road, January 20, 2018. And you recognize what this  
3 is?

4 A. Yeah, I've seen it.

5 965. Q. This was -- well, who was this prepared  
6 by?

7 A. By Sotheby's -- that's something they  
8 do.

9 MR. BORTOLIN: We'll just mark this as an  
10 exhibit quickly, number 4.

11 --- EXHIBIT NO. 4: Listing Analysis for 2 Gordon Road,  
12 dated January 20, 2018.

13 BY MR. BORTOLIN:

14 966. Q. And what I want to go through is the  
15 registered offers that start five pages in. And I'll  
16 just ask generally before we go through these; you  
17 were involved in the process of trying to sell the  
18 house and listing it for sale and finding buyers?

19 A. Both my wife and I were involved.

20 967. Q. And the first ---

21 A. We own 50% each.

22 968. Q. The first offer here is from August 23,  
23 2017, which is like -- if I go back to when it says it  
24 was listed on the second page of this exhibit, it was  
25 listed on August 17th, so within less than a week from

1           when it's posted for listing it looks like there was a  
2           purchase offer for 3.988 million.

3                       A.    M'hmm.

4   969.            Q.    And I take it that this sale did not  
5           complete?

6                       A.    No, because the buyer was a foreigner  
7           and backed off from the deal at the last minute  
8           because of the new tax that went into effect around  
9           that time, I believe. We had signed it back but he  
10          didn't come back to us.

11   970.            Q.    The next offer is a few weeks later,  
12          September 14, 2017 and it's for 4.2 million. And do  
13          you recall what the reason was that this offer did not  
14          go through?

15                     A.    Which is the buyer on that one?

16   971.            Q.    The second page; the offer of September  
17          14, 2017? Go to the second page of the first two  
18          offers.

19                     A.    14th, September 2017, you say?

20   972.            Q.    Yes.

21                     A.    M'hmm. What about that?

22   973.            Q.    My question was, what was the reason  
23          that this -- from your understanding that this sale  
24          did not go through?

25                     A.    I'm trying to remember who these people

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1 are -- I don't recall, but the excuse that we always  
2 got was either we can't get the finance, they didn't  
3 sign it back, or in two cases it was they had the  
4 building inspector -- in one case was the building  
5 inspector came in, walked through the house and then  
6 they said house has problems; we're backing off. That  
7 was the second last one.

8 974. Q. Second last one. I don't think we're  
9 quite there yet, so it doesn't sound like this one.  
10 So, I take it you don't remember sitting here today  
11 why this particular deal fell through?

12 A. I don't remember, but it could have  
13 been because they couldn't get the financing or, they  
14 simply didn't come back.

15 975. Q. And when they execute an agreement like  
16 that, they pay a deposit; don't they?

17 A. I never got any of those deposits, and  
18 in any of these cases and you can check that with  
19 Sotheby's, none of these deposits when they backed off  
20 the deal, or the deal never went to the point that it  
21 was confirmed, they backed off before confirming but  
22 we never got any deposits.

23 And the only time that I really expected to  
24 get the deposit back was the second last one. And in  
25 that case I learned that the buyer backed off before

1           paying the deposit, so we never got a penny out of the  
2           deposits -- never.

3           976.           Q.    I'm just going through these  
4                           sequentially. The next one is an offer of January 28,  
5                           2018, and it's for \$4 million. Do you recall why this  
6                           offer did not go through?

7                           A.    Now that I see the order I think the  
8                           prior one that we were talking about, the one in  
9                           September, I think that was a couple from Montreal  
10                          that were doctors or something, they were coming. And  
11                          then, they were really interested; they came many  
12                          times.

13                          We were almost -- we agreed on the price and  
14                          then they said that they couldn't afford it and then  
15                          they bought somewhere else. This other person here, I  
16                          remember it was a guy that was in the middle of a  
17                          divorce or something. So, we agreed to his terms and  
18                          he backed off.

19           977.           Q.    He didn't give a reason for backing  
20                           off?

21                           A.    No, not that I remember.

22           978.           Q.    The next one seems to be the same  
23                           buyer, but it's dated February 13, 2018.

24                           A.    Which one?

25           979.           Q.    So the one we just looked at was

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1 January 28, 2018 and it was Jason Burns in Trust. And  
2 this one is also February 13, 2018, Jason Burns in  
3 Trust. And I think you told me he backed off with the  
4 prior offer because it was too much money?

5 A. Yeah.

6 980. Q. But he's offering you more money on  
7 this one; 4.1 million.

8 A. No, he backed off because he had  
9 problems; he was divorcing or something -- I don't  
10 know the details. I didn't ask him, or I didn't  
11 interrogate him; I never even met the guy. But he  
12 first wanted to do it through a trust -- a very  
13 complicated deal, and then he backed off and said he  
14 couldn't do it. And then he came back again, and then  
15 he backed off again. And the realtor told me that the  
16 guy was in the middle of a very complicated divorce --  
17 I don't know more, so he never actually completed any  
18 offers.

19 981. Q. And there was nothing that he was  
20 asking you to do that you wouldn't do that was  
21 blocking the ---

22 A. No, we accepted everything he wanted.  
23 In none of these cases the thing didn't happen because  
24 we said no to something. We attempted to negotiate  
25 the best price possible; we signed back their last

1 offers -- they never came back to us in some cases,  
2 others backed off like this guy.

3 This other person here the 14th of May is  
4 the one that sent a building inspector and we had a  
5 deal. We were happy we made a deal. They sent a  
6 building inspector and then they backed off from it.

7 982. Q. I'm going to suggest to you, and it may  
8 refresh your memory or you may just say this is  
9 totally wrong, but the way that this person offers 4  
10 million on January 28th, and then comes back and  
11 offers 4.1 million on February 13th; it looks like  
12 he's being told the 4 million offer's not good enough  
13 and asking to make a better offer?

14 A. What are you talking about?

15 983. Q. The two we just looked at; the ones  
16 where Jason Burns is the person who had divorce  
17 problems.

18 A. I already told you Jason, whatever his  
19 name is, I never met the guy, he was in the middle of  
20 a divorce -- that's what the realtors told me. We  
21 signed back his offer but he didn't come back for it.  
22 Like he backed off because of the legal or whatever  
23 reasons. I don't know; I don't know his details. But  
24 the one thing I can tell you is we did our best. We  
25 signed these offers back.

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1                   Our house was worth much more but there was  
2 no market, and I talked to our realtors many, many  
3 times and they told me listen, all his clients they  
4 are trying to -- thinking they can buy this as a  
5 bargain. That's why a lot of people didn't come  
6 through because we have all these convoluted things,  
7 and this judgment and all these things. And the bank  
8 was pressing also to liquidate -- that's why the price  
9 at the end of the day; we had to give it up for the  
10 only price we could actually get.

11                   And if we wouldn't accept the last offer the  
12 bank would have taken the house away, so we were left  
13 with no options. And then, to make it even nicer, you  
14 know once we get the deal and we inform your firm  
15 about it, then using the power -- the position of  
16 strength that you guys had, press my wife to give up a  
17 big chunk of her 50% equity, even though she has  
18 nothing to do with this, because otherwise you guys  
19 wouldn't allow us to make the sale.

20                   So we had to agree, and at first it was  
21 supposed to be 350,000 and then it was increased to  
22 425,000 or we won't approve the sale. Okay? And that  
23 was Jason Woycheshyn who says that. And then we had  
24 to agree on that, otherwise the bank would have end up  
25 taking the house and we would all lose more.

1           984.           Q.    I will come to the difference between  
2                            what you described, the 350 and the 425, but for now I  
3                            just want to go through these agreements that we're  
4                            looking at, and I promise we'll come back to that.

5                            A.    My wife lost a lot of money because she  
6                            was paid only 250 out of that house, you know, and we  
7                            did our absolute best.    Because, we are not stupid  
8                            people, okay?  I'm not going to sell my house for  
9                            nothing if I can get something.  It would be very  
10                           stupid, and I'm not stupid.

11                           We lost tremendously.  And the only reason  
12                           we had to do this was because we had a mortgage with  
13                           Scotiabank first, and we got that Scotiabank mortgage  
14                           because why?  Because my dad asked me to get a  
15                           mortgage so he could pay my sister's mortgage, so she  
16                           would go without debts.  That's a fact, okay?

17                           And then, I can't pay the mortgage anymore.  
18                           The bank was not willing to renew the mortgage, and  
19                           then we had all this pressure -- when a house goes on  
20                           power of sale, the buyers just play these games, until  
21                           somebody gets it, because they're not really willing  
22                           to pay the price.

23                           They know they're going to get it cheaper in  
24                           an auction or something, and that's a fact too.  Okay?  
25                           And then, I asked my sister last summer to allow me to



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1 re-finance the house so we can put it up for sale and  
2 sell it without all these judgments on top of it, so  
3 the house would sell for more money, she would get  
4 more money and we would get more money. And the  
5 answer was no. We don't trust you, is the answer.  
6 You're probably the ones who drafted the answer. So,  
7 we couldn't do that. Then we were under the power of  
8 sale of the bank all this long, and we were  
9 desperately trying to find a buyer.

10 985. Q. And that's what I'm asking questions  
11 about, so just let me ---

12 A. So, I'm telling you exactly what  
13 transpired ---

14 986. Q. --- please let me ask the questions and  
15 we'll get through it ---

16 A. --- and then my sister through your  
17 firm forced my wife to give up a big chunk of her 50%  
18 at her damage, at her prejudice, when she's not part  
19 of this case. She's not a debtor of hers, nothing.  
20 My wife never did anything to my sister at all --  
21 nothing.

22 There's no reason why my wife had to lose  
23 money on that sale -- and she did. She got \$250,000  
24 when my sister got \$475,000 on a house that was worth  
25 much more. So, when you act the way you guys managed

1           this case, everybody loses.

2       987.           Q.    My questions are pretty specific.  I'm  
3           asking right now about the registered offers you  
4           received.  You told me in one of your answers that you  
5           signed all of these.  Is that right?

6                    A.    In all cases we were prepared to make  
7           the deal; we signed back -- when you're negotiating  
8           you obviously sign back.  In one case we signed it  
9           back with a difference of about \$50,000 and the guy  
10          backed off.

11                    In another case we accepted the offer and  
12          the guy never confirmed the sale because that was this  
13          guy Jason, whatever his name is, who was in the middle  
14          of some legal issues, divorce or something.  I don't  
15          know the buyers, because under the real estate rules  
16          here you don't negotiate with the buyers; you  
17          negotiate through third parties.

18                    So, we are at the mercy of the real estate  
19          agents, and there's all these rules that impedes you  
20          from actually making the best deal.  But that's how it  
21          works.

22       988.           Q.    Right, but my question was narrower  
23           than that.  I'm asking about what you described as  
24           signing the offers.  And the answer you just gave me  
25           told me something slightly different, which is that

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1           you signed back a counter-offer?

2                   A.    We signed counter-offers and we signed  
3           back offers.  We accepted the terms, okay?  That's  
4           what I'm telling you.  In one occasion -- I don't  
5           remember which of these cases, we were -- we came down  
6           tremendously from the asking price to the guy's price.  
7           And then the real estate agent said well, you can get  
8           50,000 extra; it's easy.  So, we signed it back with a  
9           \$50,000 difference.

10                   And we expected him to say 25 or say no, and  
11           if he would have said no we would have agreed anyway.  
12           We tried to get an extra 50 grand -- that guy backed  
13           off.  I can't control the buyers.

14   989.           Q.    Right, and I'm not asking whether you  
15           can control the buyers.  I'm trying to get from you  
16           whether you accepted any of these offers.

17                   A.    We did.

18   990.           Q.    And what I just want to draw your  
19           attention to is that, at least in these copies that I  
20           have, part of the report I received that we marked  
21           Exhibit 4, you'll notice at the end of every one of  
22           these -- I'll call it I guess an offer sheet -- it  
23           says at the top Agreement of Purchase and Sale --  
24           there's room for initials of buyers and initials of  
25           sellers.  And in all of these the initials of the

1 buyer are present, but the initials of the sellers are  
2 not. So, if I'm understanding your evidence it's  
3 that, in at least some of these cases there is a  
4 version of this Agreement of Purchase and Sale  
5 somewhere that you did sign back?

6 A. I assume so, because we did accept all  
7 of the offers. Now I don't know -- I didn't put this  
8 together, it was done by some -- not even by our  
9 agent; it's done by somebody in their office. So I  
10 don't know exactly how they put together these things,  
11 so I can't tell you about that.

12 991. Q. Right.

13 A. But what I can tell you is that we did  
14 our absolute best -- it was for our best interest. We  
15 were going to lose our house; we wanted to get every  
16 penny we could get out of it. We're not suicidal  
17 individuals; I'll sell it for nothing so we hurt  
18 somebody else -- no.

19 We sell it for what we could sell it. There  
20 was not possibility to sell it any other way. We  
21 tried our absolute best. For a year we were trying to  
22 sell this house. And the market has been weak on that  
23 range of pricing, by the way, because of this tax that  
24 was imposed.

25 The first buyer we accepted the offer -- the

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1 offer was the best offer and were very happy with it  
2 and it was really good for us. We accepted it but the  
3 buyer said no, I'm not going to go for it and the  
4 reason is because of the tax. So then he backed off.  
5 He was a guy from China, I believe.

6 992. Q. I hear you saying that you accepted the  
7 offers. What I'm just looking to get to the bottom of  
8 is that the copies of the offers that I have, it seems  
9 like the buyer's making the offer and you're not  
10 accepting the offer, so what I'm going to ask is for  
11 you to check if you have copies of any of these  
12 Agreements of Purchase and Sale that are included in  
13 Exhibit 4, that you did sign back, and to provide me  
14 with copies of the ones that you did sign back?

15 A. I'll check if I have any, but I don't  
16 think I kept them.

17 --- UNDERTAKING

18 993. Q. And, as a follow-up to that you've  
19 described to me that you never got any deposits?

20 A. No.

21 994. Q. And just if I look at what some of  
22 these agreements say -- not all of them, but some of  
23 them say the deposit is upon acceptance. And so, I  
24 would expect that if you had accepted them that you  
25 would have gotten deposits?

1                   A.    Except that the buyers backed off at  
2                   the last minute.

3   995.            Q.    Right, but they were -- and I'm not  
4                   trying to get into a legal argument with you, but my  
5                   understanding would be -- and I'll ask if it's your  
6                   understanding -- that once they've signed or once  
7                   they've already made the offer -- once you sign to  
8                   accept they owed the money; they couldn't back out.  
9                   Did you understand something different?

10                  A.    No, I understand that, but I never got  
11                  a penny. I was told by Sotheby's that the deposits  
12                  were not paid. That the offers were never confirmed,  
13                  whatever is called, from the other side. When you  
14                  sign an offer back, if you're agreeing on the terms  
15                  the other person has to sign the confirmation.

16                  We never got those confirmations, except on  
17                  the case of the May 14th, Mr. Sharma. They did sign  
18                  the confirmation and we were on, and then they backed  
19                  off because they argued that the building inspector  
20                  who was 7 hours in the house then they said there was  
21                  too many problems.

22                  They would not give us reasons; they just  
23                  backed off. And Sotheby's told us that because it was  
24                  on a condition of the building inspection we didn't  
25                  get the deposit. I asked -- I wanted the deposit and

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1 I never got it.

2 996. Q. And I'll explain why this is important,  
3 because if any of these buyers were obligated to pay  
4 you a deposit then that is money that is potentially  
5 available to us to collect. That's why I'm asking  
6 these questions.

7 A. So go and ask it for them, because I  
8 couldn't get it. I asked and the lawyer who was  
9 representing us was Mr. McLean, my wife's lawyer; he  
10 was representing us on the deal. And I asked him and  
11 he said, no, there's no deposit we can get. So we  
12 never got a deposit.

13 997. Q. And so that we can assess, just to  
14 explain why I'm asking this question to ask you for  
15 more information about the offers that went back and  
16 forth and whether they were accepted or not, can you  
17 provide us with copies of -- and I think I've asked  
18 for if you have copies of these agreements anywhere  
19 that are signed, any confirmation, any documentation  
20 that was signed by people who offered and then backed  
21 out -- I'm going to ask you to provide that to us.

22 A. I already told you I will check if I  
23 have anything. I don't remember keeping copies of  
24 this -- I don't keep copies of everything.

25 998. Q. Can I ask you to make inquiries of the

1 lawyer who acted on the transaction; Reginald McLean  
2 to provide copies of those documents, if you don't  
3 have them personally?

4 A. I will ask the question. But he  
5 doesn't represent me; he's not my lawyer -- he's my  
6 wife's lawyer, by the way.

7 999. Q. And it may be that there are good  
8 reasons that you did not go after these people for a  
9 deposit they were obligated to pay you, but if they  
10 are obligated to pay a deposit it would potentially be  
11 something that your wife would be entitled to half of  
12 it. So there may be a mutual interest to getting to  
13 the bottom of it.

14 --- UNDERTAKING

15 A. So, you are welcome to go and get those  
16 deposits, because I don't have the money to pay a  
17 lawyer to do that.

18 1000. Q. Right. And just to tell you why I'm  
19 asking for what I would need to do that, it would be  
20 copies of the contracts to see whether they do in fact  
21 owe you money that they haven't paid you. So that's  
22 why I'm asking -- and you've said you'll look into it.  
23 But just to explain why and maybe to motivate you to  
24 help us with that. We were going through the offers,  
25 and again, I do just want to make sure we get through



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1 all these, to the extent you remember anything  
2 specific about them and why they didn't go through;  
3 there are quite a few. But we left off on the  
4 February 13th one with Jason Burns in Trust. And I  
5 believe you told me the reason that that didn't go  
6 through just had something to do with him being in the  
7 middle of a divorce?

8 A. That's what my understanding is. I  
9 don't know the guy, so I don't know who he is; I don't  
10 know what he does. That's what I was told.

11 1001. Q. And if you just want to open this  
12 again, so that we're looking at the same thing,  
13 please, Exhibit 4? I'm now looking at an offer, May  
14 11, 2018? And it is for 3.5 million.

15 A. Yep.

16 1002. Q. And do you remember anything about why  
17 this didn't go through?

18 A. She's a real estate agent herself, so I  
19 think she was looking to buy it as an investment. And  
20 we accepted their terms, and I don't remember what the  
21 excuse was, but they also backed off at the last  
22 minute.

23 1003. Q. I'm just looking at what's struck  
24 through and done in handwriting on this one. It looks  
25 like they offered a deposit of \$150,000, but then they

1           initialled and they scribbled and they made it up to  
2           \$200,000. So, is that a case where -- obviously this  
3           was the lowest offer you received. Was that a case  
4           where do you recall pushing back saying, okay, make it  
5           \$200,000 and we'll consider it?

6                        A. No, we didn't push back on that.

7   1004.            Q. So they voluntarily offered to pay a  
8           bigger deposit?

9                        A. I don't know. I don't even know --  
10           this is not a copy I drafted. If you can see, it's  
11           handwritten by them, so how would I know why they put  
12           that there.

13   1005.            Q. And, well, I'm asking if you may --  
14           they would have put it there if you had insisted on  
15           it; if you said something along the lines of ---

16                        A. No, we didn't insist on that.

17   1006.            Q. Okay, so they voluntarily offered to  
18           pay a larger deposit?

19                        A. I don't know. How would I know that?  
20           I don't even know if this is the original first copy  
21           they sent us. We did not ask them to increase the  
22           deposit -- I can tell you that.

23   1007.            Q. Okay, so, I don't know that anything  
24           turns on it, but I find it confusing. Is there anyone  
25           that you can ask who could explain why they would have

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1           increased their deposit?

2                   A.    I can ask the real estate agent to see  
3           if they know.

4    1008.           Q.    And the relevance of it from my view  
5           would be that it seems to suggest that there's a  
6           motivated buyer who wants to purchase the property.  
7           But that's not your recollection; they backed out?

8                   A.    They backed out.  Listen, they backed  
9           out -- I don't remember the exact details, but as I  
10          told you many of these people found out there was a  
11          judgment against me from the bank, a judgment against  
12          me from DX Finance, a judgment against me from my  
13          sister, so then and she's an investor.

14                   My recollection of discussing with our  
15          realtor is that our realtors have the impression that  
16          this person had decided to back out of the deal,  
17          thinking that this was going to go on an auction and  
18          they could probably pick it up cheaper there.  They  
19          didn't want to buy this to live in it; it was just an  
20          investment.  That's what I was told by our agent.  As  
21          I said, we never met these people; I don't know their  
22          faces; I don't know who they are.

23                   Because, the real estate system here is such  
24          that you are at the mercy of the realtors, right?  So,  
25          I have no idea who these people are.  All I can tell

1           you is what I was told by the realtors.

2           1009.           Q.    And the next one in here seems to be a  
3           duplicate of one we've already looked at. The one  
4           from Jason Burns; we'll skip over that. Also seems to  
5           be a duplicate -- I didn't prepare this. So, we just  
6           looked at one the 11th of May, and I won't say the  
7           names of the buyers so as to avoid the trouble of  
8           trying to spell them for the transcript, but the same  
9           buyers again on the 14th of May, so three days later  
10          come back with another offer. And whereas the first  
11          offer was for 3.5 million with \$200,000 deposit, this  
12          is for 3.7 million with \$175,000 deposit.

13                        A.    What are you looking at; 14 of May?

14          1010.           Q.    14th of May -- it's the last one before  
15          ---

16                        A.    And where do you have them again? It's  
17          only one of them. They only made one.

18          1011.           Q.    Well no, aren't these the same people  
19          that made the offer on the 11th?

20                        A.    No. The 11th is the ---

21          1012.           Q.    Oh, you're right -- sorry.

22                        A.    It's completely different people. This  
23          was a family from India that simply liked the house;  
24          they were very motivated to live in the house, et  
25          cetera. And then they sent their inspector, who

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1           stayed seven hours in the house, and after that they  
2           backed off. This is the only deal that we thought  
3           actually had closed.

4       1013.           Q.    And then we get to the purchase that  
5           went through -- the first one here is an Agreement of  
6           Purchase and Sale, and it's in a similar form to the  
7           ones we've been looking at on the first page. It's  
8           dated July 9th, the buyer, Elliott Sud.

9                    A.    Yeah.

10      1014.           Q.    And so, you recognize this as the  
11           person who ultimately bought the property?

12                    A.    Yeah. This is actually not the guy who  
13           actually end up buying the property; he backed off at  
14           the last minute.

15      1015.           Q.    Oh, I see, okay.

16                    A.    This was the -- this is the first time  
17           you gave me one that is the last version of the thing,  
18           and we agreed on his terms, and I don't remember  
19           exactly, I think he used also the inspect -- I don't  
20           remember exactly what was his excuse to walk out.  
21           Couldn't get the finance, or the inspector, something,  
22           I forgot. And then we didn't get totally discouraged,  
23           because very close to this offer came the one that  
24           actually bought the house.

25      1016.           Q.    And so, I take it you recognize this.

1 Is that your signature, or one of the signatures under  
2 initials of sellers; is that yours?

3 A. Let me see if you have the same copy I  
4 have?

5 1017. Q. Yeah, I have the same copy, yes, in the  
6 bottom right.

7 A. I want to see it. Let me see it,  
8 because I can't see it from here.

9 1018. Q. Well, you have the same document --  
10 bottom right, where it says initials of seller?

11 A. Yeah, those are our initials.

12 MR. BORTOLIN: Just mark this as Exhibit  
13 number 5.

14 --- EXHIBIT NO. 5: Agreement of Purchase and Sale for 2  
15 Gordon Road for \$3 million by Elliott Sud, dated July 9,  
16 2018.

17 BY MR. BORTOLIN:

18 1019. Q. So this is an offer for \$3 million, and  
19 it gets signed by you. And so, certainly this offer  
20 is significantly less than the other offers you  
21 received. That's fair to say?

22 A. Yeah. We are -- at that point we're  
23 getting to the point where the bank is going to  
24 liquidate the house. We had to vacate, we got a  
25 Vacate the House Order, right away. So, at that point

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1 I presume this guy probably knew about it, and what  
2 was our only option; accept the offer. We tried to  
3 negotiate this as much as we could and it didn't work.

4 1020. Q. I want to take you to Schedule A, one  
5 of the pages. In the upper right of the fax it's  
6 number 12 of 13, and the bottom right it's page 7 of  
7 8?

8 A. Yeah.

9 1021. Q. So, one of the terms of the transaction  
10 was that the seller shall be permitted the right to  
11 remain upon and continue the seller's use of the real  
12 property, in accordance with the residential tenancy  
13 agreement attached to this document at Schedule C for  
14 a period of 24 months...and I could continue reading.  
15 But this was a term that you negotiated into the  
16 Agreement of Purchase and Sale that you would remain a  
17 tenant at 2 Gordon Road for 24 months after the sale?

18 A. In this particular case he was refusing  
19 to go up in price, and we had like a \$200,000  
20 difference from our asking to where he was. And then  
21 the realtor suggested we could accept his price and  
22 then he would rent us the house for two years, and  
23 then the rental of the house could be considered as  
24 part of the price, so that would have improved the  
25 price by that amount.

1                   So that's why it was this solution; he  
2                   wanted to have it gone that way. So, instead of  
3                   paying rent we would get to stay there, and then that  
4                   would increase the value of our \$200,000, so then the  
5                   selling price would end up being about 3,200,000  
6                   instead of 3 million.

7                   And that was the deal that was negotiated at  
8                   that point, but it didn't go through because the guy  
9                   backed off at the last minute. And this is the guy  
10                  that I said well, I want a deposit, and then I learned  
11                  that this guy -- actually it happened very quickly;  
12                  his sign-backs were quick. And the guy had not paid a  
13                  deposit and never did.

14       1022.           Q.    And this idea of a 24-month, or I  
15                    shouldn't say 24-month -- of a continued tenancy after  
16                    sale; had that come up in any of the discussions with  
17                    any of the other buyers, or people who offered -- made  
18                    purchase offers that we just looked at?

19                    A.    Not in this form. We don't have  
20                    anywhere else to go, so the first buyer, the Chinese  
21                    buyer he wanted to buy it as an investment. So there  
22                    was a discussion that after buying the house he was  
23                    willing to rent it back on yearly basis for a year and  
24                    renewals, but since the deal didn't close that's  
25                    irrelevant. None of the others were interested in



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1           that. And then the guys who actually bought the  
2           house, they're not going to move in until December or  
3           something, so they allowed us to stay until November,  
4           which is just two extra months.

5           1023.           Q.    So, I take it that this was something  
6           that you and your wife were asking for to be a term of  
7           the agreement?

8                        A.    In this particular case, in this case  
9           that we're talking about, the Mr. Sud? That's  
10          something that we were interested in -- we don't want  
11          to move if we don't have to, that's costly, and we  
12          don't have anywhere else to go and we don't have any  
13          money to buy a place, so it's irrele -- so, if we  
14          can't increase the price and then rent back, so then  
15          he doesn't have to put the cash in, the prepaid rent,  
16          that would work really well for us because we don't  
17          have any way to pay rent anyway, you know?

18                        So then we could have lived there for a two-  
19          year period. And at first he agreed on that, then he  
20          backed off on the deal. So, if that deal would have  
21          closed then you would have to consider the selling  
22          price at 3.2 million, instead of 3.025, because that  
23          was built in -- it was a way to increase the price,  
24          okay? So, it's all arguments because the thing never  
25          closed. So...

1 1024. Q. What I'm just trying to understand, and  
2 this goes to whether you made, what you said were your  
3 best efforts to obtain the best value for the house.  
4 And, I don't think I'm being unfair to say it sounds  
5 like you made compromises on the price that was being  
6 paid for the house, in order to get some other type of  
7 value at the back end that was beneficial to you  
8 personally.

9 A. I know where you're going; if this deal

10 ---

11 1025. Q. I'm going exactly where I just said.

12 A. If this Elliott Sud deal would have  
13 happened, then my sister would have get the 50% of the  
14 equity at 3.2 million, not 3.025, because the prepaid  
15 rent would have been part of the price. Do you  
16 understand what I'm trying to say? I wasn't trying to  
17 cheat my sister, because that's what you're  
18 insinuating.

19 We were just trying to close a deal; the guy  
20 didn't want to put more cash, we said okay, let's do  
21 it this way. We discussed that with our realtors and  
22 he seemed to agree at first, and then he backed off.  
23 I don't know exactly the reasons and it didn't happen,  
24 so this is just an argument.

25 We were just trying to find a way to close

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1 the deal, and also we need to live somewhere. So  
2 instead of going to rent somewhere else, we could have  
3 rent the same house; that would be a very fair deal,  
4 you know?

5 And if this deal would have closed that's  
6 two years of rent would be added for the purpose of  
7 liquidating my sister's thing, would have been added  
8 to the price and she would have gotten the equity at  
9 50% -- that's what it would have been. And in a way,  
10 that's about the amount that the closing ended up  
11 being, similar; right?

12 1026. Q. So the listing report that we looked  
13 at, and we marked it as Exhibit 4, it was dated June  
14 20th, so it would not include offers of purchase  
15 received after June 20th, and I think I've already  
16 asked you to check for signed copies of Agreements of  
17 Purchase and Sale, they're titled that at the top of  
18 the page. Can you also check for any -- I'm going to  
19 call them an offer, because that's what they seem to  
20 be, any offers that were received after June 20th that  
21 are not included in the Listing Analysis, and provide  
22 those to me?

23 A. There's no offers that are not here.

24 1027. Q. Well, that ties into my next question  
25 which is whether this was the very first offer you

1 received, and I'm looking again, we marked as Exhibit  
2 5, the July 9, 2018 offer from Elliott Sud.

3 A. That's not the very first offer.

4 1028. Q. Right. So ---

5 A. That's the second last offer.

6 1029. Q. From Elliott Sud?

7 A. Well, the only one from him.

8 1030. Q. Okay, so that's what I'm asking about,  
9 is whether there was a prior offer from Elliott Sud  
10 that did not include as one of its terms 24 months of  
11 a tenancy after completion. Because from how you  
12 describe it to me, this was a back-and-forth that was  
13 added on later, and not something that should be in  
14 the very first offer.

15 A. I don't recollect -- I don't remember  
16 for sure when this agreement was. I presume it was in  
17 the sign-back. But our realtors knew that we were  
18 interested in staying, and they knew that we needed to  
19 sell the house, and they were trying their best to get  
20 buyers, so I don't know at what point Mr. Sud was  
21 informed that that was an option that we would  
22 consider, which is a rental of the house.

23 I don't know when he was informed of that,  
24 so I don't remember it was in the first original offer  
25 or if it was added afterwards -- I cannot tell you

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1 that for sure. But the intention here was to make a  
2 deal with him and try to get the highest value we  
3 could for the house, and doing it this way would have  
4 get extra value, in this case for my sister, because  
5 my wife wouldn't get it; the benefit of that would  
6 actually have to pay the other 50% of those -- let's  
7 say \$200,000 rent for two years, half of that we would  
8 have to give my sister in cash from the actual sale of  
9 the house -- we understand that. Do you understand  
10 what I'm trying to explain to you?

11 1031. Q. I do, I understand perfectly. I'm not  
12 sure ---

13 A. We've been fair to my sister all the  
14 time, even though she hasn't been fair to us at all.  
15 But I've been fair to her and we did our best, and the  
16 person that lost the most here was my wife because she  
17 got \$250,000 for a home that is a really beautiful  
18 home, that she really took care of for more than 20  
19 years and it's her home, and she's out of it now, well  
20 we still stay until November. But that's it; we're  
21 gone after that.

22 1032. Q. The question I'm trying to get to the  
23 bottom of, is to confirm that there was no prior offer  
24 from Elliott Sud that did not include the 24 months  
25 free rent?

1           A.    Elliott Sud did one offer and we signed  
2           back -- I don't know, I don't remember how many times  
3           if it was more than once, and I don't remember exactly  
4           if -- I already told you; I don't know if this clause  
5           on, whatever it's page, on Schedule A, if that clause  
6           was from the original Schedule A or it was added  
7           after, I don't know. You know the real estate agents  
8           talk to each other. Our agent knew that we wanted to  
9           stay in the house if we could, because we don't have  
10          anywhere else to go.

11                 So we would pay rent as part of the -- that  
12          was something I suggested, because it was a way to get  
13          the buyer to not have to put more cash forward on the  
14          deal, and we would get to be there. And as I said  
15          before, if that would have happened, I would have give  
16          my sister the 50% of that, because that would be part  
17          of the equity, right? But in this case it didn't  
18          happen, so you can argue about -- and that's all the  
19          questions you want; it didn't happen. The guy backed  
20          off from the deal anyway, so it's a moot thing.

21    1033.         Q.    Well, I'm not here to argue. I'm  
22          asking if there were prior offers, and I take it from  
23          your answer that you think there probably were. And  
24          what I would like is to have copies of the prior  
25          offers and counter-backs that preceded this one that's

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1 on the first page of Exhibit number 5.

2 A. I'll try to see if I can get that.

3 --- UNDERTAKING

4 1034. Q. Thank you.

5 MR. BORTOLIN: Maybe we'll go off the record  
6 for just a second.

7 --- OFF THE RECORD (1:10 P.M.) ---

8 --- UPON RESUMING (1:11 P.M.) ---

9 1035. Q. I am showing you now another Agreement  
10 of Purchase and Sale dated July 27, 2018 with the  
11 buyer Larry Mowens. Do you recognize this?

12 A. Yeah, I believe this is the one that we  
13 signed -- this is the actual buyer. This is the deal  
14 that closed.

15 1036. Q. And that's your signature beside  
16 initials of seller on the bottom of the page?

17 A. Yeah, provided that you have the same  
18 document as I do.

19 1037. Q. I do -- it's a copy.

20 MR. BORTOLIN: I'll mark this as Exhibit 6.

21 --- EXHIBIT NO. 6: Agreement of Purchase and Sale for 2  
22 Gordon Road dated July 27, 2018 by Larry Mowens.

23 BY MR. BORTOLIN:

24 1038. Q. So, I just want to make sure the  
25 sequencing of how this ties together with the first

1           buyer. It was actually not our impression that it was  
2           a different buyer. I was under the misapprehension  
3           that it was the same buyer that had just come back  
4           with a slightly different offer.

5                    A.    This Larry Mowens only came once.

6    1039.            Q.    So, at some point the purchase from  
7           Elliott Sud, the agreement we have at Exhibit 5; it  
8           became clear that that wasn't going to work?

9                    A.    He backed off from the deal.

10   1040.            Q.   And then you've got another offer that  
11           came in -- the Agreement of Purchase and Sale was  
12           dated July 27th. Do you recall if there was anything  
13           prior to that with this buyer?

14                    A.    No.

15   1041.            Q.   And again, I have a similar question to  
16           the one I just asked in terms of, this is the final  
17           version of this that you both parties have signed. Do  
18           you recall if there were any prior offers or counters  
19           back and forth with this buyer?

20                    A.    I don't remember. I suppose there  
21           probably was, but I don't remember.

22   1042.            Q.   I will ask you to check, please, and  
23           provide me with copies of any prior offers or counter-  
24           offers that were exchanged back and forth? Will you  
25           do that?



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1                   A.    On this one I think is the only one,  
2                   not for sure, but most likely will have access because  
3                   this is the one that closed, so I should be able to  
4                   have this.

5    1043.           Q.    And the ones that you don't personally  
6                   have access to, would they be things that you could  
7                   ask the real estate agent who worked for you to  
8                   provide to you?

9                   A.    I will attempt to do that.

10    --- UNDERTAKING

11    1044.           Q.    Thank you.  And so this offer is for  
12                   more than the last one.  The last one was for 3.025  
13                   million, this one's for 3.174 million.  And if I go to  
14                   Schedule C, I believe it is, to this agreement, which  
15                   is the second to last page?

16                   A.    M'hmm.

17    1045.           Q.    There's a tenancy arrangement similar  
18                   to the one we just looked at.  And we talked about  
19                   this earlier, where you stay in the property until the  
20                   end of November, in consideration for reducing the  
21                   purchase price.  You recall negotiating for that?

22                   A.    Well, this is the deal we agreed on.

23    1046.           Q.    And in the second paragraph of this it  
24                   says that the licensee requested it.  And the licensee  
25                   is, it's at the top of the page, is you and your wife?

1           A.    We requested the buyer if we vacate the  
2           house after November.  And the reason for that is  
3           because our son is getting married in October.  One of  
4           our sons is getting married in October and then it  
5           will be very hectic to move before October, and we  
6           don't have a place to go; we need time to find  
7           somewhere to live.

8                    And it's not easy, particularly this time of  
9           year to find houses for lease -- it's not easy.  
10          There's a few but either too overpriced or in really  
11          bad shape.  So, we had to have a little bit of time to  
12          accommodate and the buyer was, he say yeah; he's not  
13          going to move before that anyway.

14        1047.        Q.    So what strikes me is that you have a  
15          lot of offers for more money that don't go through,  
16          but then the two offers that include you being able to  
17          stay in the house as a tenant do get signed.  And so,  
18          my pointed question to you is whether you insisting on  
19          a right to tenancy caused those earlier transactions  
20          to fail?

21                   A.    The answer is absolutely not.  We  
22          didn't ask for that -- that was indicated -- I told  
23          you the first buyer, the Chinese person, he was an  
24          investor that was looking for buying the house for  
25          investment purpose.  And he was willing to sign a

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1 lease agreement for the house.

2           Unfortunately he backed off because of the  
3 new rules, and he decided he wasn't going to go  
4 forward with the investment so that deal didn't close.  
5 And then, none of the others was renting the house  
6 back until the last, Mr. Sud said he would for a year  
7 or two years -- but he also backed off.

8           And this other buyer he agreed on doing it  
9 until November 20, in order for us to have time to  
10 find somewhere to move and not have to be rushing and  
11 moving out during my son's wedding. I think it's a  
12 very reasonable thing.

13           So, if you're insinuating that we were  
14 blocking sales or anything, I just want to tell you  
15 again we did not do that. We did our absolute best to  
16 sell this house. We tried really hard, and the  
17 circumstances were such that these deals didn't go  
18 through, partly because the market at this particular  
19 level of house is difficult right now.

20           Prices have come down a lot. Just look  
21 around; there were many houses in my block that took  
22 much longer to sell than usual. But we had these  
23 judgments on top of it, and anybody who does a little  
24 due diligence will quickly find out that this is a big  
25 family issue. People don't want to get involved in

1 it, or they're trying to take advantage of it and  
2 that's what we saw in some of the buyers.

3 That's all I can tell you. We did our  
4 absolute best, our real estate agents did the best  
5 they could; they brought as many people as they could  
6 bring, and we accommodated to the offers; we tried to  
7 close these deals within reason.

8 Of course we were not just going to buy --  
9 if somebody would offer me 20 bucks I wouldn't accept  
10 that either. But we did our absolute best to sell the  
11 house, and you're smiling again like making fun of me.

12 1048. Q. I don't know what you think a smile  
13 looks like, but it's not this.

14 A. But I'm telling you the truth. I'm  
15 telling you the truth. And do you think -- just think  
16 logically; do you think that we would try not to sell  
17 the house when we have the bank executing on us? We  
18 were going to have to sell the house, like it or not,  
19 because the bank was already evicting us anyway.

20 And I couldn't pay the bank because my  
21 sister didn't allow me to re-finance and allow us to  
22 sell this without all the judgments on top. So I had  
23 two mortgagers -- how do you call it -- pressing for  
24 foreclosure and selling it for sale, the house. I  
25 have my sister pressing for it for sale. Anybody who

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1 wants to buy a house knows this is going to be cheap  
2 on the market. Simple as that.

3 We did the best we could to get this done.  
4 And it was to our own interest. Do you think I'm very  
5 thrilled that my wife only got \$250,000 for her house?  
6 Do you think that she's celebrating and going on  
7 parties because she got that? Of course not. We  
8 wanted to sell this house for what it was worth. And  
9 we couldn't because of the circumstances.

10 1049. Q. So you're going to tell me ---

11 A. We did an absolute best to do it, and  
12 you can smile and you can look away and you can say  
13 whatever you want to say, but we did what we could.  
14 It was to our own interest.

15 1050. Q. Was it not in your interest to stay in  
16 your house longer?

17 A. How could we? We have the bank  
18 liquidating the house. We had the house for sale.  
19 The only reason we didn't get evicted a year earlier  
20 is because the house was for sale and the bank  
21 realized that it was going to be a better deal of  
22 selling the house in the market, than by a forced  
23 sale.

24 The bank is not necessarily interested in  
25 doing that; the house was for sale. And we had this

1 effort going as much as we could. Now, I don't have a  
2 miracle thing that I say, (clicking fingers) like that  
3 and people will come in and buy my house and pay me  
4 whatever I want. It doesn't work that way.

5 The reality is different than what you would  
6 like it to be. So we got what we could get. We got  
7 what we could get. And you use your position of  
8 strength, you know, to pressure my wife. She had to  
9 accept the offer no matter what, and you pressured her  
10 to give away a big chunk of her 50% equity. And she's  
11 not a debtor of my sister.

12 But she had to accept that because otherwise  
13 this deal would not close and we would not have a  
14 house anymore. So we did what we had to do; we  
15 couldn't do nothing else. So you can make all the  
16 faces you want, but that's it; that's the truth.

17 1051. Q. I have a problem with the fact that you  
18 told me earlier you're here to give evidence on your  
19 wife's behalf, you don't know evidence on your wife's  
20 behalf, but now when it's convenient to you to assert  
21 that she's been aggrieved, suddenly you're giving  
22 evidence on your wife's behalf?

23 A. I'm not giving evidence on my wife's  
24 behalf; I was part of the seller. I'm just telling  
25 you I'm very upset that my wife was forced by you guys

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1 to give up a big chunk of her share of the deal. But  
2 we had no choice; we had to sell the house.

3 So, we had to say to Mr. Woycheshyn okay,  
4 just like Willie Aguilera, our former IT guy had to  
5 say okay to Ricardo; I'll steal the information for  
6 you so you don't sue me. We had no choice; we're  
7 against the wall. And you think I'm very happy about  
8 selling my house so cheap?

9 You think that's the case? Use -- be  
10 reasonable and use your brain and think about it. I  
11 was in a situation where I needed to get as much as I  
12 could from the house, and that's all we could get.

13 1052. Q. We'll come back to math of what you got  
14 for the house after we take a fifteen-minute break for  
15 me to collect my notes -- off the record?

16 --- A BRIEF RECESS (1:23 P.M.) ---

17 --- UPON RESUMING (1:34 P.M.) ---

18 CONTINUED EXAMINATION BY MR. BORTOLIN:

19 1053. Q. So I'm going to describe to you what I  
20 understand to be where the proceeds of the sale of 2  
21 Gordon Road went. If you want to bring out a  
22 calculator or write this down on a piece of paper, and  
23 I'm going to ask you to let me know which of these  
24 numbers you disagree with.

25 The price paid by the buyer was \$3,174,596.

1 Of that \$1,739,598.42 was to discharge the mortgage of  
2 the Bank of Nova Scotia; another \$525,089.23 was to  
3 discharge a second mortgage, possibly the DX Financial  
4 mortgage. And then there was the commission, part of  
5 which was paid as a deposit, but the balance that was  
6 not the deposit was \$52,459.98.

7 If I -- and again, we can take a break if  
8 you want to do it, but if I take that top line number,  
9 the 3.174 million, and subtract the mortgage discharge  
10 numbers and the commission number that I just  
11 described, and divide by two, the number that I get is  
12 429,224.19.

13 So, I can tell you that that is the basis on  
14 which we sought \$425,000 on the sale of 2 Gordon Road,  
15 and you've told me several times today that that was  
16 more than half, so I'd ask you if you're sitting here  
17 today you can tell me, but just tell me otherwise,  
18 I've asked you to go figure out on what basis are you  
19 saying that the proceeds of the sale were not evenly  
20 split?

21 A. Well, I didn't do the numbers, so I  
22 have to ask the lawyer who did the closing because  
23 he's the guy who did the liquidation. So, I don't  
24 even know if these numbers you're giving me here are  
25 the correct numbers; I have no idea. So I have to ask



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1 the lawyer who handled the closing, because he's the  
2 guy who did the math; I didn't do the math.

3 1054. Q. But you were very, very confident  
4 earlier -- you repeated it to me at least half a dozen  
5 times today, that you paid Margarita more than half of  
6 the house sales and that it came out of your wife's  
7 pocket. So, on what basis were you so confident of  
8 that?

9 A. On my understanding from what the  
10 closing was. The information we got from the closing;  
11 my wife got \$250,000, that's what she got.

12 1055. Q. So, if you want to rely on that for any  
13 purpose, or if you want to make a big deal out of it  
14 then I'd ask you to substantiate on what basis you say  
15 that she got less than was paid out to Margarita, the  
16 judgment creditor, on the sale?

17 A. I'm not trying to make a big deal of  
18 anything, except I'm telling you -- you're trying to  
19 tell me that we sold the house or did not do the best  
20 to sell the house. You're trying to invent all these  
21 situations and I'm telling you that's not all true;  
22 it's all lies what you're telling me.

23 We did our very best effort to sell the  
24 house. A lawyer handled the closing; I don't know the  
25 numbers. I don't know if these numbers you're telling

1 me here are accurate or not. I don't know what else  
2 it could have been or not.

3 I was told that when you add the numbers my  
4 wife was getting less. And if she got less then I  
5 didn't do the math, so I might have done the math  
6 wrong in this case because I didn't have the numbers;  
7 I didn't do the numbers.

8 But the one thing I can tell you very  
9 clearly is we did our absolute best to get the best  
10 price of this house, and we got very little out of it.  
11 And all these things have been a sham, and I've been  
12 saying -- that's why I repeated it, because I never  
13 had my chance to be in front of the judge.

14 And again you're doing the little faces.  
15 You can do all the faces you want; I'm going to keep  
16 saying the truth here. I did my very best, my very  
17 best to sell this house. We've done our best to pay  
18 this, again your little face and looking at the table  
19 ---

20 1056. Q. This is the face of someone who's  
21 exasperated because you're not answering my questions.

22 A. If you're going to be disrespecting me  
23 -- are you going to continue disrespecting me? I'd  
24 like to know why are you so disrespectful. I'm  
25 answering your questions. You guys fabricated a case,

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1 manipulated big time; we never got our fair trial.  
2 You got paid with money that was stolen from us,  
3 concocted in a deal in your office.

4 I never had the chance to be in front of a  
5 judge to say all that -- you keep doing your face.

6 1057. Q. This is my resting face; I'm sorry if  
7 you don't like it.

8 A. No, it's not your normal face because  
9 I've seen you the whole day and I've seen you before,  
10 okay? So, I'm telling you the things the way they  
11 are. And I have been -- I'm the actual victim here,  
12 you know, big time, because I lost everything I had.  
13 I've been accused of money laundering in false. The  
14 allegations were dismissed after five years'  
15 investigations; destroyed my banking relationships, my  
16 business relationships, my reputation.

17 My sister printed a letter that is full of  
18 lies in the newspapers on paid ads, full page size, in  
19 every single newspaper in Guatemala where we had our  
20 main businesses. Destroyed the reputation of our  
21 firm, our company, the reputation of our family.

22 And then you're making a big mess out of  
23 everything. You took everything away from me; I have  
24 no car, I have no house, no nothing. I have no bank  
25 accounts, I have nothing.

1                   And you keep asking me the same damn  
2                   questions over and over again. Just looking for when,  
3                   because I'm upset, I will say something that you can  
4                   turn, twist and spin, like you're trying to do here  
5                   now.

6                   I was telling you what my honest  
7                   understanding is. We sold this house for very little  
8                   value, very little, because we couldn't sell it. And  
9                   the main reason why we couldn't sell it for a better  
10                  price was because of all these judgments that were on  
11                  top. I'm the big time loser here.

12       1058.           Q.    What question do you think you're  
13                    answering?

14                    A.    Huh?

15       1059.           Q.    What question do you think you're  
16                    answering?

17                    A.    I am telling you that I don't know --  
18                    it's helpless, to talk to you is helpless, you know?  
19                    You are trying to make me accept things that are not  
20                    true. And I'm not going to play this game. Ask me  
21                    direct questions and I'll give you the answer, but  
22                    stop doing those faces, please, because it's really  
23                    insulting. It's really insulting.

24       1060.           Q.    There's no face -- let's move on.

25                    A.    Yeah, you're making these disrespectful

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1 faces to me.

2 1061. Q. The last thing I want to do today is  
3 you've provided us with answers to undertakings with a  
4 couple of hundred pages of credit card statements.  
5 And I put it to you earlier that your spending was not  
6 as frugal, at least in 2016 and early 2017, as you  
7 described it to me and you resisted that.

8 So, we'll do this as long as it takes to go  
9 through your credit card statements and I'll ask you  
10 about some of these things that were spent money on.  
11 And if you'll accept that you spent money somewhat  
12 liberally in 2016, we can just leave it at that and  
13 move on; otherwise I'll take you through some  
14 examples?

15 A. I don't understand what you're saying.

16 1062. Q. All right, well let's get started then.  
17 I'm starting with the year-end summary statement for  
18 an American Express Platinum card in your name for the  
19 period from January 1st through December 31, 2016.  
20 Are you familiar with that credit card?

21 A. Yeah.

22 1063. Q. Are you the only person who uses that  
23 credit card?

24 A. My wife has a secondary card.

25 1064. Q. And I see that actually does come up in

1           some of these, that there's a different card number  
2           who's attributed to the transactions. So I'm going to  
3           mark all this as an exhibit, but I put a star beside  
4           transactions in August 2016 that reference a hotel  
5           that your wife stayed at.

6                     Do you recall making a trip in August 2016?

7                     A.    August 2016 -- it's very long ago, but  
8           I don't think I did that trip. Where is this? If my  
9           wife paid it means I wasn't with her. So, this  
10          might've been when my wife went to visit my daughter  
11          who lived in London at the time.

12       1065.           Q.   Well, in the row above that there's a  
13          transaction on August 22, 2016 where you're staying at  
14          the Shangri-La.

15                     A.    Which are you talking about?

16       1066.           Q.   The same page we were just looking at  
17          where there were transactions on your wife's card,  
18          right above that on August 22, 2016 is a Shangri-La  
19          charge for \$315?

20                     A.    \$315 -- yeah, but that was in April,  
21          that wasn't in August -- September. You were asking  
22          me about her staying in a hotel in August. So, if you  
23          want to ask me now about the Shangri-La thing I can  
24          answer to you.

25                     I did a business trip to China -- never been

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1           there before -- took my wife with me, and the person  
2           that we were meeting with there invited us to go and  
3           visit the Latheau, which is Tibet, which for Chinese  
4           people is a very important place.

5                        So, I never had plans to go there, he wanted  
6           to go there so off we went. So is spending \$315 is a  
7           sin? Is there something wrong in April 2016?

8           1067.           Q.    Well, I'm allowed to ask about your  
9           spending, so that's what I'm doing. So, you're saying  
10          it was a business trip to China?

11                       A.    I did a business trip to China at the  
12          time.

13          1068.           Q.    What was the business opportunity in  
14          China?

15                       A.    I was thinking of getting into the  
16          plastic business, so we went to talk to people there.  
17          Actually what I did is I attended a conference there,  
18          a trade fair.

19          1069.           Q.    That ties into another question I was  
20          going to ask you. Given what you described as the  
21          state of Xela, have you looked at any other employment  
22          or income opportunities?

23                       A.    I never searched for any other  
24          opportunity. I worked in Xela since we founded my dad  
25          and I in 1984, in June. The company started; I

1 started working there from the beginning and I worked  
2 all the way there. And that was my only commitment.  
3 All I did was work for that company.

4 1070. Q. So, looking forward what would you  
5 anticipate as potential sources of income?

6 A. Going forward?

7 1071. Q. Yes?

8 A. I don't know. I don't know. I just  
9 expect to be able to resolve our problems down south.  
10 At this particular time I'm 62 years' old, so I don't  
11 know what I'm going to do at this point. Right now I  
12 can't get -- you have to understand the damage you  
13 guys did to me with those allegations that my sister  
14 has done publicly is unbelievable.

15 My reputation is completely ruined. So,  
16 what do you expect me to do; flip burgers at  
17 McDonald's or something like that? I may have to do  
18 that at one point, but I'm not there yet.

19 1072. Q. And that's what I'm just trying to get  
20 to the bottom of that. You mentioned the downside of  
21 you're talking about the litigation with the cousins?

22 A. Yeah.

23 1073. Q. I think you described what that was in  
24 the last examination, so I think we both know what I'm  
25 referring to by that, but relating to shares of



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1 Avicola?

2 A. That's correct -- not shares only, past  
3 dividends that have been illegally retained. And that  
4 we were -- by the way, that's a very important  
5 question you asked, because Avicola shares that you  
6 just asked about are the ones that we were  
7 expropriated from by the boys, or the cousins sorry,  
8 we call them boys, the cousins; using the information  
9 your office facilitated my sister to steal from our IT  
10 department.

11 All that has now been overturned and it's  
12 almost told, but not there yet. So it's been a  
13 nightmare that we had to raise for all these years  
14 since 2011 to date, and everything because of what  
15 your firm helped my sister do.

16 1074. Q. So do I understand that you're counting  
17 on -- you have no other source of income that you  
18 anticipate receiving, other than resolving the  
19 problems with the cousins?

20 A. At this point, yeah, that's it.

21 1075. Q. And what do you anticipate are the odds  
22 of resolving those difficulties and when would you  
23 expect to resolve those?

24 A. Very good, and soon. I'm not going to  
25 tell you what because you're part of the other team

1 and if I disclose -- I talk about that, it's going to  
2 end up in my cousin's knowledge and we'll go back into  
3 the same thing all over again.

4 And I know that's what a lot of your  
5 questions are guiding is to find where we can get  
6 attacked by my cousins, so...

7 1076. Q. That's very imaginative of you ---

8 A. It's not imaginative, you did it in  
9 2011, you did for five years. You were taking  
10 information about our company that had nothing to do  
11 with my sister's lawsuit. You're trying to do the  
12 valuation of the Tropic shares; you hired this big  
13 named evaluator, Mr. Cohen, who started demanding  
14 information that he didn't even use.

15 We said, this information you're demanding  
16 has nothing to do with the Tropic shares, nothing.  
17 And you insisted and we got -- we had to deliver all  
18 that stuff. Where all that stuff ended? Did Mr.  
19 Cohen use any of that for the valuation?

20 The answer is no. Did the evaluation of Mr.  
21 Cohen end up him being the numbers my sister was  
22 claiming? No, it was very close to the offer price we  
23 made. The judge ruled that we had to pay her less  
24 than 20% more than we had offered in 2011, so then  
25 where was all this magnificent information you were

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1 getting from? Where was it used to? It was all sent  
2 down south, and that's how I've been hurt so much.

3 1077. Q. My question ---

4 A. So, I'm not imaginative, I'm just  
5 telling you what's already happened.

6 1078. Q. My question -- you may not recall --  
7 was with respect to the likelihood that you expected  
8 to receive these funds, and you said soon, so my  
9 question would be how soon?

10 A. I don't know how soon, but it's soon.  
11 I don't have a crystal ball; I can't read the future,  
12 but I know we are getting very close to it. And  
13 besides, I'm not going to tell you any more about it,  
14 because that's why I just gave you the explanation and  
15 there you go again trying to -- trick me into give you  
16 information about the case; I'm not going to tell you.

17 1079. Q. It's not a trick. One of the primary  
18 focuses of this type of examination is to understand  
19 your capacity to pay the judgment and determine how we  
20 can collect on the judgment. And what you're  
21 describing to me is the only possible source of money  
22 that you could receive is this settlement, or I should  
23 say not settlement, I'm guessing settlement, but some  
24 sort of resolution of issues between you and the  
25 cousins.

1                   And I'm just asking for more detail on why  
2                   you're expecting to receive money; how much you're  
3                   expecting to receive; when or how? And I'm entitled  
4                   to ask those questions. You're entitled to not answer  
5                   them, well, you're not entitled, but you can refuse to  
6                   answer them and decide later in front of a judge  
7                   whether you're entitled not to. But, let me just ask  
8                   those questions and you can answer them or not answer  
9                   them.

10                   A. I forget the exact date, but I think it  
11                   was February or March of this year we had a meeting in  
12                   your office.

13                   1080.           Q. And again, I don't want to interrupt  
14                   you when you're giving answers, but you're describing  
15                   a conversation that's subject to settlement privilege,  
16                   and I'm not asking you about that.

17                   A. Well, it was a conversation between  
18                   your side and my side, so to me that's the only  
19                   privilege that counts. I was in that meeting, you  
20                   were in that meeting, Mr. Leon was in that meeting,  
21                   Woycheshyn was in that meeting, my sister was in that  
22                   meeting.

23                   In that meeting I presented a proposal to  
24                   settle my sister's judgment in full, and then we  
25                   provided you all of the information on money that's

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1 going to be collected in a matter of months. So, and  
2 you already know about that.

3 I'm not going to tell you more, because  
4 anything else I would be disclosing things of the case  
5 to people who have been helping our counterparts, so I  
6 hope you can understand that I cannot tell you that.

7 1081. Q. Well, I'm not sure I do understand, but  
8 I don't need to. But let me just make sure I have the  
9 hope you have of collecting money with respect to the  
10 issues with the cousins is the same issues that you've  
11 communicated previously to Margarita, or the same  
12 grounds that you've communicated previously to  
13 Margarita.

14 A. Yeah, it's part of it -- there's more.

15 1082. Q. There's more, okay?

16 A. But I'm not going to say more about it.

17 1083. Q. So, you're refusing to tell me more  
18 about ---

19 A. Because you're going to pass over to my  
20 cousins, like you did it already before. Since 2011,  
21 so you want me to repeat how you got the information  
22 that you gave to my cousins?

23 1084. Q. That was absolutely not my question.

24 A. Well, so then don't ask me more things  
25 about the case.

1           1085.           Q.    I'll go back to the credit card  
2                           statement and eventually we'll mark this as an  
3                           exhibit, but for now I'll just hand you some pages  
4                           from it.  This is page 9 of 10 of the year end summary  
5                           of 2016 for the American Express card, and I'm  
6                           directing your attention to the bottom of the page  
7                           where there's a charge, again in April 2016, which  
8                           would likely have been when you said you went to  
9                           China.

10                           It says Sunrise Duty-Free, Shanghai, 997.00.  
11                           Can you take a look at that, please?

12                           A.    Yeah, I can see that.  That was the  
13                           same trip that we did to China that I already  
14                           mentioned before.

15           1086.           Q.    And do you recall what you bought at  
16                           the duty-free shop for almost \$1000?

17                           A.    I do not remember exactly what it was,  
18                           but I believe -- if I remember I bought a brief case,  
19                           or not a brief case but a travelling bag, and I might  
20                           have bought a few other things for my wife and maybe  
21                           some souvenirs -- I don't really remember what it was.

22           1087.           Q.    So it's possible that you bought some  
23                           expensive luggage?

24                           A.    Not expensive, I just bought a little  
25                           carry-on bag.  \$900 seems like a lot of money, but

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1           it's not a lot of money either when there's three  
2           people travelling. I don't remember what we bought.  
3           And, as far as I know, spending \$900 was not something  
4           that I was not allowed to do.

5                     You know, I had a reasonable income at the  
6           time. I don't have it anymore, but I had a reasonable  
7           income at the time, so...

8           1088.           Q.    And so, when would you say you stopped  
9           having a reasonable income?

10                    A.    At the end of August last year.

11           1089.           Q.    So the next I'll show you, this is from  
12           a different set of documents, a year end summary 2017  
13           for the same American Express credit card. And I've  
14           starred a couple of rows here, one is a transaction in  
15           April 2017 and another is a transaction on your wife's  
16           card, but in September 2017, so you take a look at it.

17                    A.    Yeah. The one in April is a computer,  
18           obviously. I don't remember exactly what computer it  
19           was, but I had an iPad that was damaged by accident.  
20           So, I'm assuming that's the one that was replaced.

21           1090.           Q.    So this is in August 2017?

22                    A.    No, that was in April.

23           1091.           Q.    Sorry you're right, I misspoke. What I  
24           just want to get to is this notion that you didn't  
25           spend money even on clothing; that you were just

1 spending money on food and ---

2 A. I didn't say we didn't spend money on  
3 clothing. I said we didn't spend money like crazy on  
4 a lot of expensive, luxury things -- of course people  
5 need to buy clothing from time to time. My mother was  
6 used to have a lot of stuff and buying whatever she  
7 wanted, because my dad gave her that pleasure and she  
8 deserved it.

9 Now we're not supposed to buy new clothes  
10 when we need one? Are we just supposed to dress in  
11 rags and we're not supposed to go to a restaurant and  
12 we cannot buy a couple things in the one and only time  
13 we've been in China? You know, this is not like we're  
14 buying jewelry, throwing money around like crazy, you  
15 know?

16 You can try to portray this any way you  
17 want, but we are not people that throw money like  
18 crazy. We could have spent much more money when we  
19 had money and we didn't necessarily live like crazy.  
20 As I said before, I didn't take my family to expensive  
21 World Cup trips paid by the company, like my brother-  
22 in-law did.

23 And that's what triggered all this problem;  
24 when my father found out that he was embezzling money  
25 from the company fired him and that angered them. I



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1 had nothing to do with it, nothing to do with it, and  
2 I'm the one paying now.

3 So you took everything I have now and you're  
4 going to go back a year, or two years' ago on \$315 we  
5 spent probably at a dinner or something, entertaining  
6 the guy who had invited us to do this trip in Tibet,  
7 or buying something on our one and only trip to China  
8 in a duty-free.

9 You can try to portray anything you want,  
10 but we haven't been spending my sister's money, if  
11 that's what you're concerned about.

12 1092. Q. At your last exam I'll show you -- you  
13 still have a copy of the transcript, or I still have  
14 both of them to show it to you -- so, I'm looking at  
15 question 604 on page 113. The question was, "What  
16 about clothing? Do you go shopping for clothing?"  
17 Answer: "I don't shop for clothing at all. From time  
18 to time my wife buys me something when she thinks I'm  
19 looking too used -- I hate clothes"?

20 A. Yeah, that's been true since we got  
21 married.

22 1093. Q. And I'm just trying to understand your  
23 evidence, because you said before and I recall you  
24 saying it again today, although I may have mis-  
25 remembered and we'll find out later, that you didn't

1 buy clothes, or things you didn't need; that you were  
2 very minimalist in your spending. And the answer that  
3 you just gave now was not entirely the same; it was,  
4 well I've got to live my life. What if I want to go  
5 on vacation, what if I want to buy something,  
6 occasionally get something nice?

7 And I'm just trying to understand which of  
8 those two is your evidence as to how you've been  
9 spending money since the judgment was issued against  
10 you?

11 A. There you go again with the little  
12 games, and that's why you don't ask me the question  
13 without looking at me -- you look at the table over  
14 there and you look at the floor and you look at the  
15 wall, but you don't look at me when you ask the  
16 question.

17 And the question is very simple; we're not  
18 buyers of clothing -- I'm not going like my sister and  
19 my brother-in-law used to go shopping at malls; we  
20 don't do that. Of course from time to time we need to  
21 buy a shirt or something, that's normal for people;  
22 don't you think? I don't go to the shopping for  
23 clothing; my wife does most of the clothing shopping  
24 and very very seldom.

25 We're not in the mall all the time buying

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1 clothing -- that's what I meant. So you can try to  
2 twist it and spin it anyway you want; we're not people  
3 that throw money around like crazy and spend money  
4 that's not ours. And by the way, I worked really hard  
5 all my life. I worked -- never had less than 10, 12  
6 hours a day work, maybe 14 hours a day. On Saturdays  
7 and Sundays I have the phone on and the computer on; I  
8 was connected to our business all the time.

9 I was the only one in the family doing that  
10 and I'm the one that's getting nothing now. I've lost  
11 everything I had, and that's a fact that you need to  
12 know. You're trying to find out what else can you  
13 take away from me to give my sister for this judgment.  
14 Well, I told you already you can take my eyes, my  
15 ears, my lungs, any of my organs if they can be sold  
16 for somebody who needs a transplant, because that's  
17 the only thing I have left personally.

18 Everything else is either you took it or I  
19 never had it. Okay, so what else you want me to tell  
20 you?

21 1094. Q. Just answer my questions and we'll be  
22 fine. Do you recall what you bought at the Apple  
23 Store?

24 A. I just told you, because of the pricing  
25 must have been a replacement for my iPad, the one I

1 use for work. I don't have a laptop, I use an iPad.  
2 And it was accidentally damaged and I needed a  
3 replacement; I can't operate without communications  
4 device, right?

5 1095. Q. If you flip over the page, page 7 of 8  
6 for the year end summary of 2017?

7 A. Which one? What are you talking about?

8 1096. Q. The one that you were just looking at,  
9 you're on page 6 of 8?

10 A. This?

11 1097. Q. Flip it over, please? And I'm going to  
12 ask about in the middle of the page, on October 13,  
13 2017 there's a series of charges relating to Porsches  
14 and Minis and Audis that total \$3,361. Can you  
15 describe to me what those were for?

16 A. Because of the date, the first one must  
17 have been probably the purchasing of winter tires, I  
18 presume, because cars need those. The Mini is my  
19 son's car and he might probably need money to pay for  
20 service or something, I don't know what exactly that  
21 was.

22 1098. Q. So you would've still been paying money  
23 at least sometimes to help your kids as late as  
24 November 2017?

25 A. No, I don't know exactly what these

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1 are. I'm just telling you I probably picked up the  
2 car for them -- I don't know. I don't remember. This  
3 is a year ago. I don't remember exactly what I do  
4 every day. But you have a car in service. If it's  
5 winter you need winter tires, it's simple as that.

6 So we're not supposed to change the tires if  
7 they're needed? If the car needs service we're not  
8 supposed to service our cars?

9 1099. Q. I didn't ask you what you were or  
10 weren't supposed to do; I just asked you what these  
11 charges were for.

12 A. If we are family we're not supposed to  
13 be able to do a favour to somebody in the family? I  
14 can assure you probably my son has paid things for me  
15 too. So, if you want to make a big deal out of it,  
16 make a big deal out of it.

17 So, what you want me to do? Give \$500 to my  
18 sister because I paid something at the Mini for my  
19 son's car?

20 1100. Q. All I want you to do is answer my  
21 question.

22 A. Just be serious. Try to be serious,  
23 you know? So, find something in there that is really  
24 a substantial thing that you can make a big fuss out  
25 of it, because otherwise you're just wasting our time

1           -- and keep doing little faces and rubbing your eyes -  
2           - come on? Be professional, please and respect me.

3                   Talk to me seriously without doing all these  
4           faces. You know? I'm not doing faces to you.

5   1101.           Q.   Do you recall what these charges were  
6           for?

7                   A.   Not off the top of my head, but  
8           obviously they are car-related service or something.

9   1102.           Q.   But you have no specific recollection?

10                  A.   No.

11   1103.           Q.   I take that as your answer. The  
12           charges related to the Mini and the Audi; you  
13           recognize those as being cars of your kids?

14                  A.   Yes.

15   1104.           Q.   So, the only explanation you can think  
16           of for paying those would've been for your kids?

17                  A.   Yeah, it could -- so, is that a sin?

18   1105.           Q.   Well, it's just a yes or no question.  
19           You don't have to worry about what it means.

20                  A.   I know what you're trying to do; you're  
21           trying to make me fall into traps here. If I pay the  
22           bill for my son and then I'm giving money to my son  
23           and then you're going to say at one point I said I'm  
24           not giving money to my son -- no, I'm not giving  
25           money, my kids money to live every day, every week.

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1                   Once somebody needs a little help, you help.  
2                   The same way as when I need help they help. If that's  
3                   a sin, then I'm a sinner, you know? And you're going  
4                   to try to twist this, and that's why I'm telling you;  
5                   you ask these little questions and then make these  
6                   little faces and don't look at me, because you're  
7                   trying to set me up into something that you're going  
8                   to try to create. This is just normal family life --  
9                   that's what it is.

10           1106.           Q.   I'm at a different period of time and a  
11                   different credit card. This is a TD Gold Elite credit  
12                   card. Do you remember that one?

13                   A.   Yeah.

14           1107.           Q.   Do you still have that credit card?

15                   A.   Yeah.

16           1108.           Q.   And this is a statement from, dated  
17                   February 17, 2016. I'm showing you page 4 of 5 of it.  
18                   But I'm going to put a star beside a transaction on  
19                   February 3rd from Brown's Appliances, Port Carling.  
20                   Do you recall this?

21                   A.   I don't remember what that might be.  
22                   Obviously it's something at the cottage that needed  
23                   replacement. I don't know what it is. That was  
24                   actually on my wife's card, if you can see it.

25           1109.           Q.   The account is in your name, but I

1           guess this is another one that has two cards that can  
2           be charged to the same account; is that what's going  
3           on?

4                       A.    Yeah.

5    1110.           Q.    And paying these credit cards off; it  
6           always came from the same place? It came from the  
7           joint account. Right?

8                       A.    Up until you froze the account. Then,  
9           since then I'm not paying the account; my wife takes  
10          care of it.

11   1111.           Q.    Still with the TD Gold Elite and I'll  
12          move to November 17, 2016 statement. And again, at  
13          page 5 of 6 there's a reference here to Guarantee Co.  
14          of Northam, Woodstock and an amount payable of over  
15          \$1,000?

16                      A.    Insurance company.

17   1112.           Q.    What was being insured?

18                      A.    The house, the cottage, the car. You  
19          have to add those insurances for the mortgage purposes  
20          and to get a license for the car. Right?

21   1113.           Q.    Another statement that I'll show you,  
22          still on the TD Gold Elite, now February 2017, a star  
23          beside it on the copy I gave you. It says a cash  
24          advance of \$2000?

25                      A.    I don't know what that is.



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1 1114. Q. You can't recall why someone would take  
2 out a cash advance of \$2,000 in February 2017?

3 A. No, I don't know what it is. I don't  
4 have a clue. It could've been, I don't know for sure,  
5 but my wife's mother is a 94-year-old woman and she  
6 doesn't have any income either, so from time to time  
7 my wife sends money to her, so that might've been.  
8 It's the only reason we would take cash out.

9 1115. Q. And I think in fairness you've told me  
10 that you were giving money to your mother up until  
11 July 2017. Right?

12 A. Yeah.

13 1116. Q. I'll show you a similar one. This is a  
14 statement dated April 17, 2017, page 3 of 5 of it.  
15 The transaction posted April 3rd for a \$6000 cash  
16 advance. Do you recall what that was for?

17 A. I have no idea.

18 1117. Q. Are you surprised that that's on the  
19 statement?

20 A. I am surprised at that one -- I didn't  
21 see that. I don't know what that is. I have no idea.

22 1118. Q. And if you didn't know would your wife  
23 likely know what that money was for?

24 A. I don't know.

25 1119. Q. Can I ask you to inquire with her what

1           that \$6,000 was for?

2                   A.    I can ask her if she remembers.  I  
3           don't know if she does.

4           --- UNDERTAKING

5   1120.           Q.    And I'll have the same question; I'm  
6           looking now at the May 17, 2017, still for the TD Gold  
7           Elite, page 3 of 5.  The transaction's posted on May  
8           1st and May 2nd.  There are again cash advances of  
9           \$3000 and \$5000.  Do you remember those?

10                   A.    No, I don't know what this is.  I will  
11           have to find out.

12   1121.           Q.    And I'll make the same request that you  
13           inquire?

14                   A.    This is strange.  I've never seen this.

15           --- UNDERTAKING

16           BY MR. BORTOLIN:

17   1122.           Q.    Is it a practice for you to review  
18           credit card statements before paying the bill?

19                   A.    I don't pay the bills; my wife pays the  
20           bills.  I used to, but all this is after you froze me  
21           out of my own life.

22   1123.           Q.    And so, just to follow up on that  
23           point, so when is it that you say you stopped having  
24           access to the TD joint account?

25                   A.    When you froze my account.  I don't

JUAN GUILLERMO GUTIERREZ - 303

1 remember the date, but you know the date; you did it.

2 1124. Q. Well, but you seem to remember it  
3 vividly. I'm just asking you to tell me what the date  
4 is.

5 A. I know it was last year, I don't  
6 remember the exact date. It was sometime last year  
7 before these dates, for sure.

8 1125. Q. And so, from that point forward, where  
9 did the money come from to pay the credit cards then?

10 A. My wife.

11 1126. Q. So this question seems like it might be  
12 a different card, unless it got rebranded. It's still  
13 TD, but it's called a Visa Infinite card.

14 A. The card we had -- this elite card came  
15 from '84. They've changed the -- whatever.

16 1127. Q. And I'm going to draw your attention,  
17 so this is an August 4, 2017 statement, page 3 of 7,  
18 and a transaction on July 9th at Gordon Bay Marine  
19 Ltd., MacTier?

20 A. Yeah, that was servicing the boat.

21 1128. Q. And maybe I'll just ask this question  
22 generally without referring you to it, or I can if you  
23 like. But, if I see a charge in 2016 that goes to  
24 places like Mini Downtown or Audi, Midtown or  
25 Mercedes-Benz Canada, or downtown Porsche Toronto, can

1 I assume that those relate to vehicles owned by you,  
2 your wife or your kids?

3 A. Or my mother.

4 1129. Q. And so, the ones that are charged on  
5 credit cards, and again if it helps I can show you  
6 what I'm looking at, but it may be easier just to  
7 answer the question generally since it does recur.  
8 Are these lease payments, maintenance payments; what  
9 are they?

10 A. Maintenance payments, repairs, new  
11 tires that sort of stuff.

12 1130. Q. And you would do that at the  
13 dealership?

14 A. Yes. If you don't service them at the  
15 dealership your warranty is voided.

16 1131. Q. Another transaction I'll ask you about  
17 is for your Canadian Tire MasterCard. Do you remember  
18 that card?

19 A. Yeah.

20 1132. Q. Is that a card that's still issued?

21 A. Yeah. You have all the statements for  
22 that card too.

23 1133. Q. And this is a statement that I'm  
24 looking at dated February 12, 2017, and the  
25 transaction I'm going to ask you about with the star

JUAN GUILLERMO GUTIERREZ - 305

1           beside it is dated January 23rd at Nordstrom's for  
2           \$847.50?

3                       A.    That will probably be some winter  
4           clothing or something, I don't know for who. You  
5           can't get a decent coat for 10 bucks, right? So I  
6           don't know what that is. I didn't buy that. That  
7           must have been my wife probably.

8   1134.           Q.    So is that like a winter coat; is your  
9           guess?

10                   A.    Or could have been for my mother also.

11   1135.           Q.    Do you recognize the name Express  
12           Router?

13                   A.    No.

14   1136.           Q.    I'm just looking at these statements;  
15           the cardholder name looks like it says Juan C.  
16           Gutierrez?

17                   A.    It's misspelled.

18   1137.           Q.    They misspelled it? And then I have  
19           another credit card -- how many credit cards do you  
20           have?

21                   A.    I only have the Visa and the  
22           MasterCard. I no longer have the AMEX.

23   1138.           Q.    This seems to be for a different card,  
24           an older one. The statement I'm looking at is dated  
25           February 11, 2011 for TD First Class Travel Card. Do

1           you recognize that card?

2                   A.    Can I see the statement, because I  
3           don't have a travel card?

4   1139.           Q.    And I'll put a star next to the  
5           transaction I'm going to ask you about on January 15?

6                   A.    That's my father's credit card.

7   1140.           Q.    Oh, it's your father's credit card,  
8           okay. I think it was provided to us in a package of  
9           statements identified as yours.

10                  A.    No. That's from February 2015. That  
11           was my father.

12   1141.           Q.    Fair enough; I won't ask you about that  
13           one. It just got lumped together into the file, I  
14           think.

15                  A.    If you look at it carefully it says  
16           here, MD through Point Zero Interpreter, Infinity, I'm  
17           pretty sure that's one of his many medical bills that  
18           he used to have to pay when he was in winter season.

19   1142.           Q.    Just a few follow-up items and then  
20           we'll be done. When we last examined you we asked if  
21           there were any judgments against you other than  
22           Margarita's and you advised there were not. And my  
23           question will be whether that remains true; that only  
24           Margarita's judgment against you, and if it helps I  
25           thought you referred earlier to mortgage judgments

1           against you?

2                   A.    I have the mortgage judgment, that's  
3           more recent.

4    1143.           Q.    And so, that is the Scotia Bank  
5           judgment?

6                   A.    Yes.

7    1144.           Q.    Did DX Financial, which had the second  
8           mortgage also obtain a judgment?

9                   A.    No, they didn't obtain a judgment.

10   1145.           Q.    So the judgments against you are  
11           Margarita's and the Nova Scotia judgment, which I'm  
12           guessing will be discharged now that the house is  
13           sold.  Is that right?

14                   A.    Yes.

15   1146.           Q.    There's nothing else?

16                   A.    No.

17   1147.           Q.    In your answers to undertakings you  
18           provided some T4 and T5 slips and some other tax  
19           documents and I have a couple of follow-up questions  
20           about those.  So, I'm going to show you a T5, it's  
21           from 2015 and it's for \$127,836.79.

22                   And it says its investment income.  Can you  
23           describe what investment this is?

24                   A.    I'm not a hundred percent sure whether  
25           it, it must be related to my RRSP, because it's with a

1 -- oh, it's London Life Insurance, yeah that's related  
2 to that I think. I cannot tell you -- or it may have  
3 been when I sold my life insurance is because I needed  
4 money.

5 1148. Q. Sorry, I'm not sure I ---

6 A. I had some life insurance way back in  
7 '14, '15, I don't remember. All that stuff we already  
8 provided to you anyway, so whatever it happened you  
9 already have the papers because I don't have a  
10 recollection about that. I do not know exactly what  
11 this is about.

12 1149. Q. These are the papers, so it's all I  
13 have to go on.

14 A. But you have the information anyway; it  
15 was provided to you already.

16 1150. Q. But this is the information that's  
17 provided, and it's just not clear to me what this  
18 refers to, so that's why I asked you. I think your  
19 recollection is that this relates to an RRSP?

20 A. I don't know what it is. I just  
21 suspect -- that came as a possibility, but I don't  
22 know exactly -- what year is this?

23 1151. Q. 2015.

24 A. '15? That might've been probably when  
25 I was -- I may have cashed one of my life insurance



JUAN GUILLERMO GUTIERREZ - 309

1           that I used to have. Could be, but I can't actually -  
2           - I don't know for sure. I'm speculating on that, I  
3           shouldn't be, but I'm trying to help you out with the  
4           answer.

5           1152.           Q.    We referred to this document, so I'm  
6           going to mark it as an Exhibit number 7.

7                        A.    This one?

8           1153.           Q.    Yes, the T5; it's a Statement of  
9           Investment Income 2015?

10                      A.    7, you said, number 7?

11           1154.           Q.    Yes.

12           --- EXHIBIT NO. 7: T5 for 2015; Statement of Investment  
13           Income for Mr. Gutierrez.

14           BY MR. BORTOLIN:

15           1155.           Q.    When you were last here you brought  
16           with you to your last examination your income tax  
17           return for 2016. If you may recall, the tax that you  
18           reported was 45,000 from Xela. Do you remember that?

19                      A.    That's what year?

20           1156.           Q.    2016?

21                      A.    Yeah.

22           1157.           Q.    You've provided us subsequently with a  
23           reassessment that adjusts your income to \$96,825. Do  
24           you remember receiving that reassessment?

25                      A.    These tax things are so complicated; I

1 don't understand them. So I always rely on the tax  
2 advisor to go through that. So, I don't remember that  
3 stuff. I don't understand exactly what it is.

4 1158. Q. And there is an explanation; it's not  
5 very detailed, but I should give you a copy of this  
6 and I'll mark it as an exhibit. And I'm looking at --  
7 the first several pages are the original filing. And  
8 then, starting at -- it's the middle page on the back  
9 there's a Notice of Reassessment.

10 And at the bottom of the page where it says,  
11 "Tax Reassessment" at the top on page 2 in the upper  
12 right-hand corner, at the bottom of that page there's  
13 a heading called "Explanation of Changes and Other  
14 Important Information".

15 It says, "We included income from London  
16 Life Insurance Company, T4 RRSP". Does that refresh  
17 your memory at all?

18 A. I cannot tell you for certain because,  
19 as I said I'm not understanding the tax issues very  
20 clearly, it's so complicated material. But, from what  
21 it says here is that was the year when I sold the life  
22 insurance thing and I'm being reassessed on that, I  
23 presume. I presume that's what it is.

24 1159. Q. Well there are a couple of different  
25 things. The tax that we just looked at was for the

JUAN GUILLERMO GUTIERREZ - 311

1 year prior, 2015, and that was for over \$100,000.  
2 This seems -- this is from 2016 and it's for a  
3 significant -- well, it seems, I'm inferring because I  
4 can't actually tell -- it seems to be for about  
5 \$45,000 based on how much it increases the total  
6 income, or \$50,000?

7 A. I cannot tell you what it is because I  
8 don't understand this. I can inquire.

9 1160. Q. Thank you.

10 --- UNDERTAKING

11 BY MR. BORTOLIN:

12 1161. Q. There's also a reference on the back of  
13 this page, page 3 in the upper right-hand corner, it  
14 says "We changed your federal spouse or common-law  
15 partner amount to take into account your spouse or  
16 common-law partner's correct net income".

17 And do you have an understanding of what the  
18 spouse or common-law partner deduction is?

19 A. Can I see what you're looking at,  
20 because I have no idea what you're talking about?

21 1162. Q. It's the same document we were just  
22 looking at; it's just the next page over. I haven't  
23 marked this as an exhibit yet, so let me do it before  
24 I forget. This would be Exhibit 8, the Income Tax  
25 Return and Notice of Reassessment for 2016 for Juan

1           Guillermo Gutierrez.

2           --- EXHIBIT NO. 8: Income Tax Return and Notice of  
3           Reassessment for 2016 for Juan Guillermo Gutierrez.

4                   A.    I don't understand what that -- this is  
5           something Revenue Canada did, I have no idea. I don't  
6           know anything they do. All I know is whatever they  
7           tell me to pay, I pay because I don't know what the  
8           rules, exactly.

9           1163.           Q.    So there's someone who prepares your  
10           taxes for you, I take it?

11                   A.    I use an advice for that because I  
12           can't do that.

13           1164.           Q.    And when you say you use advice; does  
14           that mean that you give your papers to someone else  
15           and they file your taxes, or does that mean that you  
16           ask someone for advice and then you file your taxes  
17           based on their advice?

18                   A.    I provide all the information and they  
19           prepare the thing and then we go through it and then I  
20           sign it and send it.

21           1165.           Q.    So you're involved in the process of  
22           preparing your tax return?

23                   A.    At the end of the process I sign the  
24           things, but as I said I'm not a tax expert and these  
25           rules are so complicated; I rely on the experts to do

1           that.

2           1166.           Q.    Well, I'll show you something and you  
3           may not recognize it and you may have never seen it  
4           before, it's from the Government of Canada website.  
5           It refers to the spouse or common-law amount; it seems  
6           to correspond to what's described in the Notice of  
7           Reassessment. And what it describes is a deduction  
8           that can be claimed if your spouse or common-law  
9           partner has a net income of less than a certain  
10          amount. And does that refresh your memory at all as  
11          to what the issue was with spousal amount?

12                    A.    I already told you my wife doesn't have  
13          a steady job. In those years she wasn't receiving any  
14          money, so I already answered all those questions  
15          before when you asked me about source of income.

16          1167.           Q.    And if we come back to that point, you  
17          explained where the money for the house came from.  
18          But, as we were talking about earlier with the credit  
19          cards there comes a point at which she's also paying  
20          for the credit cards.

21                    And as we saw, through there, there's a not  
22          insignificant number of charges over time that add up,  
23          whether or not they're reasonable or not; there's a  
24          significant amount of money that gets put on the  
25          credit cards over time.

1                   And that's all coming from your wife?

2                   A.    Yeah and my mother also got a mortgage  
3                   on her apartment also which we've been helping --  
4                   she's been helping us also.  It's been a double --  
5                   listen, we are family in a serious crisis and so we do  
6                   what we can to help each other.  So, then that's how  
7                   it is.

8    1168.           Q.    But there's no dispute between us  
9                   anyways that your wife's income, current income over  
10                  the past two, three years is not a significant amount  
11                  of money?

12                  A.    In the last two years it wasn't.

13    1169.           Q.    And your explanation for why she had  
14                  money, at least at some point in time, is through  
15                  savings from a long time ago.  Is that right?

16                  A.    Yeah.

17    1170.           Q.    And that understanding is based on what  
18                  she's told you?

19                  A.    She's not on trial here.  I'm just  
20                  telling you what I understand, what I know.  I cannot  
21                  tell you what she says or doesn't say.  She's not a  
22                  party in this thing, you know?

23                  Actually, she's the biggest victim of all  
24                  these things; she's lost her home, so what else you  
25                  want?

JUAN GUILLERMO GUTIERREZ - 315

1 1171. Q. I just wanted to know the basis for  
2 your understanding.

3 A. You're going to go after her now? Come  
4 on.

5 1172. Q. It makes it hard for the transcript if  
6 you talk over me. I was just asking what the basis  
7 for your understanding was about where her money came  
8 from and what she had told you.

9 A. I already answered that question since  
10 we started today, and before. You know all these  
11 things -- you already know them, so...

12 1173. Q. So you're not going to answer my  
13 question now?

14 A. I already answered your question. And  
15 again, you're with these little games. You asked me  
16 these questions at the beginning of this cross-  
17 examination, now you're going to ask me, and then of  
18 course I'm not going to use the exact same words and  
19 then you're going to find one little thing where you  
20 can accuse me of contradicting myself, and I don't  
21 have the benefit of a lawyer to assist me here.

22 So, I'm not going to tell you anything  
23 different. I already know the answer.

24 MR. BORTOLIN: Subject to answers to  
25 undertakings, refusals, those are my questions.

1

2

--- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 2:33 P.M.

3

4

I hereby certify that this is the

5

Examination in Aid of Execution of

6

JUAN GUILLERMO GUTIERREZ, taken

7

before me to the best of my skill

8

and ability on the 30th day of

9

August, 2018.

10

11

-----

12

LAILA A. STEPHEN - Certified Court Reporter

13

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Reproductions of this transcript are in direct

23

violation of O.R. 587/91 Administration of Justice Act

24

January 1, 1990, and are not certified without the

25

original signature of the Court Reporter



**TAB CC**

THIS IS EXHIBIT "CC" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,**  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

3

COUNSEL SLIP (COMMERCIAL MOTIONS)

No On List: 3

Court File No CV-11-9062-0001 DATE: Oct 15/18

Title of Proceeding: Castillo vs Xela Enterprises LTD et al

COUNSEL FOR

Plaintiff(s):

Applicant(s): Margarita Castillo

Petitioner(s):

PHONE NO. & FAX

416.777.4662 (pho)

Jason Woycheszyn woycheszynj@bennettjones.com

416.863.1716 (fax)

COUNSEL FOR

Defendant(s):

Respondent(s): Carmen Gutierrez Estate of Arturo Gutierrez

PHONE NO. & FAX

MARTIN MENDELZON

416-203-4475

416-203-9231

mmentelzon@yrcolco.com

RELIEF SOUGHT:

15 Oct 18 Exam in aid of execution of ~~Carma~~ Gutierrez shall take place on Nov 23/18. Exam of Calvin Shields shall take place on Nov 27/18 by video conference. Mc [signature]

in person

**TAB DD**

THIS IS EXHIBIT "DD" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

**REGINALD MURRAY McLEAN \***

Barrister and Solicitor

1035 McNicoll Avenue  
Main Floor  
Toronto, Ontario  
M1W 3W6Telephone: (416) 756-7500  
Facsimile: (416) 512-1212  
Email: [maclaw@bellnet.ca](mailto:maclaw@bellnet.ca)\* a Professional Corporation  
File No. 2446-1

November 20, 2018

**VIA EMAIL**Bennett Jones LLP  
Barrister and Solicitors  
One First Canadian Place  
Suite 3400, P.O. Box 130  
Toronto, Ontario  
M5X 1A4Attention: Jason W. J. Woycheshyn

Dear Sir:

**RE: Xela Enterprises Ltd, et al ats Margarita Castillo**

---

I have now been retained by Carmen S. Gutierrez with regard to matters arising from the Judgment against her late husband. If necessary, I can provide you with a Notice of Change of Solicitor for Mrs. Gutierrez.

In any event, the purpose of this letter is to ask you to seek instructions from your client to reconsider her position about examining her mother in aid of execution. I am attaching herewith correspondence from John H. Went a registered psychotherapist dated October 20, 2018. Obviously this report would have not been available when you appeared before the Motion's Judge on October 15, 2018. The point that I have been asked to convey as evidenced by report is that an examination would in all likelihood be extremely detrimental to Mrs. Gutierrez' health. At the end of the day, I am reasonably certain that you will be able to obtain all of your answers by way of response to written questions. Keep in mind that Mrs. Gutierrez is being examined as a representative of her late husband's estate. She is not being examined with respect to her personal assets and in all likelihood would have to give undertakings in any event for many of your questions. Therefore there would be very little difference between an in-person

November 20, 2018

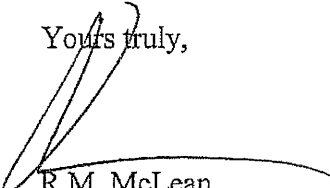
Page 2

examination and one conducted by way of written questions.

I am sure your client does not wish her mother to suffer distress as a result of this examination. If your client is prepared to turn this into written questions, I am prepared to undertake on behalf of Mrs. Gutierrez to provide you with answers within 3 weeks assuming that documentation does not have to be obtained from third party financial institutions of which we would have no control.

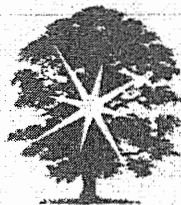
May I please hear from you with regard to your position. I would be happy to discuss this matter with you.

Yours truly,



R.M. McLean  
RMM:cv

Encl.



John Went  
*Psychotherapy*

1352 BATHURST STREET, SUITE 102, TORONTO, ONTARIO M5R 3H7 TELEPHONE (416) 530-0673

15170 KEELE STREET, KING CITY, ONTARIO L7B 1A3

October 20, 2018

Re: Carmen S. Gutierrez  
D.O.B. December 28, 1936  
207-One Post Road  
Toronto, On., M3B 3R4

To Whom It May Concern:

Please be advised that Mrs. Gutierrez came to my office, with her son Juan Gutierrez, on Tuesday, October 16, 2018, with the purpose of discussing the matters relating to a current court case.

For the record, I am a Registered Psychotherapist with the College of Registered Psychotherapists of Ontario and have been in private practice for 40 years. Along with my direct clinical work, I am the director of the Integral Healing Centre of Toronto Psychotherapy Training Program, responsible for training, supervision, and certification of students in the training program.

Mrs. Gutierrez shared with me the history that led to the court case, the death of her husband Arturo, in 2016 and the impact it has had on her physical and mental health. It was especially hard being called to testify at the court proceedings. She broke down a number of times through out my questioning and her sharing of this history. She is experiencing bouts of anxiety, stress and depression and becomes agitated when talking about the court case.

Given the degree of stress that she is experiencing at her advanced age, it would seem cruel to make her take the stand to testify once again. I would hope that the courts could make some allowances for her, and let her answer the questions in a written response away from the court room. This would limit the degree of stress to which she would be subjected.

Yours truly,

John H. Went, M.A., C.B.P., C.I.H.  
Registered Psychotherapist  
# 002153



**From:** Jason Woycheshyn  
**Sent:** 22 November 2018 3:31 PM  
**To:** Reginald M. McLean  
**Cc:** William Bortolin  
**Subject:** RE: Castillo v. Xela et al - Letter from R. M. McLean - November 20, 2018 [BJ-L.FID355753]  
**Attachments:** Counsel Slip (Commercial Motions).pdf

Thank you for your email, Reg.

We do not agree to postpone tomorrow's examination, which was set over five weeks ago under the attached endorsement of Justice McEwen.

We will proceed with obtaining a certificate of non-attendance if she does not appear.



**Jason Woycheshyn**  
Bennett Jones LLP  
T. 416 777 4662 | F. 416 863 1716

---

**From:** Reginald M. McLean <maclaw@bellnet.ca>  
**Sent:** 22 November 2018 3:23 PM  
**To:** Jason Woycheshyn <WoycheshynJ@bennettjones.com>  
**Cc:** William Bortolin <BortolinW@bennettjones.com>  
**Subject:** RE: Castillo v. Xela et al - Letter from R. M. McLean - November 20, 2018 [BJ-L.FID355753]

Dear Sir,

I acknowledge receipt of your email sent on Wednesday with respect to Mrs. Gutierrez. I have spoken to my client and reviewed the letter forwarded to you yesterday and I am writing at this time to advise you that she is simply not able from a psychological or physical point of view to undergo questioning tomorrow. Hopefully that will improve in the future. I am however formally advising you that she will not be attending at that time.

I trust this is satisfactory and hope that it does not cause too much inconvenience.

Reginald McLean  
1035 McNicoll Avenue  
Toronto, Ontario  
M1W 3W6

Tel: (416) 756-7500 x 3  
Fax: (416) 512-1212  
Email: [maclaw@bellnet.ca](mailto:maclaw@bellnet.ca)

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-----Original Message-----

From: Jason Woycheshyn [<mailto:WoycheshynJ@bennettjones.com>]

Sent: Wednesday, November 21, 2018 5:07 PM

To: Reginald M. McLean

Cc: William Bortolin

Subject: RE: Castillo v. Xela et al - Letter from R. M. McLean - November 20, 2018 [BJ-L.FID355753]

Reg:

Thank you for your letter from yesterday and for the Notice of Change of lawyers.

Our instructions are to proceed with examining your client in her capacity as estate trustee for the estate of Arturo on November 23. We recognize your client's advanced age and the discomfort she may experience from being involved in this judgment enforcement. However, our client's judgment has been outstanding for over two years and your client accepted her role as estate trustee knowing of this outstanding litigation. If the stress associated with being the legal representative of a judgment debtor is too great, we suggest your client renounce her role. But we are entitled to examine the legal representative of the Estate that owes our client millions of dollars and we will proceed with doing so in person on November 23.

Given her ongoing role as estate trustee we expect Ms. Gutierrez to have actual knowledge, or take steps to inform herself, of the Estate's current financial condition.

Thank you.

Jason Woycheshyn

Bennett Jones LLP

T. 416 777 4662 | F. 416 863 1716

-----Original Message-----

From: Reginald M. McLean <[maclaw@bellnet.ca](mailto:maclaw@bellnet.ca)>

Sent: 20 November 2018 2:49 PM

To: Jason Woycheshyn <[WoycheshynJ@bennettjones.com](mailto:WoycheshynJ@bennettjones.com)>

Subject: Castillo v. Xela et al - Letter from R. M. McLean - November 20, 2018

Please see attached.

Carmela Volpe

Assistant to Reginald McLean

1035 McNicoll Avenue

Toronto, Ontario

M1W 3W6

Tel: (416) 756-7500 x 2224

**628**

Fax: (416) 512-1212

Email: [maclaw@bellnet.ca](mailto:maclaw@bellnet.ca)

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# TAB EE

THIS IS EXHIBIT "EE" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE

BETWEEN:

MARGARITA CASTILLO

Plaintiff

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez.

Defendants

## Certificate of Non-Attendance

I, **Tara Belsito**, of the City of Toronto, in the Province of Ontario, hereby certify:

**That** on the 20th day of November, 2018, an appointment was issued returnable the 23rd day of November, 2018, at my office, Network Reporting & Mediation, 1 First Canadian Place, 100 King Street West, Suite 3600, Toronto, at the hour of ten o'clock in the forenoon, for the examination of CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez, a Defendant herein.

**That** at the said last above mentioned time and place I was attended by William A. Bortolin of the office of Bennett Jones LLP, Counsel for the Plaintiff, who waited for more than fifteen minutes, but the said Defendant did not appear, nor did anyone on their behalf.

**Dated** at Toronto this 23rd day of November, 2018.



**Tara Belsito**  
Commissioner of Oaths

**TAB FF**

THIS IS EXHIBIT "FF" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



Court File No. CV-11-9062-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE

B E T W E E N:

MARGARITA CASTILLO

Plaintiff

- and -

XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST INC., 696096 ALBERTA LTD., JUAN GUILLERMO  
GUTIERREZ and CARMEN S. GUTIERREZ, as Executor of the  
Estate of Juan Arturo Gutierrez

Defendants

-----  
This is the Continued Examination in Aid  
of Execution of CALVIN SHIELDS, via videoconference,  
personally herein, taken at the offices of Network  
Reporting & Mediation, 100 King Street West, Suite  
3600, Toronto, Ontario, on the 27th day of November,  
2018.  
-----

A P P E A R A N C E S:

WILLIAM A. BORTOLIN                      Solicitor for the Plaintiff  
  
JUAN J. RODRIGUEZ                      Solicitor for Calvin Shields  
(via videoconference)

I N D E X   O F   P R O C E E D I N G S

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I N D E X   O F   E X H I B I T S

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--	-----

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\*\*\*No undertakings or under advisements noted in  
transcript\*\*\*

## I N D E X   O F   R E F U S A L S

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--- REFUSAL.....	.111
--- REFUSAL.....	.111
--- REFUSAL.....	.112

1 --- UPON COMMENCING AT 11:10 A.M.

2 CALVIN SHIELDS; Re-Affirmed

3 CONTINUED EXAMINATION BY MR. BORTOLIN:

4 305. Q. My name is Will Bortolin. I am counsel  
5 for Margarita Castillo. You will be familiar with my  
6 colleague, Jason Woycheshyn who examined you last  
7 July. And you are Calvin Shields. Correct?

8 A. Yes.

9 306. Q. Do you still live at 4118 Oakmont Court  
10 in Vero Beach, Florida?

11 A. Yes.

12 307. Q. And are you now 86 years' old?

13 A. 87.

14 308. Q. A recent birthday?

15 A. February, yes.

16 309. Q. And you are still a member of the Board  
17 of Directors of Xela Enterprises, Ltd.?

18 A. Well, I suppose technically. We  
19 haven't had a meeting in over two years, a long time,  
20 and so I don't know what we do. We don't have a  
21 company much anymore.

22 310. Q. But you understand that you're  
23 testifying as a representative of Xela, as you were  
24 last year?

25 A. Yes, I haven't learned anything since

1 last year though.

2 311. Q. Okay. But I have. Much of what I'll  
3 be doing today will be following up on a lot of  
4 answers that we got after your last examination, and  
5 you have some of the stacks of paper in front of you.  
6 But, we got a lot of answers afterwards and so I'll be  
7 following up on some of those.

8 Xela Enterprises Ltd. I'll just refer to as  
9 Xela today. And there are some other affiliates that  
10 I'll identify more precisely as we come across them.  
11 If you don't understand a question as I'm asking it,  
12 don't hesitate to let me know. And if ever you need a  
13 break again, don't hesitate to let me know?

14 A. Thank you.

15 312. Q. You're represented by a lawyer today;  
16 and that's Juan J. Rodriguez?

17 A. Yes.

18 313. Q. And is it the same as your previous  
19 examination that he's representing you in a personal  
20 capacity?

21 A. Yes.

22 314. Q. Did you review the transcript from your  
23 last examination held on July 27, 2017?

24 A. I don't remember doing it. It was  
25 basically just saying I didn't know -- there wasn't

1 much to review, I'm afraid.

2 315. Q. So I take it from that then that you  
3 didn't see anything in the transcript that you recall  
4 thinking that you needed to correct?

5 A. Oh, heavens no. I don't even remember  
6 what the transcript was like -- when I saw it.

7 316. Q. Were you involved though in following  
8 up to figure out some of the answers to the questions  
9 you didn't know at the time?

10 A. I remember asking Mark Korol, telling  
11 him that I'd used him as a reference and that he was  
12 going to be getting questions from you people. And,  
13 that was basically the only thing I remember.

14 317. Q. And we received several answers and  
15 your lawyer had some of them beside him today. Would  
16 you have reviewed those before they were sent over to  
17 us?

18 A. Not sure what you're talking about.

19 318. Q. So there were several questions that we  
20 asked at your last exam that you didn't know, and  
21 either undertook to answer or declined to answer, but  
22 later the court directed you to answer, or directed  
23 Xela to answer with you as Xela's representative?

24 A. I still support it, I guess.

25 319. Q. And my question was just whether the

CALVIN SHIELDS - 74

1           answers that we've received and you can take it from  
2           me that we've received answers, but the question was  
3           whether you reviewed those before they were sent to  
4           us?

5                           A.    I assume I have, but I don't remember.

6    320.                Q.    As far as you know those answers were  
7           correct?

8                           A.    Yes.

9    321.                Q.    And, are there any new relevant  
10          documents that you brought with you today?

11                        A.    I have no documents at all. I have  
12          seen no relevant documents.

13    322.                Q.    So my focus today, as it was on your  
14          last exam, is going to be on the assets, liabilities,  
15          income and spending of Xela, including its  
16          subsidiaries. And I'm not going to repeat questions  
17          or try not to repeat questions that you've already  
18          been asked, except to confirm that they're up to date  
19          or bring them up to date if they're not.

20                        And most of what I'll do today, as I  
21          mentioned earlier, is follow up on some of the answers  
22          and documents that we received after your last  
23          examination. Mr. Woycheshyn addressed with you at  
24          your last exam that there was an outstanding judgment  
25          against Xela and others, which including the costs

1           award totalled a little over \$5 million.

2                       I will represent to you that there are some  
3 of the other judgment debtors that have contributed  
4 towards paying down some of that amount. But am I  
5 correct that Xela has not contributed any money  
6 towards paying the judgment debt?

7                       A. I have no idea.

8       323.           Q. If you take a different position that  
9 Xela has paid any money towards paying down the  
10 judgment debt, will you let me know?

11                      A. I don't know.

12                      THE DEPONENT: Should I be letting him know?

13                      MR. RODRIGUEZ: What's the question?

14                      MR. BORTOLIN: It's whether -- I'm putting  
15 to you that Xela has not put any money towards paying  
16 down the judgment debt, and I just want to make sure  
17 we're on the same page about that and that you don't  
18 take a different position.

19                      MR. RODRIGUEZ: I think his answer was that  
20 he does not know whether or not Xela has paid any  
21 money or not.

22                      THE DEPONENT: I don't know if they could or  
23 not.

24                      BY MR. BORTOLIN:

25       324.           Q. And if you don't know the answer to



1           that question who would?

2                   A.    Mark Korol.

3    325.           Q.    Okay, anyone else?

4                   A.    I don't think Mark Korol, I don't even  
5           think is working for Xela anymore, but he would have  
6           been the lawyer at the time, I guess, but whatever has  
7           happened since I don't know.

8    326.           Q.    Is there anyone else other than Mark  
9           Korol who would know?

10                   A.    Rodriguez or Gutierrez would probably  
11           know.

12    327.           Q.    Sorry let me make sure that's clear for  
13           the record, because of course there are a couple of  
14           Juans. Did you say that Juan Rodriguez who's sitting  
15           to your left would know the answer or that Juan  
16           Gutierrez?

17                   A.    Juan Gutierrez.

18    328.           Q.    I want to make reference to a corporate  
19           organizational chart of Xela, which was originally  
20           evidence in the application from which the judgment  
21           we're enforcing arises. And I had sent that in  
22           advance, and I'll check if your lawyer has a copy of  
23           that with him?

24                   MR. RODRIGUEZ: I don't. I do have it in my  
25           email though.

1 BY MR. BORTOLIN:

2 329. Q. And while he's looking that up, if you  
3 don't mind my asking a question while he does that.  
4 We were talking about whether Mr. Korol was still an  
5 officer of Xela. Can you tell me what your  
6 understanding is of who the current officers and  
7 directors of Xela are?

8 A. You mean now?

9 330. Q. Yes, now?

10 A. As far as I know Juan Gutierrez and I  
11 are the only ones, but I don't -- I don't -- Korol was  
12 just the secretary. He was not part of the board. So  
13 I can't answer that very well, because we've done  
14 nothing.

15 We've had no meetings or anything in the  
16 last two years, over two years, maybe more than that.  
17 So nothing has transpired, as far as I know. There's  
18 no money -- nothing we can do.

19 331. Q. Sorry continue?

20 A. Well no, that's it.

21 332. Q. Xela's incorporated under the *Ontario*  
22 *Business Corporations Act*. Are you familiar with the  
23 obligation of an OBCA corporation to update the names  
24 of its officers and directors with the registry  
25 maintained by the Ministry of Government Services?

CALVIN SHIELDS - 78

1 A. Not really, no.

2 333. Q. Do you know who would've been  
3 responsible for making those updates?

4 A. Well originally I would have guessed it  
5 was Korol, but who's doing it now I can't answer that.  
6 Is there a need for an update if the company doesn't  
7 have anything?

8 334. Q. But you're not aware of the specific  
9 updates that have been made then?

10 A. No.

11 335. Q. Sorry are you aware of the specific  
12 updates that have been made?

13 A. For what?

14 336. Q. To the registry of officers and  
15 directors. Are you aware of updates having been made  
16 to it?

17 A. No.

18 337. Q. And are you aware that Mr. Rodriguez,  
19 seated to your left, has been at times reported as an  
20 officer of the company?

21 A. No.

22 338. Q. Does that make sense to you that he  
23 would be an officer of the company?

24 A. What?

25 339. Q. Does it make sense to you that Mr.

1           Rodriguez would be an officer of the company?

2                   A.   Not really, no.

3       340.           Q.   Could it have been in a legal counsel  
4           capacity?

5                   A.   Well, he's been a counsel for us for a  
6           long time.  But I don't -- while I was involved he was  
7           not an officer.  I mean, while we had meetings he  
8           wasn't an officer.

9       341.           Q.   And so, because of the difficulty of  
10          marking as an exhibit I won't put it in front of you,  
11          but I'll represent to you that it was reported to the  
12          Ministry that he was an officer as recently as July of  
13          this year.

14                    But I take it from the best of your  
15          understanding that was incorrect?

16                   A.   Yes, to the best of my understanding.

17       342.           Q.   So since your last examination we've  
18          received a lot of documents that are directed at the  
19          subsidiaries of Xela.  Among those were several -- we  
20          requested the minute books of Xela subsidiaries, and  
21          what we received was the minute books of four  
22          companies, which for the reporter's benefit I'll spell  
23          later.

24                    But, Pahula, S.A., Metro Boliche, S.A.,  
25          Marco Polo, S.A., and La Floresta Crops de Guatemala,

CALVIN SHIELDS - 80

1 S.A. And do you recognize those as names of indirect  
2 Xela subsidiaries?

3 A. Yes, I believe so yes. Repeat them  
4 again, please?

5 343. Q. Yes, Pahula, S.A., Metro Boliche, S.A.,  
6 which I believe may also be known as Metrobol ---

7 A. That one I recognize. What was the  
8 first one?

9 344. Q. Pahula, S.A.?

10 A. Pahula -- okay.

11 345. Q. And the third was Marco Polo, S.A.?

12 A. Okay.

13 346. Q. And the fourth was La Floresta Crops de  
14 Guatemala, S.A.

15 A. Yeah.

16 347. Q. And I think you may be looking at the  
17 organizational chart that I'd asked to call up  
18 earlier. And is that right; are you looking at the  
19 organizational chart?

20 MR. RODRIGUEZ: Yes.

21 BY MR. BORTOLIN:

22 348. Q. And is that something -- I'll represent  
23 to you that that comes from evidence that was filed in  
24 the application. With the exception of two boxes that  
25 I've added myself, which are Bucharon and Management

1 Solutions Inc., and you'll see those appear a little  
2 bit differently in the chart.

3 Excluding those two boxes do you recognize  
4 the organizational chart as something you've seen  
5 before?

6 A. Long time ago, yeah, I think so.

7 349. Q. And do you recognize it as a document  
8 that was used by the Xela Board of Directors?

9 A. Yes.

10 350. Q. And as far as you know using it, and  
11 I'll tell you the dating of this goes back to about  
12 2012. As far as you knew using it in or about 2012 it  
13 was accurate?

14 A. Yeah, but that goes back a long time.  
15 But yeah, I suspect that's pretty close though. And  
16 again, I don't recognize these other two boxes.

17 351. Q. The other two boxes and you may not --  
18 you may disagree with those, as I mentioned I added  
19 them based on ---

20 A. What year was this that you're talking  
21 about?

22 352. Q. This chart is from 2012. The boxes  
23 were added based on testimony given perhaps slightly  
24 after that, maybe in 2013 or 2014. But they're based  
25 on things that were stated in affidavits or cross-

1 examinations.

2 And you don't have to agree with those  
3 boxes, my question is just if you know whether or not  
4 that's correct or not that Bucharon Universal Corp. is  
5 a subsidiary of Xela? Do you know whether that's the  
6 case?

7 A. Just looking.

8 353. Q. Sorry is that correct that it is?

9 MR. RODRIGUEZ: The question is do you know  
10 whether or not Bucharon is a subsidiary of Xela.

11 THE DEPONENT: No, I have no idea. I don't  
12 know about Bucharon.

13 BY MR. BORTOLIN:

14 354. Q. And it's not that you don't think it's  
15 a subsidiary; you just don't know one way or the  
16 other?

17 A. I don't know much about it, or anything  
18 about it.

19 355. Q. And who would know -- to the extent  
20 that this chart is missing subsidiaries or something  
21 has changed with the subsidiaries; who would be the  
22 best person to ask about that?

23 A. Probably Juan Gutierrez.

24 356. Q. And Management Solutions Inc., which  
25 I've added here as a subsidiary under Pahula. Do you

1           have any knowledge of whether that's accurate?

2                   A.    Never heard of it.

3    357.           Q.    And would that be another one that if  
4           anyone knew it would probably be Juan Gutierrez?

5                   A.    Probably.

6    358.           Q.    And so, I mention that those four  
7           companies that I listed earlier, Pahula, Metro  
8           Boliche, Marco Polo and La Floresta are ones for which  
9           we had asked for the minute books of all of Xela  
10          subsidiaries and we've received minute books for those  
11          four companies.

12                   To the best of your knowledge are there  
13          minute books for any other indirect subsidiaries?

14                   A.    I have no idea.

15    359.           Q.    And from what you described as being  
16          the process for putting this together, would this have  
17          been based on Mark Korol's understanding of who the  
18          subsidiaries were and which ones had minute books?

19                   A.    Repeat that, please?

20    360.           Q.    I'm just trying to understand where the  
21          minute books came from and why we only have minute  
22          books for four companies, rather than the rest of the  
23          companies.  Would that have been Mark Korol's decision  
24          or identification of what minute books he could find?

25                   A.    Well probably Mark Korol; he's the one



CALVIN SHIELDS - 84

1           that puts together our charts all the time, or did, I  
2           should say.

3       361.           Q.    And so, you don't know one way or  
4           another whether any of the other companies on this  
5           chart, with the exception of a couple we'll come back  
6           to, but for the most part you don't know whether the  
7           other companies on this chart had minute books?

8                    A.    No, I do not.

9       362.           Q.    And if you're not familiar with the  
10          minute books, I don't know that it does much good to  
11          pull them up and look at them.  But if I represented  
12          to you that the minute books of those four companies  
13          seem to show business activities; do you have any  
14          different information?

15                   A.    No.

16       363.           Q.    Does it surprise you that these  
17          companies are active and have an ongoing business?

18                   A.    No.  I went through a company a long  
19          time ago that I worked with that had a lot of ongoing  
20          things and the overall company was bankrupt.  So, this  
21          does not surprise me.

22       364.           Q.    Also among the documents that we  
23          received, or just if I can line this up in the  
24          organizational chart -- I may as well try to do this,  
25          just so that we're understanding what I'm looking at

1 and what you're looking at are the same thing.

2 The four companies; Pahula, Metro Boliche,  
3 Marco Polo and La Floresta, I believe all correspond  
4 with the lower left of this chart as subsidiaries  
5 under Crystal Del Pacifico.

6 MR. RODRIGUEZ: For the record, the  
7 corporate chart that you sent over does not have La  
8 Floresta.

9 MR. BORTOLIN: And that's right, and my  
10 understanding and you can tell me if you know one way  
11 or the other or you understand something different, is  
12 that La Floresta and Mayacrops are part of the same  
13 group. And if you look under Mayacrops it says  
14 includes La Floresta in this chart here.

15 MR. RODRIGUEZ: Okay. You see that -- let  
16 me put this -- All right we're on the same page.

17 BY MR. BORTOLIN:

18 365. Q. And so, would you have any idea why you  
19 would have minute books for that group of companies  
20 but not for the other ones?

21 A. No.

22 366. Q. And you may not have seen these, so  
23 again I don't know how much good it does to have you  
24 look at them. But we also received several financial  
25 statements for various companies.

1                   And some of those overlap with the ones  
2                   we've looked at, but some of them don't. One in  
3                   particular we received several years of financial  
4                   statements for was Empresas Arturo International,  
5                   which is in the upper right of that chart?

6                   MR. RODRIGUEZ: Give him a minute.

7                   BY MR. BORTOLIN:

8                   367.           Q.    And are you familiar at all with the  
9                   business operations of Empresas Arturo International?

10                  A.    No. I haven't been involved in  
11                  anything in a long time.

12                  368.           Q.    And how long is that? When was the  
13                  last time you were involved?

14                  A.    I don't know. I can't even remember  
15                  the last board meeting probably. I don't even  
16                  remember that date -- but that's it. I can't help you  
17                  much on that one.

18                  369.           Q.    And when you were on the board and I  
19                  think you had a date estimate at your last  
20                  examination, so you don't need to try to remember  
21                  again; I think we've already covered it. But when you  
22                  were on the board of Xela, or when the Board of Xela  
23                  was meeting I should say; were you looking at the  
24                  activity of the subsidiaries and the indirect  
25                  subsidiaries?

1                   A.    I suppose so.  We're dating back now a  
2                   long ways, but we reviewed financial things at the  
3                   meetings and we're always on the dockets.

4    370.            Q.    And was Xela at least at the time  
5                   exercising some oversight over the subsidiary  
6                   companies?

7                   A.    Yes.

8    371.            Q.    And so, is it your understanding that  
9                   that oversight has stopped?

10                   A.    Yes -- well, I assume so.  Juan is  
11                   still involved; Juan Gutierrez is still involved with  
12                   them.  So, what is taking place I can't answer that.  
13                   But Xela basically is defunct.  The companies I think  
14                   are mostly running pretty much on their own.

15    372.            Q.    And so, if anyone knew whether Xela was  
16                   exercising any oversight over the subsidiaries it  
17                   would be Juan Gutierrez?

18                   A.    Yes, I think so yeah.

19    373.            Q.    Can I ask you to follow up and ask Juan  
20                   whether he's exercising, as president of Xela, whether  
21                   he's exercising any oversight over any of the direct  
22                   or indirect subsidiaries?

23                   MR. RODRIGUEZ:  Why can't you ask him  
24                   yourself, since he's in Toronto?

25                   MR. BORTOLIN:  I would like to.  I examined

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1 him in a personal capacity and he steadfastly refused  
2 to talk about Xela. And I invited him to be examined  
3 on Xela's behalf today rather than Mr. Shields, and  
4 that proposal was declined.

5 THE DEPONENT: Well if he won't respond, why  
6 should I, or why should I even ask him?

7 MR. BORTOLIN: You're here testifying as a  
8 representative of Xela; the representative that Xela  
9 wanted me to examine. And so, to the extent you're a  
10 director of the company you can obtain information in  
11 that capacity from other people on behalf of the  
12 company. I will make those requests for you to do  
13 that. In my view those are proper requests, but you  
14 can refuse them.

15 THE DEPONENT: Look, I'm 87 years' old. I'm  
16 retired basically. Why should I get back involved?  
17 You're asking me to do that. I see no benefit to me.

18 BY MR. BORTOLIN:

19 374. Q. And we covered at the beginning that  
20 you understood you were testifying on behalf of Xela  
21 and that you are still a Xela director.

22 A. But I don't have to ask questions that  
23 you can ask. You pursue it. I see no reason why I  
24 should be getting involved at this stage. The company  
25 is basically defunct. There's nothing for me to be

1           gained or, I don't have any responsibility of what's  
2           going on now.

3       375.           Q.    Well, I suppose you haven't seen the  
4           documents, but I'll represent to you that some of the  
5           documents we've seen show that some of these  
6           companies, like Latin American Procurement and  
7           Impresas Arturo International have many employees and  
8           significant assets and significant liabilities, and  
9           that they're continuing operating businesses with a  
10          lot going on in them.

11                    And so, my questions are not just directed  
12           at Xela, they're also directed at the assets that it  
13           owns, which includes these subsidiaries that still  
14           have a lot going on in them. And I understand you're  
15           saying that you're not involved in that -- the best I  
16           can tell you is that ---

17                    A.    I can't respond as to what's going on  
18           in that if I don't know. If they're going on  
19           independently on their own, more power to them, I  
20           guess. But I don't know where it all leads to.

21       376.           Q.    And just to explain why I'm asking  
22           these questions of you, and I mentioned this, but I'm  
23           only entitled to examine one representative on behalf  
24           of Xela. I had suggested that that representative be  
25           Juan Gutierrez, but I was told that I should examine

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1           you instead by Xela's counsel.

2                         And so, on that basis I can't ask anyone  
3 else these questions. If when I asked them of Juan he  
4 refused to answer them, even when I touched generally  
5 on Xela. So you're the only person I can ask these  
6 questions of.

7                         And if you'll refuse the question that's  
8 your prerogative. In my view they're proper questions  
9 and I'll at least put them on the record.

10                        MR. RODRIGUEZ: But for the record and I  
11 don't mean to be argumentative, but you know Mr.  
12 Shields lives in Florida. Juan Guillermo Gutierrez  
13 lives in Toronto. Xela is a Toronto company, and this  
14 is a Toronto case. The Toronto Court should have  
15 jurisdiction over Juan Guillermo.

16                        If he is not answering your questions, I  
17 assume that you have the ability to compel him to  
18 answer questions and obtain a contempt. Why you would  
19 expect that a Florida resident living in the United  
20 States has to somehow, I don't know, undertake to ask  
21 questions of a witness who's in your jurisdiction,  
22 just doesn't make any sense to me.

23                        MR. BORTOLIN: Well, and this is getting  
24 into argument but I don't know that it's useful for  
25 our purposes. But, if it helps eliminate roadblocks

1 for the remainder of my questions we may as well get  
2 into it.

3 But I can only examine one person on behalf  
4 of Xela and the person that the company counsel has  
5 put up for that is Mr. Shields. Mr. Gutierrez would  
6 not put himself up to be examined on behalf of Xela,  
7 and I examined him on a personal capacity, but he  
8 refused questions that were not directed to him in his  
9 personal capacity.

10 And so, my questions directed at Xela I can  
11 only ask of you because you're the person that Xela's  
12 put up to answer those questions.

13 MR. RODRIGUEZ: All right, well then I guess  
14 to the extent he knows he'll tell you. If Mr. Shields  
15 does not know then his answer will be that he does not  
16 know and then we'll have to see what happens after  
17 that.

18 MR. BORTOLIN: And I'll ask for undertakings  
19 to make inquiries, and again you may have reasons for  
20 refusing those. And my position on it will be that  
21 they're proper questions and even if you refuse them  
22 I'll just put them on the record.

23 MR. RODRIGUEZ: Okay.

24 BY MR. BORTOLIN:

25 377. Q. I don't recall the question that I



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1           asked earlier in nature, but it was in the nature of  
2           what I was just describing as an undertaking to make  
3           inquiries of Mr. Gutierrez. I believe it was. I just  
4           want to make sure I have it clearly on the record, a  
5           request to inquire of Mr. Gutierrez whether Impresas  
6           Arturo International has ongoing business activities.

7                       MR. RODRIGUEZ: We're refusing the  
8           undertaking.

9           --- REFUSAL

10           BY MR. BORTOLIN:

11       378.           Q.   And this will be another question that  
12           I fully expect you won't have the answer to based on  
13           what you've told me already. But, when I look at the  
14           financial statements that have been provided to us for  
15           Empresas Arturo International Limited, there's a  
16           statement as at June 30, 2015 that shows total assets  
17           in excess of 10.3 million.

18                       And then, the same statement for 2016  
19           appears June 30, 2016, appears to show current assets  
20           of \$421,000 and some change. And the question I'll  
21           ask if you know the answer to I'll ask, is what  
22           happened between 2015 and 2016 that reduced the assets  
23           of Empresas Arturo International by more than nine and  
24           a half million dollars? Do you know the answer to  
25           that?

1 A. I don't know. I don't remember.

2 379. Q. And this will be a request for an  
3 undertaking that I expect you'll refuse, but I'll ask  
4 it anyways, to ask Juan what happened between 2015 and  
5 2016 to the assets of Empresas Arturo International  
6 Limited?

7 MR. RODRIGUEZ: Okay, you can ask him.

8 MR. BORTOLIN: I am asking.

9 MR. RODRIGUEZ: You're asking whether or not  
10 we'll undertake to ask Juan Guillermo?

11 MR. BORTOLIN: Yes.

12 MR. RODRIGUEZ: The answer is we're going to  
13 refuse to do that because Juan Guillermo is in Toronto  
14 and you can just as easily ask him yourself. And he's  
15 subject to the jurisdiction of the Courts of Ontario,  
16 and if he refuses to answer you should be able to  
17 compel his answer. But he's the one that should know  
18 the answer to that, not Mr. Shields.

19 --- REFUSAL

20 BY MR. BORTOLIN:

21 380. Q. We were also provided after your last  
22 examination a listing of directors and officers of  
23 Xela and several Xela affiliates. Would that have  
24 been a document that you saw before it was provided to  
25 us? Does that sound familiar?

1 A. What document?

2 MR. RODRIGUEZ: A listing of officers and  
3 directors of Xela.

4 THE DEPONENT: At which point? At what  
5 time?

6 BY MR. BORTOLIN:

7 381. Q. Well, they were provided to us I  
8 believe it was in or around March of this year, so it  
9 isn't dated. My understanding is that it would've  
10 been current as of March of this year.

11 A. The only ones that are on there are  
12 Juan and myself, I believe, because after Arturo died  
13 most of the directors resigned.

14 382. Q. And so this chart was not just Xela  
15 though but also several Xela subsidiaries, direct and  
16 indirect. And it listed their directors and officers.  
17 And I take it from your answer that that's not a  
18 document that you're familiar with?

19 A. Yeah, offhand, no. If it's stating  
20 that many people on the board it was -- I can't say;  
21 I'm not familiar.

22 383. Q. So as far as you know that was probably  
23 an answer provided by Mark Korol, that listing of  
24 directors and officers?

25 A. I have no idea.

1           384.           Q.    Seeing as you're not familiar with the  
2           document, I know it doesn't do any good to put it in  
3           front of you, but I'll represent to you that it lists  
4           you as a director of not just Xela Enterprises, which  
5           we've talked about, but also of Tropic International  
6           Ltd. Is that correct?

7                    A.    Yeah, I believe I was on that for a  
8           while.

9           385.           Q.    And is that another company that hasn't  
10          met in the last two years?

11                   A.    That is correct.

12          386.           Q.    You're also listed as a director of  
13          Lisa, S.A. incorporated in Panama. Is that correct?

14                   A.    What?

15          387.           Q.    This chart that was produced to us as  
16          an answer to an undertaking given on your last exam,  
17          or an answer to a refusal that Xela was ordered to  
18          answer, it lists you as a director of Lisa S.A. Is  
19          that correct?

20                   A.    I believe so.

21          388.           Q.    You believe so, you said?

22                   A.    Yes.

23          389.           Q.    And that's still the case today that  
24          you're a director of Lisa, S.A.?

25                   A.    Yes.

1 390. Q. The document also listed you as the  
2 president of Lisa, S.A. Is that correct?

3 A. Yes.

4 391. Q. And is Lisa, S.A. a company that has  
5 met within the past two years?

6 A. Well, not really, not that was done  
7 lately.

8 THE DEPONENT: Are you aware of anything?

9 MR. RODRIGUEZ: No.

10 THE DEPONENT: I don't think so.

11 BY MR. BORTOLIN:

12 392. Q. And that document also listed David  
13 Harry as another director and officer. Are you  
14 familiar with him?

15 A. Yes.

16 393. Q. And are you -- if Lisa were to hold a  
17 meeting would you coordinate that with him and what  
18 would you do to have a meeting?

19 A. Well, I'm not here for Lisa; are we?

20 394. Q. What we're here for is Xela, and I  
21 don't know if you're familiar with the background on  
22 this.

23 A. Xela -- I mean, Lisa under Gavinvest?

24 395. Q. Yes.

25 THE DEPONENT: Are we supposed to be

1           answering questions on Lisa?

2                       MR. RODRIGUEZ: No.

3                       THE DEPONENT: I mean, it seems to me we're  
4           getting off subject.

5           BY MR. BORTOLIN:

6           396.           Q. No, this is very much on the subject.  
7           And you may not be familiar with this background, but  
8           there were questions, several questions directed to  
9           you on the last exam that concerned subsidiaries and  
10          indirect subsidiaries of Xela.

11                       And I believe Mr. Rodriguez may have taken  
12          those under advisement. Xela's law firm here in  
13          Toronto then refused to answer a lot of those  
14          questions. Those questions then went before a motion  
15          with respect to whether those refusals were proper,  
16          and a Master directed that questions concerning the  
17          indirect subsidiaries were proper and were required to  
18          be answered.

19                       And if that's something you're not familiar  
20          with, we can go off the record for a few minutes and I  
21          can send the Master's reasons to Mr. Rodriguez, if it  
22          helps inform whether those are proper questions?

23                       MR. RODRIGUEZ: Go ahead and send me that.  
24          I'm not sure that -- I don't want to stop the  
25          examination, so just send me the email while you

1 continue your questioning and I'll look at that.

2 MR. BORTOLIN: I just sent that over. I  
3 will think about whether I can move on to something  
4 else, although many of my questions that I have left  
5 will be concerned with indirect subsidiaries.

6 MR. RODRIGUEZ: I think the question that  
7 you posed to him was whether or not he was aware of  
8 the officers of Lisa?

9 MR. BORTOLIN: Yes.

10 MR. RODRIGUEZ: You also asked him whether  
11 or not there had been any meetings of the Board of  
12 Directors of Lisa?

13 MR. BORTOLIN: Yes.

14 MR. RODRIGUEZ: Okay.

15 MR. BORTOLIN: And are those questions  
16 you're refusing to answer?

17 MR. RODRIGUEZ: You can answer those  
18 questions -- I think he did answer those questions  
19 that there have been no meetings of Lisa, but he can  
20 confirm or not.

21 THE DEPONENT: Well, there have been no  
22 meetings.

23 BY MR. BORTOLIN:

24 397. Q. Okay. And I believe you discussed this  
25 at the last examination, but it's correct that Lisa

1 holds a share certificate or share certificates in  
2 Avicola?

3 MR. RODRIGUEZ: Well, I'm going to object to  
4 the form of the question, because there is no company  
5 called Avicola. There's a group of companies in  
6 Guatemala that is called The Avicola Group and that's  
7 comprised of last we heard somewhere around 22  
8 companies.

9 --- REFUSAL

10 BY MR. BORTOLIN:

11 398. Q. And what is the name of the entity in  
12 which Lisa has a share certificate?

13 MR. RODRIGUEZ: Anyway, I'm going to object  
14 to the form of the question. I just told you that  
15 it's not one company, it's 22 different companies.

16 --- REFUSAL

17 MR. BORTOLIN: And I understand what you're  
18 saying and I appreciate the clarification. Let me ask  
19 the question more generally then.

20 BY MR. BORTOLIN:

21 399. Q. Am I correct in my understanding that  
22 Lisa holds a share certificate in at least one of  
23 those 22 companies?

24 A. Yes.

25 400. Q. You said yes, sorry?



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1 A. Yes.

2 401. Q. Can you tell me which one or ones of  
3 the Avicola entities that is?

4 A. No. I have no idea.

5 402. Q. And are there paper copies of the share  
6 certificates?

7 A. I don't know. I suppose, though I  
8 don't know.

9 403. Q. And if you as a president and director  
10 of Lisa don't know the answer to that question; who  
11 would?

12 A. Probably Mark, either Mark or Juan --  
13 probably Juan.

14 404. Q. And so, do I understand from that  
15 answer that even though, and by Mark you mean Mark  
16 Korol?

17 A. Yes.

18 405. Q. And by Juan you mean Juan Gutierrez?

19 A. Yes.

20 406. Q. And so, if I understand what you're  
21 saying is that even though they're not officers or  
22 directors of Lisa, they have some understanding of  
23 what's going on inside that company?

24 A. Yes.

25 MR. BORTOLIN: And could I ask you to

1           inquire of them what the name of the entity is in  
2           which Lisa holds shares? Which ones of the Avicola  
3           entities in which Lisa, S.A. holds shares?

4                     THE DEPONENT: As I say, why should I get  
5           involved at this stage? This isn't about Xela. I'm  
6           retired basically.

7                     MR. RODRIGUEZ: In answer to your question  
8           is he's refusing to do that undertaking and for the  
9           record I've told you already that it's not one, it's  
10          like 22 different companies.

11                    MR. BORTOLIN: Right and my question was to  
12          inquire which ones of the entities in which the share  
13          certificate was held.

14                    MR. RODRIGUEZ: Right and he told you that  
15          the information is either Mark Korol or Juan  
16          Guillermo, both of whom live in your neck of the  
17          woods, and both of them are subject to your  
18          jurisdiction. And for the record, Lisa would hold a  
19          share certificate in all 22 different companies, not  
20          just one.

21                    MR. BORTOLIN: So you have an understanding  
22          yourself then that the answer is is that it holds  
23          shares certificates in all 22?

24                    MR. RODRIGUEZ: It's a matter of public  
25          record. In fact, I think it's even part of the

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1 Statement of Claim in Toronto, the original 19  
2 companies is also a matter of public record. Over the  
3 years they've grown to 22, and like I said its 22  
4 different companies that are referred to as the  
5 Avicola Group.

6 MR. BORTOLIN: And so, if I refer to the  
7 Avicola Group again today I'll refer to it as having  
8 that meaning that you just set out. And I don't  
9 recall if I asked you this, do you know, well the  
10 question I asked was if you knew whether those shares  
11 certificates were paper, and I don't know that I got  
12 an answer to that, so let me make sure I ask that  
13 again.

14 BY MR. BORTOLIN:

15 407. Q. Do you know whether the share  
16 certificates that Lisa holds in the Avicola Group, as  
17 we just defined it are in paper?

18 A. Repeat again specifically?

19 MR. RODRIGUEZ: Do you know whether or not  
20 the share certificates of the Avicola Group are on  
21 paper; paper share certificates?

22 THE DEPONENT: No, I do not. I assume they  
23 are, but I don't know.

24 BY MR. BORTOLIN:

25 408. Q. Is it safe to say they probably are on

1 paper somewhere?

2 MR. RODRIGUEZ: The answer was that he does  
3 not know but he assumes they are.

4 BY MR. BORTOLIN:

5 409. Q. And I'm following up on that. Do you  
6 assume because that would be typical for this type of  
7 company, of these types of companies where the Avicola  
8 Groups are incorporated?

9 A. Yes, that's what I assume. I don't  
10 know -- I've never seen any of the shares of any of  
11 these companies.

12 410. Q. So I take it you don't know where those  
13 shares certificates would be?

14 A. That's correct.

15 411. Q. And who would know the answer to that  
16 question?

17 A. I assume that Juan Gutierrez would.

18 412. Q. And I know your answer to this already,  
19 but I'm still going to ask it.

20 MR. BORTOLIN: Can I ask you to inquire of  
21 Mr. Gutierrez where the share certificates are?

22 THE DEPONENT: You can talk to him yourself.

23 MR. BORTOLIN: I take that as a refusal, I  
24 think correctly?

25 MR. RODRIGUEZ: Yes.

1 --- REFUSAL

2 BY MR. BORTOLIN:

3 413. Q. The financial statements that we  
4 received as answers to undertakings go up to, as far  
5 as I can tell, June of 2017. Are you aware if Xela or  
6 any of its subsidiaries, direct or indirect, has  
7 produced another financial statement more recent than  
8 that since then?

9 A. No, I have no idea -- repeat the date  
10 that you said they were to?

11 414. Q. So I just want to make sure I have the  
12 most up-to-date financial statements as possible of  
13 Xela and its subsidiaries. So my question was first  
14 whether you believe any more recent statements than  
15 June 2017 existed?

16 A. June 1917?

17 MR. RODRIGUEZ: 2017.

18 THE DEPONENT: This year?

19 MR. RODRIGUEZ: No, last year.

20 THE DEPONENT: Well, okay. I didn't even  
21 know there was statements then, so...

22 BY MR. BORTOLIN:

23 415. Q. And who would be aware of whether more  
24 recent financial statements existed?

25 A. I would suppose Mark Korol, but again

1 he's not working with Xela anymore, so because he  
2 wasn't getting paid either.

3 416. Q. So if not Mark Korol, then who?

4 A. Well there's only one left and that's  
5 Juan Gutierrez, and he doesn't have any money either.

6 417. Q. And so again, even though I know your  
7 answer to this I still have to ask it. Can I ask you  
8 to inquire of Juan to provide me with copies of any  
9 more recent financial statements for Xela or any of  
10 its direct or indirect subsidiaries, subsequent to  
11 June 2017, that have not been provided to us?

12 A. No.

13 --- REFUSAL

14 BY MR. BORTOLIN:

15 418. Q. Have you Mr. Shields received any  
16 compensation from Xela since your last examination?

17 A. No.

18 419. Q. Have you had any expenses reimbursed  
19 since your last examination in July of 2017?

20 A. No.

21 420. Q. And Mr. Rodriguez is representing you  
22 today. Is he being compensated by Xela for attending  
23 today?

24 A. He's doing it; I take it as an old  
25 friend of me and our past relationship. I don't know

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1           any more than that. I was a good friend of Arturo and  
2           that's why I stayed on the board, and he has been very  
3           gracious in supporting me through this.

4           421.           Q.    I've asked about financial statements  
5           subsequent to what we've received. I'm going to ask a  
6           similar question with respect to meeting minutes. The  
7           ones we have are dated in 2016 and 2017 for the group  
8           of four companies that I mentioned earlier on in the  
9           examination.

10                        To your knowledge are there any other  
11           meeting minutes, either from different companies among  
12           Xela and its direct and indirect subsidiaries, or that  
13           are more recent than 2017?

14                        A.    No.

15           422.           Q.    And if such documents did exist would  
16           Juan be the one that knows about them?

17                        A.    I suppose.

18           423.           Q.    And I suggest Juan because he was the  
19           answer to similar answers I'd asked before. Is there  
20           anyone else who would aware?

21                        A.    He's the most likely one. I can't --  
22           well, Mark Korol would be the only other one, but  
23           again he's not part of the Lisa -- Xela anymore.

24           424.           Q.    And so when you say that, I haven't  
25           asked you to make any inquiries of Mr. Korol, as was

1 the case on the last exam. Based on my understanding  
2 from the answers you've given that he's not under  
3 Xela's power or control anymore.

4 Am I understanding that correctly, that Mr.  
5 Korol is not under Xela's power or control anymore?

6 A. That's correct, to my knowledge.

7 425. Q. But, of course Juan Gutierrez as the  
8 president of the company is. Right?

9 A. Yes. I would guess so. Again, Xela  
10 isn't doing anything.

11 426. Q. Well, let me follow up on that. So, it  
12 has subsidiaries that I'll represent to you based on  
13 the documents we provided, do have ongoing operations  
14 and employees. And I just want to make sure I  
15 understand that these are completely unsupervised, at  
16 least at the Board of Directors level by Xela?

17 A. I would say that's correct, yes. We  
18 don't have any control over -- well, I assume they're  
19 running it on their own.

20 427. Q. Well let me drill down on that. So, if  
21 we look at a company like Empresas Arturo  
22 International, which is in the upper right of the  
23 organizational chart. And just so I don't forget, we  
24 should mark that as an exhibit, if there's no  
25 objection from Mr. Rodriguez -- Exhibit number 1,



1           which is the Xela organizational chart.

2           --- EXHIBIT NO. 1: Xela Organizational Chart.

3           BY MR. BORTOLIN:

4           428.           Q.    So sorry, following up to where I was  
5           asking my question before, with respect to Empresas  
6           Arturo International, that company is 100% wholly  
7           owned by Xela. Right?

8                        A.    I don't know.

9           429.           Q.    Well, let's assume that it is, because  
10           that's what's indicated on the chart.

11                       A.    When was this chart done?

12           430.           Q.    This chart was prepared I believe in or  
13           -- or it was current as of in or around 2012.

14                       A.    Well, I can't answer. I don't remember  
15           exactly what's transpired on any of this.

16           431.           Q.    And my question is slightly  
17           hypothetical, but it's that if Xela wholly owns a  
18           company like Empresas Arturo International and  
19           Empresas Arturo International holds an annual meeting  
20           to elect its directors, whomever votes on Xela's  
21           behalf can pick whoever they want to appoint to the  
22           Board of Directors.

23                        Is that consistent with your understanding  
24           of how corporate law works?

25                        A.    Yeah.

1           432.           Q.    And so what I'm suggesting to you on  
2                           that basis is that if Xela wanted to it could  
3                           reconstitute the board of directors of a wholly-owned  
4                           subsidiary like Empresas Arturo International. Do you  
5                           agree with that?

6                           A.    Yeah, if it's got control over it, I  
7                           would suppose that's correct, yes.

8           433.           Q.    And so, if Xela wanted to exercise  
9                           control over the subsidiaries, my suggestion to you is  
10                          that it could?

11                          A.    I suppose.

12                          MR. RODRIGUEZ: The answer was "I suppose".

13                          MR. BORTOLIN: Sorry, I didn't hear. I may  
14                          not have any more questions if we can just take a 10-  
15                          minute break I'll just go over my notes and make sure  
16                          that's the case?

17                          MR. RODRIGUEZ: Sure.

18                          --- OFF THE RECORD (12:03 P.M.) ---

19                          --- UPON RESUMING (12:11 P.M.) ---

20                          BY MR. BORTOLIN:

21           434.           Q.    I haven't asked you today about Xela  
22                           International Inc. Is that a company of which you're  
23                           also a director?

24                           A.    I don't think so.

25           435.           Q.    I don't know that it refreshes your

CALVIN SHIELDS - 110

1 memory at all, but I mentioned earlier that we've been  
2 provided with a list of officers and directors for  
3 various Xela companies and you were listed on that as  
4 a director of Xela International?

5 A. I mean, it could have been. I'm a  
6 director of a number of companies over the years. I  
7 don't seem to do anything with them anymore.

8 436. Q. But I take it from it not being fresh  
9 in your mind, that you haven't attended any Xela  
10 International board meetings in the last two years?

11 A. No.

12 437. Q. And do you have an understanding of who  
13 is in charge of Xela International?

14 A. No. I assume Juan, but I don't know.

15 438. Q. And I'll let you know that that's what  
16 it says on the document that was provided to us, is  
17 that he's the president of the company and the other  
18 director. We were provided with financial statements  
19 of Xela International up to May 31, 2016.

20 I take it you're not aware of any financial  
21 statements being approved after that date?

22 A. No -- well.

23 439. Q. I will ask you to inquire of Juan  
24 whether there are more recent financial statements for  
25 Xela International Inc., and if so to provide them?

1 A. No.

2 --- REFUSAL

3 440. Q. We received also as a document  
4 subsequent to the last examination; a list of Xela's  
5 account receivables. One of those account receivables  
6 was from Xela International. And would you have any  
7 understanding of whether any amount of that money has  
8 been paid back from Xela International to Xela  
9 Enterprises?

10 A. No idea.

11 441. Q. And who would be aware of whether there  
12 had been any money paid back from Xela International  
13 to Xela Enterprises, if not you?

14 A. I suppose it would be Juan, if he's the  
15 one that's listed as president.

16 442. Q. I will ask you to inquire of Juan  
17 whether any money has been paid back from Xela  
18 International to Xela Enterprises under the account  
19 receivable.

20 A. No, the same reason we've discussed  
21 before.

22 --- REFUSAL

23 443. Q. There is also an account receivable  
24 listed in Xela's -- or, we were advised that Xela has  
25 an account receivable also from Empresas Arturo

CALVIN SHIELDS - 112

1 International. And are you aware of any payments  
2 being made by Empresas Arturo International to Xela on  
3 account of that account receivable, in the last year  
4 and a half?

5 A. No.

6 MR. BORTOLIN: Will you please ask Juan  
7 whether he's aware of any payments being made under  
8 that account receivable?

9 THE DEPONENT: No.

10 --- REFUSAL

11 BY MR. BORTOLIN:

12 444. Q. I asked you about Xela's officers and  
13 directors, and I just want to be comprehensive and  
14 make sure I don't miss it. Are you aware of any  
15 current Xela employees who are not officers or  
16 directors?

17 A. The ones that are not?

18 445. Q. So, someone who works for Xela that is  
19 neither an officer nor a director?

20 A. No, I don't know.

21 MR. RODRIGUEZ: Are you aware of any  
22 employees in Xela?

23 THE DEPONENT: No.

24 BY MR. BORTOLIN:

25 446. Q. And am I correct in understanding that

1 Xela no longer has an operating office?

2 A. That's correct.

3 447. Q. And you answered some questions at the  
4 last examination with respect to there being  
5 litigation with respect to Lisa's shares in Avicola  
6 Group. Do you recognize the litigation I'm talking  
7 about?

8 A. No, I'm not sure what you're referring  
9 to.

10 448. Q. I believe it was characterized as an  
11 exclusion action brought against Mr. Gutierrez' family  
12 in Guatemala?

13 A. I am aware of it; I don't remember it.

14 449. Q. And I'm being a bit nonspecific because  
15 my understanding is that it's actually, and I believe  
16 you discussed it on your last exam, but it's actually  
17 several pieces of litigation and not just one case on  
18 one basis, but several pieces of litigation. Do you  
19 have some general familiarity with what I'm talking  
20 about?

21 A. Vaguely. I know that there's been  
22 litigation, including this particular thing we're  
23 talking about here today against Juan. And there has  
24 been the litigation for many years with the group with  
25 regard to family members in Guatemala.

1                   But more than that, that's about the extent  
2                   of what I know.

3           450.           Q.    And do you have any current information  
4                   on the status of that litigation, and whether it has  
5                   any prospect of being resolved?

6                   A.    Actually no.  It's been on the verge of  
7                   being resolved for many years, but it never has been.

8           451.           Q.    And would the person who does have  
9                   knowledge of the status of that litigation again be  
10                  Juan Gutierrez?

11                  A.    Yes.

12                  MR. BORTOLIN:  Okay, subject to the refusals  
13                  and undertakings, although I don't think you gave me  
14                  any, but subject to refusals and undertakings those  
15                  are my questions.  Thank you for your time.

16                  THE DEPONENT:  Thank you.

17                  MR. RODRIGUEZ:  Have a good day.

18                  MR. BORTOLIN:  You too.

19

20                  --- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 12:19 P.M.

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I hereby certify that this is the  
continued Examination in Aid of  
Execution of CALVIN SHIELDS, taken  
before me to the best of my skill  
and ability on the 27th day of  
November, 2018.

-----  
LAILA A. STEPHEN - Certified Court Reporter

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**TAB GG**

THIS IS EXHIBIT "GG" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

Source / Garnishee	Debtor	Date Served with Garnishment	Amount Recovered/Date	Amount
TD Canada Trust	Carmen S. Gutierrez (Executor of Estate of Juan Arturo Gutierrez)	May 3, 2017	3,211.00 (August 15, 2017) "Direct payout" as per Enforcement Office	\$3,211.00
TD Canada Trust	Xela Enterprises Ltd.	May 3, 2017	133568.64 (August 15, 2017) 838.00 (September 11, 2017)	\$134,406.64
TD Canada Trust	All 3 Arturo	September 12, 2017	Cheques received March 5, 2018	\$3,764.72
TD Canada Trust			Proposed Distribution of Monies Received dated November 21, 2017; Cheques received December 15, 2017	\$13,213.72
Car auction			Monies received February 28, 2018	\$181,607.90
Car auction			Monies received March 22, 2018	\$27,350.40
Car auction			Monies received April 27, 2018	\$4,710.49
TD Bank			Proposed Distribution of Monies Received dated August 10, 2018 (TD Canada Trust)	\$889.66
MAG			Cheque No. 047798 (July 18, 2018)	\$16.58
Parry Sound Property Auction				\$774,122.26
2 Gordon Road Sale	Juan		Monies received on or about August 20, 2018	\$425,000.00
<b>TOTAL RECOVERED:</b>				<b>\$1,568,293.37</b>

**ТАВ НН**

THIS IS EXHIBIT "HH" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
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Katrina Crocker

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**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**

EXAMINATION OF Carmen Gutierrez

Castillo vs Xela  
 DATE July 26, 2017  
 NETWORK COURT REPORTING

ESTATE OF J-ARTURO GUTIERREZ  
 STATEMENT OF LIABILITIES  
 as at September 19, 2016

Joint Liability with Carmen Gutierrez

Liability No.	Creditor	Particulars	Outstanding Balance	Currency
1	Castillo vs. Xela Enterprises Ltd.	Judgement Awarded to Plaintiffs, Jointly and Severally against Xela Enterprises Ltd. and its Shareholders, Currently in Appeals Process in Ontario Superior Court	\$ 4,250,000.00	CAD
2	TD Canada Trust	Line of Credit- Secured by 1 Post Road Residence - Account No. 1043 3221862	\$ 1,203,962.95	CAD (joint)
3	American Express	Centurion Card from American Express Account No. 3735 009474 22000	\$ 48,705.01	CAD
4	TD Canada Trust	Gold Elite Visa Account No. 4520 8500 1682 9039	\$ 35,030.05	CAD
5	MVL Leasing	Lease Buyout of 2013 Mercedes-Benz SL550R Convertible SS - 16 months remaining in Lease	\$ 33,086.00	CAD
6	TD Canada Trust	First Class Travel Visa Account No. 4520 8800 2340 7420	\$ 25,749.40	CAD
7	Humphrey Funeral Home A.W. Miles Chapel Limited	Funeral Expenses (Total \$29,389.9 Less \$5,000 Deposit)	\$ 24,389.90	CAD
8	Sunnybrook Health Science Center	828916A-1	\$ 8,800.00	CAD
9	Juan Guillermo Gutierrez	Deposit to Humphrey Funeral Home - Funeral Expenses	\$ 5,000.00	CAD
10	Juan Guillermo Gutierrez	Payment to Floris Flower Co. - Funeral Expenses	\$ 2,022.70	CAD
11	Carmen Gutierrez	Payment to Qualicare Inc. - Inv. 3262	\$ 1,175.99	CAD
12	Chubb Edwards	344776	\$ 797.22	CAD
13	Sunnybrook Health Science Center	008582401-1 & 08583738-1	\$ 85.20	CAD
14	Life Labs	14189939	\$ 65.00	CAD
15	Receiver General	2016 Final T1 Tax Return	TBD	CAD
16	Rogers Design Group	GUT12	\$ 108,000.00	USD
17	Sheridan Emergency Physician Services, Inc.	100110000-A	\$ 1,367.00	USD
18	Palm Beach County Fire Rescue	37928507 Inc#PBC16043554	\$ 663.75	USD
19	Diversified Consultants Inc. (AT&T Collector)	37856511	\$ 127.26	USD
20	Treasure Coast Pathology	TCP00495090	\$ 60.00	USD
		Subtotal Liabilities USD	\$ 110,218.01	
		Subtotal Liabilities CAD	\$ 5,638,869.42	
		Total Liabilities CAD @ 1.30 CAD:USD	\$ 5,782,152.83	

# TAB II

THIS IS EXHIBIT "II" TO  
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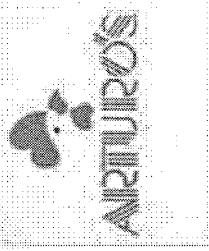
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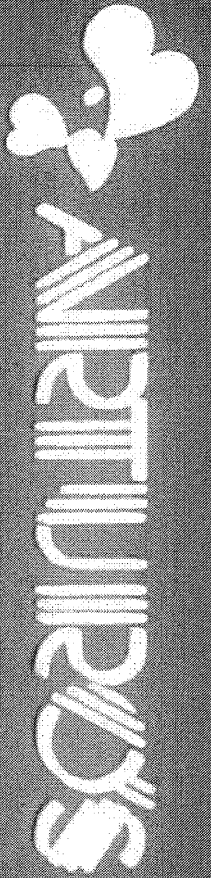


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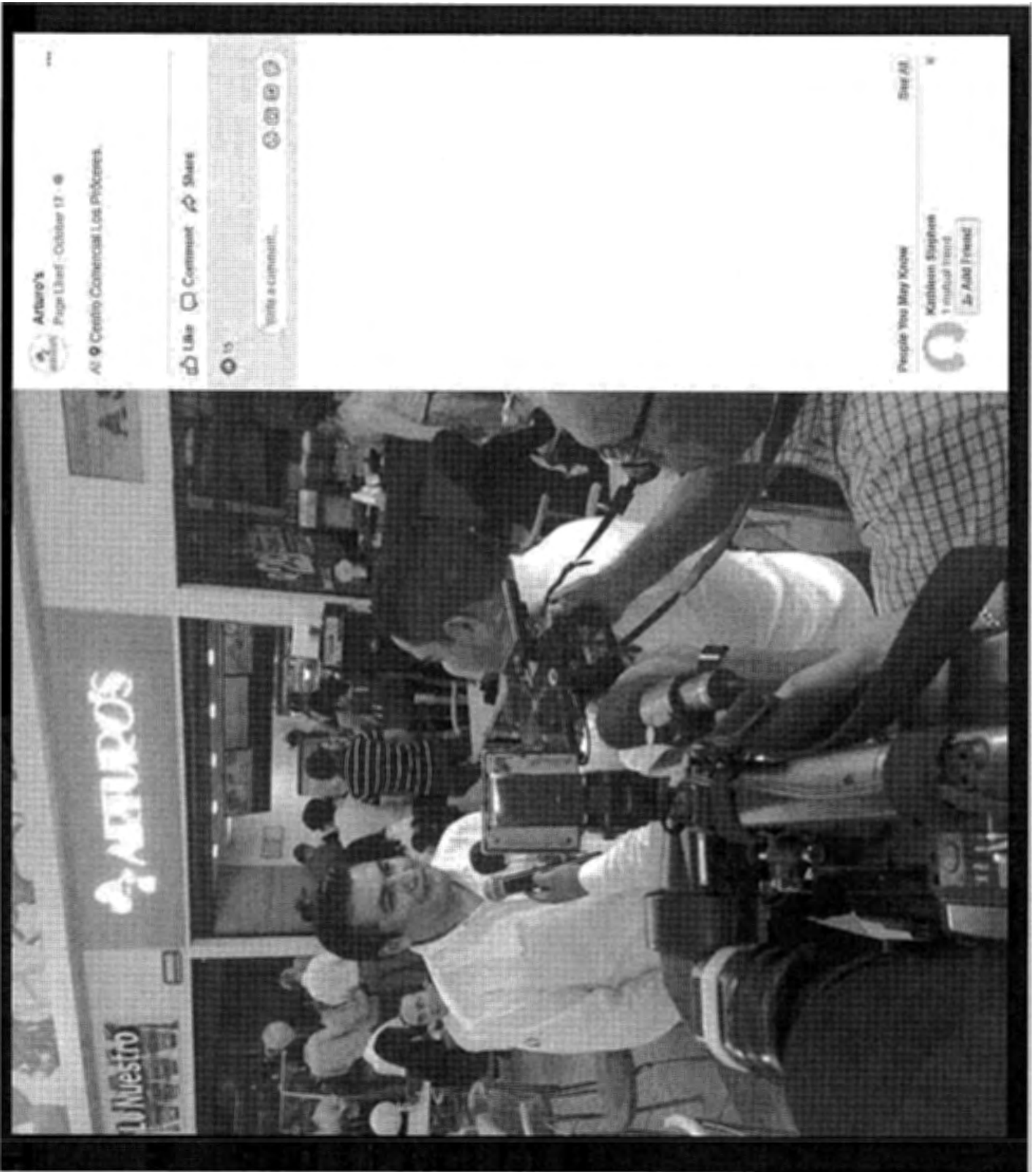
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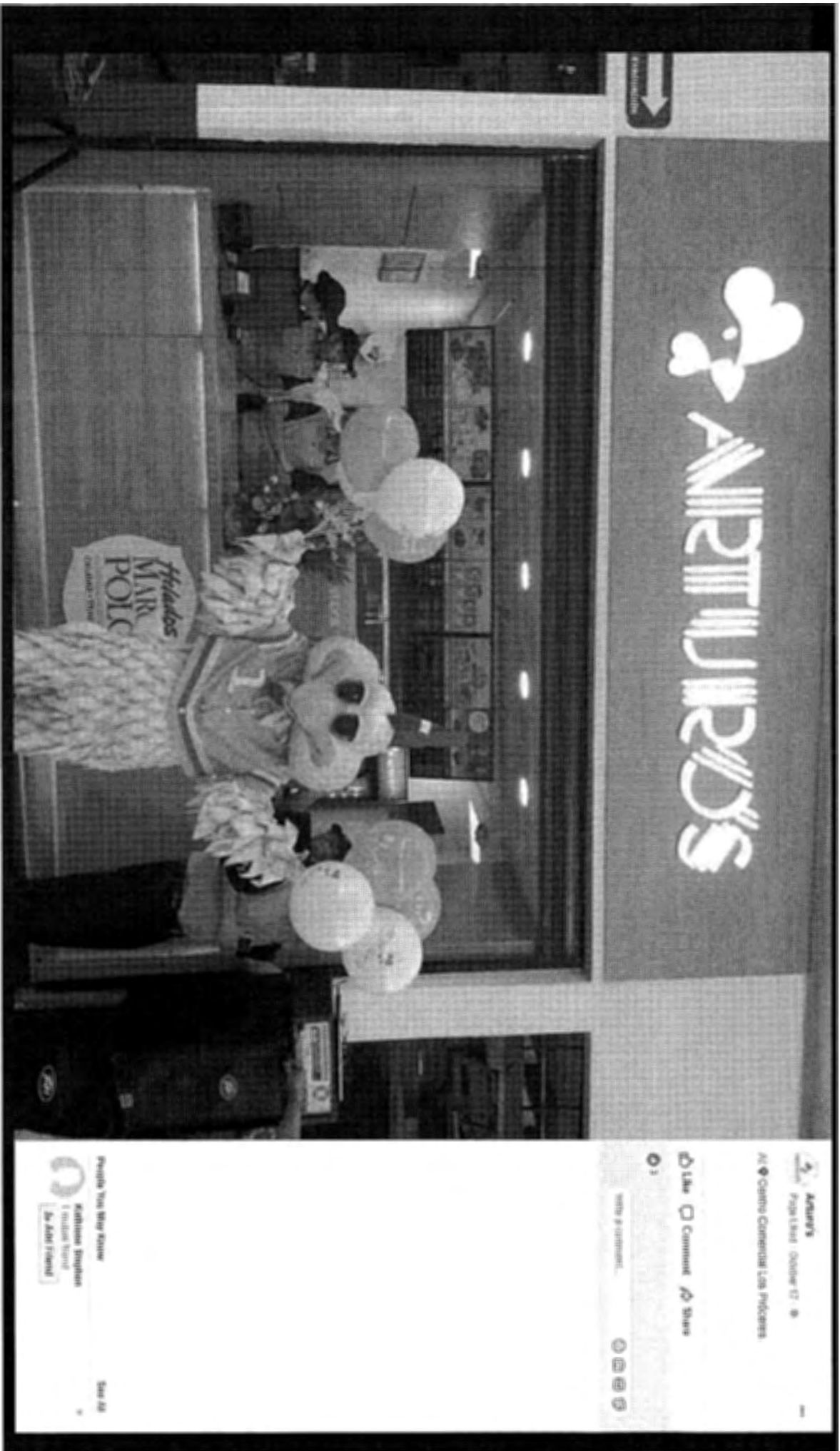
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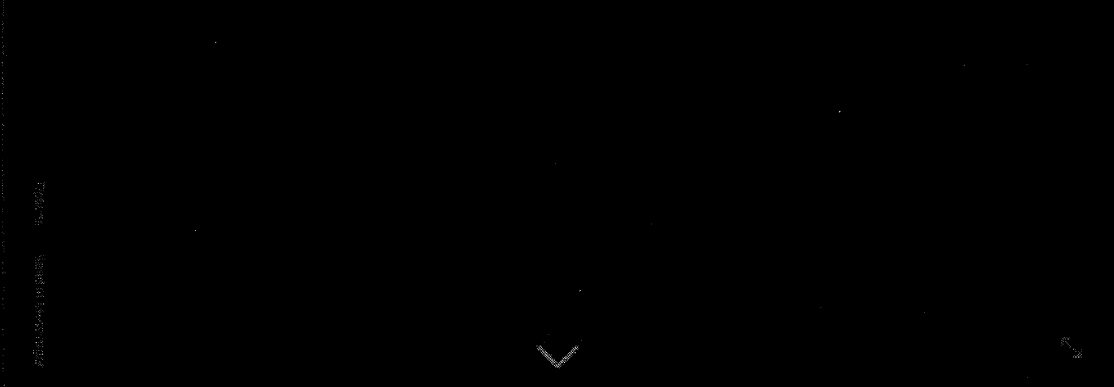
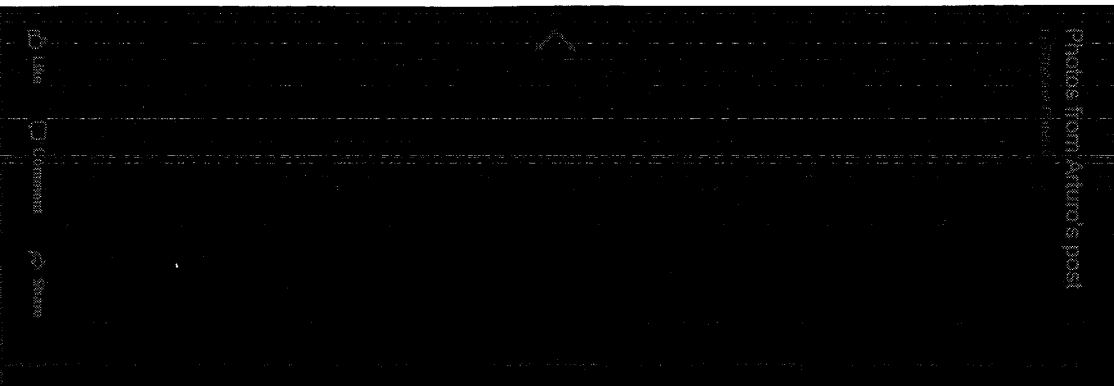


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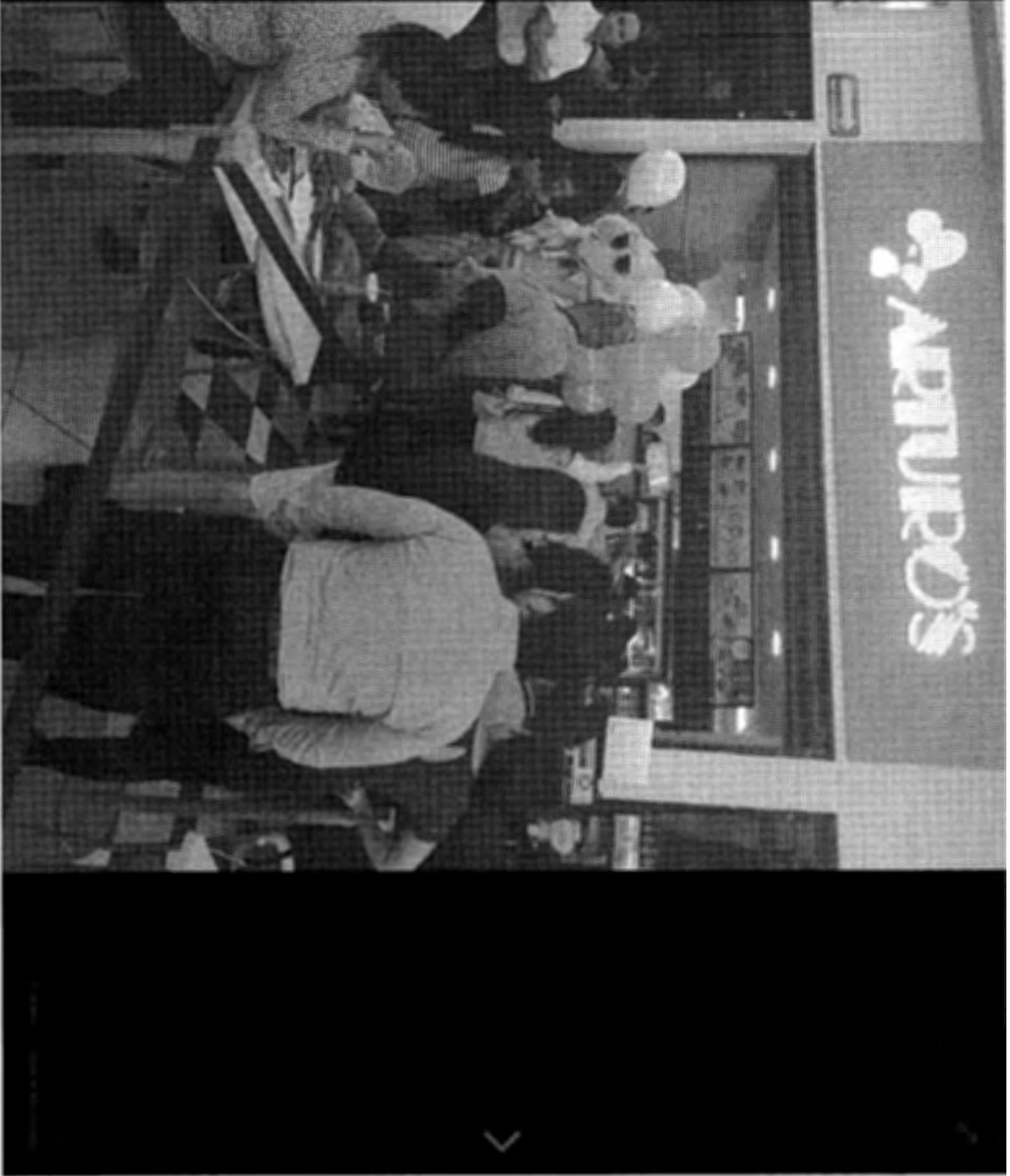
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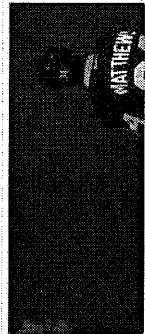
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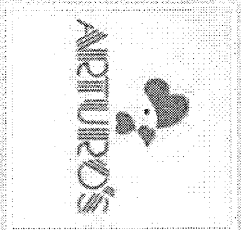
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Arturo's is feeling delighted.  
Yesterday at 1:00pm

Para todos los Chamos tenemos nuestros emojis coleccionables de #ChamaPack ¡Coleccionalos! Los esperamos en Centro Comercial Los Próceres y en Metro Bowl Come de Verdad. Come en Arturo's

For all we have our collectible emojis from #chamapack coleccionalos! We're waiting for you at Centro Comercial Los Próceres and Metro Bowl. Eat Real, eat in Arturo's



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Beatriz Zulay Milano Bautista  
July 25 at 9:36am

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**TAB JJ**

THIS IS EXHIBIT "JJ" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



AMENDED THIS Feb 22, 2013 PURSUANT TO CONFORMANCE A

RULES A RÈGLE 26 02-1 A

THE COURT OF L'ORDONNANCE 200

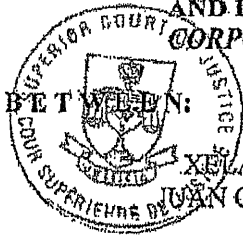
DATED/FAIT LE: \_\_\_\_\_

LOCAL REGISTRAR SUPERIOR COURT OF JUSTICE

Court File No. CV-11-9177-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
 (Commercial List)

IN THE MATTER OF XELA ENTERPRISES LTD.,  
 AND IN THE MATTER OF 696096 ALBERTA LTD.  
 AND IN THE MATTER OF THE ONTARIO BUSINESS  
 CORPORATIONS ACT



XELA ENTERPRISES, LTD., GABINVEST, S.A., LISA, S.A.,  
 JUAN GUILLERMO GUTIÉRREZ, JUAN ARTURO GUTIÉRREZ  
 and 696096 ALBERTA LTD.

Plaintiffs

- and -

MÁRGARITA CASTILLO, ROBERTO RICARDO CASTILLO,  
 JUAN LUIS BOSCH GUTIÉRREZ, DIONISIO GUTIÉRREZ MAYORGA,  
 JUAN JOSE GUTIÉRREZ MAYORGA, FELIPE ANTONIO BOSCH GUTIÉRREZ,  
 ROBERTO BARILLAS CASTILLO, ISABEL GUTIÉRREZ DE BOSCH,  
 LA BRAÑA, S.A., MULTI-INVERSIONES, S.A., VILLAMOREY, S.A.,  
 and AVICOLA VILLALOBOS, S.A.

Defendants

**FRESH AS 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 Plaintiff does not have a lawyer, serve it on the Plaintiff, 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.

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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.

**IF YOU PAY THE PLAINTIFFS' CLAIM**, and \$500.00 for costs, within the time for service and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

DATE: ~~February 28, 2013~~ *April 12-11*

Issued by:

*G. N. Brown*  
Local Registrar

Address of Court office:

330 University Avenue  
7th Floor  
Toronto, Ontario M5G 1R7

**TO: MARGARITA CASTILLO**  
135 Gordon Road  
Toronto, Ontario M2P 1E6

**ROBERTO RICARDO CASTILLO**  
135 Gordon Road  
Toronto, Ontario M2P 1E6

**JUAN LUIS BOSCH GUTIERREZ**  
Kilómetro 6.8 Carretera a El Salvador, Los Encinos, lote No. 2,  
Municipio de Santa Catarina Pinula, Guatemala

**DIONISIO GUTIERREZ MAYORGA**  
Kilómetro 7.9 carretera Santa Catarina Pinula  
Residenciales Bellas Luces, San Miguel Buena Vista  
Santa Catarina Pinula, Guatemala

- 3 -

**JUAN JOSE GUTIERREZ MAYORGA**

8a. calle 8-82, zona. 10  
Colonia Las Margaritas  
Guatemala, Ciudad

**FELIPE ANTONIO BOSCH GUTIERREZ**

Kilómetro 6.8 Carretera a El Salvador, Los Encinos, casa No. 1  
Santa Catarina Pinula, Guatemala.

**ROBERTO BARILLAS CASTILLO**

16 Avenida B, 4-11 de la zona 14  
Residenciales La Montaña  
Guatemala, Ciudad

**ISABEL GUTIERREZ GUTIERREZ DE BOSCH**

Residenciales Los Eucaliptos  
Km. 8.5 Carretera a El Salvador  
Calle Principal Residencial Los Eucaliptos, Número 6-80  
Municipio de Santa Catarina Pinula, Guatemala  
República de Guatemala

**LA BRAÑA, S.A.**

5a. avenida 15-45, zona 10  
Centro Empresarial  
Torre I, Penthouse  
Guatemala, Ciudad

**MULTI-INVERSIONES, S.A.**

5a. avenida 15-45, zona 10  
Centro Empresarial  
Torre I, Penthouse  
Guatemala, Ciudad

**VILLAMOREY, S.A.**

5a. avenida 15-45, zona 10  
Centro Empresarial  
Torre I, Penthouse  
Guatemala, Ciudad

**AVICOLA VILLALOBOS, S.A.**

46 calle 21-89, z. 12  
Guatemala, Guatemala

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## CLAIM

1. The plaintiffs claim against Margarita Castillo, Roberto Ricardo Castillo, Juan Luis Bosch Gutiérrez, Dionisio Gutiérrez Mayorga, Juan Jose Gutiérrez Mayorga, Felipe Antonio Bosch Gutiérrez, Roberto Barillas Castillo, Isabel Gutiérrez De Bosch, La Braña, S.A., Multi-Inversiones, S.A., Villamorey, S.A., and Avicola Villalobos, S.A. (collectively the "Defendants") on a joint and several basis:

- (a) General damages from the Defendants in the amount of \$400,000,000.00 for conspiracy, fraud, abuse of process, and unjust enrichment;
- (b) A declaration that the Defendants are constructive trustees of funds that belong to Xela Enterprises, Ltd. ("Xela") and that have been improperly received by Margarita Castillo, from GTC Bank of Panama, in the amount of US \$4,350,000.00;
- (c) Punitive damages in the amount of \$1,000,000.00;
- (d) Pre-judgment interest pursuant to section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended, to the date of payment;
- (e) Costs of this action on a substantial indemnity basis; and
- (f) Such further and other relief as this Honourable Court deems just.

2. The plaintiffs claim against the defendants Margarita Castillo and Roberto Ricardo Castillo (collectively the "Castillo Defendants") on a joint and several basis:

- (a) A declaration that the Castillo Defendants breached their fiduciary duties as Directors of Xela and have caused damage to Xela as a consequence thereof;
- (b) A declaration that the Castillo Defendants are constructive trustees to Xela in the amount of US \$4,350,000.00 in addition to any other amounts that the Castillo Defendants are found to have misappropriated from Xela;
- (c) A declaration that the Castillo Defendants are liable to Xela on the grounds of knowing receipt of trust property in the amount of US \$4,350,000.00;
- (d) General damages in the amount of US \$4,350,000.00;

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- (e) An order for damages in the amount of Canadian currency sufficient to purchase the amount of US \$4,350,000.00, at a bank in Ontario listed in Schedule I to the *Bank Act* S.C. 1991, c. 46, at the close of business on the first date on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by the plaintiffs.
3. The plaintiffs claim against Margarita Castillo ("Margarita"):
- (a) A declaration that the Plaintiff, 696096 Alberta Ltd. ("696096") can set off its damages recovered herein against the redemption value of Margarita's preferred shares in Xela held by 696096; and
- (b) The imposition of an equitable lien on the preferred shares of Xela held by 696096 in an amount equal to the funds that have been fraudulently or knowingly received by Margarita from GTC Bank of Panama in breach of trust together with all damages caused by her misconduct alleged herein.
4. The plaintiffs claim against Roberto Ricardo Castillo ("Ricardo"):
- (a) A declaration that Ricardo breached his fiduciary duties as an officer of Xela, and has caused damage to Xela as a consequence thereof; and
- (b) General damages in the amount of \$1,000,000.00.
5. The plaintiffs claim against Roberto Barillas Castillo ("Barillas"):
- (a) A declaration that Barillas breached his fiduciary duties to Xela;
- (b) A declaration that Barillas is liable to Xela on the grounds of knowing receipt of trust property in the amount of US \$1,850,000.00;
- (c) General damages in the amount of US \$1,850,000.00;
- (d) An order for damages in the amount of Canadian currency sufficient to purchase the amount of US \$1,850,000.00, at a bank in Ontario listed in Schedule I to the *Bank Act* S.C. 1991, c. 46, at the close of business on the first date on which the bank quotes a Canadian dollar rate for purchase of the foreign currency before the day payment of the obligation is received by the plaintiffs.

**A. PARTIES****(a) Plaintiffs**

6. The plaintiff, Juan Arturo Gutiérrez ("Arturo"), is an individual residing in the City of Toronto. Originally from Guatemala, Arturo is a Canadian citizen. He is the founder and principal of the plaintiff Xela Enterprises, Ltd. ("Xela") and owns all the voting shares of Xela. Arturo also co-founded and holds a one-third ownership interest in the Avicola Group, a collection of Guatemalan corporations that controls more than 60% of the fresh poultry market in Guatemala and is one of the largest producers of poultry throughout Central America. The Avicola Group is not a legal entity in and of itself.

7. The plaintiff, Juan Guillermo Gutiérrez ("Juan Guillermo"), is an individual residing in the City of Toronto and is a Canadian citizen. He is the son of Arturo and the current CEO of Xela.

8. The plaintiff, Xela, is a corporation incorporated pursuant to the laws of the Province of Ontario, and carries on business in the areas of agriculture and hospitality. Xela was incorporated in 1984 as a holding company for Arturo's worldwide business interests, including his one-third interest in the Avicola Group.

9. The plaintiff, Gabinvest, S.A. ("Gabinvest"), is a Panamanian corporation and is a wholly-owned subsidiary of Xela.

10. The plaintiff, Lisa, S.A. ("Lisa"), is a Panamanian corporation. Lisa is a wholly-owned subsidiary of Gabinvest. In 1984, Arturo transferred his ownership interest in the Avicola Group to Lisa, whose shares were then transferred to Gabinvest, thus making Xela the ultimate

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beneficial owner of Arturo's shareholder interests in the Avicola Group. Xela, Lisa and Gabinvest are collectively "Xela Enterprises."

11. The plaintiff, 696096, is a company incorporated pursuant to the laws of the Province of Alberta and is a holding company with certain non-voting preferred shares of Xela as its assets.

12. Xela Enterprises, Juan Guillermo, Arturo and 696096 are collectively the "Plaintiffs."

**(b) Defendants**

**i. Castillo Defendants**

13. The defendant, Margarita, is the daughter of Arturo and resides in the City of Toronto. Margarita served as a director of Xela from May 16, 2007 until being removed as a director of Xela on April 29, 2010. Margarita is a Canadian citizen.

14. The defendant, Ricardo, is Margarita's husband and resides in the City of Toronto. Ricardo served as an officer and director of Xela from its incorporation in 1984 until his resignation on May 16, 2007. Ricardo is a Canadian citizen.

15. The defendant, Barillas, is a resident of Guatemala and the nephew of Margarita and Ricardo.

**ii. The Gutiérrez Mayorga Family Defendants**

16. The defendant, Dionisio Gutiérrez Mayorga ("Dionisio"), is a resident of Guatemala. Dionisio is the son of Arturo's deceased brother, Dionisio Gutiérrez ("Dionisio Sr."), making Dionisio a nephew of Arturo.

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17. The defendant, Juan Jose Gutiérrez Mayorga ("Juan Jose"), is a resident of Guatemala. Juan Jose is Dionisio's brother and Arturo's nephew.

**iii. The Bosch Gutiérrez Family Defendants**

18. The defendant, Isabel Gutiérrez De Bosch ("Isabel"), is Arturo's sister and a resident of Guatemala. Isabel is a beneficial owner, directly or indirectly, of corporations that form part of the Avicola Group.

19. The defendant, Juan Luis Bosch Gutiérrez ("Juan Luis"), is a resident of Guatemala. Juan Luis is Isabel's oldest son and a nephew of Arturo.

20. The defendant, Felipe Antonio Bosch Gutiérrez ("Felipe"), is a resident of Guatemala. Felipe is also Isabel's son and a nephew of Arturo.

21. The defendants, Dionisio, Juan Jose, Juan Luis and Felipe collectively control a two-thirds ownership interest in the Avicola Group and are referred to herein as the "Controlling Nephews."

**iv. Defendant Corporations Controlled by the Bosch/Gutierrez Mayorga Families**

22. The defendant, Multi-Inversiones ("Multi-Inversiones"), is a Guatemalan corporation that directs and controls the operations of the Avicola Group and other investments. Dionisio and Juan Luis co-chaired the presidency at Multi-Inversiones for many years until November 2010. Since November 2010, Juan José and Juan Luis have acted as co-presidents of Multi-Inversiones.



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23. The defendant, Villamorey, S.A. ("Villamorey"), is a Panamanian corporation controlled, directly or indirectly, by the Controlling Nephews. Juan Luis is President of Villamorey and one of its directors.

24. The defendant, La Braña, S.A. ("La Braña"), is a Panamanian corporation controlled, directly or indirectly, by the Controlling Nephews.

25. The defendant, Avicola Villalobos, S.A. ("Avicola Villalobos"), is a Guatemalan corporation that functions as the administrative arm of the Avicola Group. It is controlled, directly or indirectly, by the Controlling Nephews.

#### B. OVERVIEW

26. This action is related to prior litigation before the Bermuda Supreme Court, which ruled on September 5, 2008 that, *inter alia*, the Controlling Nephews conspired to defraud Xela Enterprises. Following that ruling, the Controlling Nephews attempted to negotiate a purchase of Xela Enterprises' ownership in the Avicola Group as part of a global settlement. Negotiations ultimately failed due to: (1) the Controlling Nephews' failure to produce any legitimate financial statements for the Avicola Group; (2) the Controlling Nephews' refusal to pay Xela fair value for its Avicola shares; and (3) the Defendants' pursuit of the conspiracy alleged herein.

27. This litigation involves, *inter alia*, the conspiracy of the Controlling Nephews who, acting in concert with the other Defendants, undertook a scheme to pressure Xela Enterprises into selling, at a significant discount, its one-third ownership interest in the Avicola Group. The conspiracy included the filing of an Application in Ontario (the "Application") in this Court with the ulterior and improper purpose of facilitating the confiscation of Xela Enterprises' shares in

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the Avicola Group without compensation. The Controlling Nephews also provided the funding for the Application by diverting dividends that were due to Xela.

28. The true purpose of the Application was two-fold. First, the Defendants used the Application as a vehicle to place in the public domain numerous confidential, privileged and proprietary Xela documents that the Defendants unlawfully obtained by inducing a Xela employee to misappropriate copies. Second, the Defendants used the unlawfully obtained documents as the basis for an uncompensated minority-shareholder squeeze-out by which the Controlling Nephews purport to have confiscated Xela's entire ownership interest in the Avicola Group. It is minority shareholder oppression in the extreme.

29. The Defendants' acts constitute civil conspiracy, abuse of process, unjust enrichment, knowing receipt of trust proceeds, and breach of fiduciary duty.

30. Tortious acts in furtherance of the conspiracy have been committed in Ontario, and the Plaintiffs have suffered and continue to suffer significant damages in Ontario.

### **C. HISTORICAL BACKGROUND AND FACTS**

#### **(a) The Gutiérrez Family Companies**

31. Juan Bautista Gutiérrez emigrated from Spain to Guatemala in 1911 and created a business milling flour and feed. His children were Arturo, Isabel, and Dionisio Sr.

32. Starting in 1965, Arturo began running the entire milling operation for the family. Around that time, certain customers of the mills turned over their chicken farms in satisfaction of debts owed the mills. Arturo, Isabel, and Dionisio Sr. thereafter incorporated a company called

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Avicola Villalobos for the purpose of engaging in the production of poultry. Each sibling owned one-third of Avicola Villalobos.

33. Throughout the 1970s, under Arturo's direction, Avicola Villalobos grew to become the Avicola Group, a fully-integrated set of companies engaged in the production of poultry, from hatchlings to wholesale processed-chicken distribution. The Avicola Group today comprises 23 corporations.

34. In addition to its poultry business, the Gutiérrez family also developed a highly successful chain of chicken restaurants named Pollo Campero, which remain in operation today. Moreover, the Gutiérrez family extended its poultry business into El Salvador with the creation of Avicola Salvadoreña, S.A. The Avicola Group together with these and other family companies eventually became known as the "Gutiérrez Group."

35. As the Gutiérrez Group grew in the 1970s, Arturo incorporated the defendant Villamorey to handle financing for the Avicola Group's international sales.

36. In 1976, the Avicola Group implemented an executive-compensation program, using Villamorey as the vehicle. Each of Arturo, Isabel and Dionisio Sr. contributed 25% of their shares in the Avicola Group to Villamorey. As a result, the Avicola Group went from having three owners with a 33% share each, to having four owners with a 25% share each (the fourth being Villamorey). Because Arturo, Isabel and Dionisio Sr. each owned 33% of Villamorey, each also remained a 33% owner of the Avicola Group.

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37. Under the executive compensation program, Villamorey's shares in the Avicola Group were made available to key executives for purchase, subject to an agreement to re-sell the shares to Villamorey upon retirement or termination. Because shareholders in the Avicola Group received profit distributions at least on an annual basis, the program was essentially a profit-sharing plan for the executives.

38. Unfortunately, between 1974 and 1978, the Gutiérrez family experienced a series of tragic setbacks that set the stage for the current family dispute. In 1974, Dionisio Sr. and Isabel's husband died in an airplane crash. Dionisio Sr.'s widow, Maria Esperanza Mayorga, and her five children inherited Dionisio Sr.'s shares in the Avicola Group. With Isabel's husband gone, their son, Juan Luis, became active in the business.

39. In 1976, Juan Guillermo, who was 20 years old at the time, was kidnapped and held for ransom for 39 days. Arturo paid the ransom and Juan Guillermo was freed. Two years later, one of Arturo's cousins was murdered in a kidnapping attempt. During the same period, Arturo's father, Juan Bautista Gutiérrez, passed away. Shortly after these tragedies, family tension grew between Arturo, as the head of the various family businesses, and the Controlling Nephews.

**(b) Arturo Immigrates to Canada**

40. In 1984, Arturo and his three children, including Juan Guillermo and Margarita, immigrated to Canada and settled in Toronto.

41. In Toronto, Juan Guillermo started to work with Arturo to grow Xela. Margarita stayed home as a homemaker and raised her family. Arturo purchased homes costing in excess of

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\$500,000.00 for each of Juan Guillermo and Margarita and essentially provided them with the financial resources necessary to start a new life in Canada.

42. In 1987, Arturo began gifting Class B shares of Xela to his children so they could become equity owners in Xela. However, he kept all voting rights and control in Xela. Later, in 1996, for estate planning purposes and as part of an estate freeze, Arturo restructured Xela's ownership while still maintaining control. From 1996 to the present, Arturo has been the sole owner of all issued common shares of Xela, with sole voting control of Xela.

43. Upon the 1996 restructuring, Juan Guillermo and Margarita held non-voting preferred shares of Xela redeemable at a frozen value, essentially the equivalent of corporate indebtedness of Xela. Further, Juan Guillermo and Margarita, with advice of independent legal counsel, transferred their preferred shares in Xela to Alberta holding companies controlled by Arturo until his death. Margarita's shares were transferred to 696096 and are not redeemable until Arturo's death.

**(c) The Controlling Nephews Purchase Non-Avicola-Group Assets**

44. Upon leaving Guatemala, Arturo left day-to-day management of the Avicola Group in care of the Controlling Nephews, who to this day run the operations through the defendant Multi-Inversiones. In the mid-1980s, the relationship between Arturo and the Controlling Nephews deteriorated when Arturo complained about a lack of financial reporting and as he demanded a greater role in management.

45. Ultimately, the Controlling Nephews, on behalf of their respective families, offered to purchase all of Arturo's interests in the Gutiérrez Group, including the Avicola Group.

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46. Negotiations between the three families started in 1992 and resulted in a tentative agreement whereby the Bosch and Gutiérrez-Mayorga families agreed to purchase all of Arturo's interests in the various businesses for a total price of US \$93,457,000.00.

47. The original terms were as follows: (i) a down payment of \$27,000,000.00; (ii) the balance financed over 7 years at 7% interest; and (iii) adequate security. The Controlling Nephews proposed that Arturo's shares would serve as collateral for the financing. Arturo found this unacceptable and the agreement was never consummated.

48. As a result, in November 1992, the parties agreed to break down the transaction and sell each portion separately. In 1992, the Bosch and Gutiérrez-Mayorga families purchased Arturo's ownership interests in Pollo Campero and the El Salvador business operations. In 1995, the Bosch and Gutiérrez-Mayorga families purchased Arturo's interest in the mills and Multi-Inversiones. By 1995, Arturo was paid approximately US \$45,000,000.00 and he retained his interest in the Avicola Group.

**(d) Margarita and Ricardo's Involvement in Xela**

49. From Xela's inception in 1984 until 2007, Ricardo was an officer and director of Xela. However, Ricardo showed little interest in becoming seriously involved in the business.

50. In 2007, after Ricardo was found to be utilizing corporate funds to pay for personal vacations and the college education of one of his daughters, Arturo confronted Ricardo. As a result, Ricardo resigned as an officer and director of Xela in February 2007.

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51. Upon Ricardo's resignation, Arturo invited Margarita to join Xela's Board of Directors. Margarita accepted. Until that time, Margarita had been an invited guest at Xela's Board meetings. She served as a director of Xela until April 29, 2010.

**(e) Negotiations Over the Sale of Avicola Group**

52. In mid-1997, the Controlling Nephews communicated to Arturo that they were ready to purchase Arturo's final stake in the Gutiérrez Group: the Avicola Group. In the original tentative agreement in 1992, Arturo's (i.e., Xela's) interest in the Avicola Group had been valued at US \$48,500,000.00.

53. At a meeting in August 1997, Juan Guillermo was mistakenly given a copy of Avicola Group financial statements intended for Juan Luis. Juan Guillermo immediately noticed discrepancies with the financial information that had been previously reported to Xela.

54. Shortly thereafter, the Controlling Nephews offered US \$17 million dollars to purchase Xela's interest in the Avicola Group, while promising to address the discrepancies in the financial information.

55. In or about March, 1998, Arturo made a compromise counteroffer to sell at US \$49,500,000.00 million after providing his nephews with a lengthy memorandum detailing the family history in Guatemala and his contributions to the success of the Gutiérrez Group. The Controlling Nephews responded almost immediately and raised their offer to US \$28,000,000.00.

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56. In order to bridge the gap between the two offers, Xela requested explanations from the Controlling Nephews about the discrepancies in the financial reporting. In April 1998, the Controlling Nephews sent two of their key executives, Multi-Inversiones General Manager Roderico Rossell ("Rossell") and Avicola Group CFO Fernando Rojas ("Rojas"), to Toronto to provide explanations.

57. During this meeting, Rossell revealed that a large percentage of the sales of the Avicola Group were off-the-books cash sales. This meeting in Toronto at Xela's offices was attended by Juan Guillermo, Xela's accounting staff, and a forensic accountant retained by Xela. In light of the revelations, Xela's accountants prepared a list of documents required to properly value the Avicola Group.

58. A few months later, in August 1998, the Controlling Nephews responded that all of the information requested by Xela had been compiled by Multi-Inversiones. They suggested that Rossell and Rojas return to Toronto and deliver the documentation to Xela's offices. By this time, Xela had retained Canadian counsel and the meeting was lawfully videotaped. During the meeting, Rossell and Rojas admitted that the Avicola Group was essentially engaged in systematic fraud and money laundering. Rossell explained that as much as 55% of the net income of the Avicola Group was derived from the sales of live chickens sold to wholesalers for cash that was not being reported for tax purposes.

59. Rossell stated: "black money would be whitened." Rossell and Rojas also stated that these monies were "expenses" on the books of Avicola Group and assured Juan Guillermo of their ability to "manage" the issue so as to avoid detection by auditors and government tax officials.



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60. Rossell and Rojas further admitted that they kept separate accounting records in a dedicated room, called the "Gags and Tricks Room," within the office of Avicola, and admitted that documents were systematically destroyed after the data was entered into a computer.

61. With respect to certain negative balances reflected in the financial statements of Villamorey, Rossell and Rojas explained that the executives at Multi-Inversiones received a "black salary and a white salary." The minor white salary was declared to government authorities in Guatemala. The majority "black salary" was paid to executives through Villamorey using various money laundering schemes.

**(f) The Bermuda Litigation**

62. Upon these revelations, Xela commenced various legal proceedings in 1999 against the Controlling Nephews and others, including a proceeding in Bermuda (the "Bermuda Action") against Leamington Reinsurance Company, Ltd. ("Leamington") and Avicola Villalobos. Leamington was a Bermuda-based re-insurance company created by the Controlling Nephews and owned by Villamorey. Leamington laundered a portion of the illicit cash business from the Avicola Group by reinsuring fake transportation insurance policies issued to various Avicola Group businesses in exchange for significantly inflated premiums. The net premiums were distributed to Villamorey and paid as dividends to the other family members, but not to Xela Enterprises.

63. A trial in the Bermuda Action took place from June 23, 2008 to July 10, 2008 before the Honourable Mr. Justice Kawaley of the Supreme Court of Bermuda. On September 5, 2008, the Court rendered its final judgment, from which the Defendants did not appeal.

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64. The Bermuda court found, among other things:
- (a) that Multi-Inversiones had been the "controlling ... entity" engaged in a conspiracy to defraud Xela subsidiary Lisa;
  - (b) that it is "clear beyond serious argument" that the Avicola Group conducted business using accounting records that recorded only a portion of its true income;
  - (c) that "a substantial portion of the income generated by the Avicola Group, in particular cash generated from the sale of live chickens, chicken manure and oranges was kept off the books and used to fund distributions to shareholders" (but not Lisa);
  - (d) that the reinsurance policies at issue were not genuine;
  - (e) that "some of the 'black' money was 'whitened' by being used to pay the premiums which were then distributed as purportedly legitimate corporate profits, and that the Controllers intended to deprive Lisa of its rightful share of the profits generated by Avicola;"
  - (f) that cash-only operations were used to "conceal from the revenue authorities in Guatemala what the Poultry Group's true earnings were;"
  - (g) that Leamington "was effectively used as a 'cash cow' with premiums frequently flowing in and distributions flowing out in rapid succession;"
  - (h) that the Avicola Group, through its Bermuda-based shell company Leamington, had "an intention to injure Lisa in relation to a conspiracy involving the use of (fraudulently) unlawful means";
  - (i) that "Lisa was excluded from participating in the distributions made by Leamington's Panamanian shareholder, Villamorey;" and
  - (j) that the members and officers and directors of the various Avicola Group companies, including Multi-Inversiones, "had actual knowledge of all the facts which made the conspiracy unlawful."
65. The Controlling Nephews also diverted US \$10,000,000.00 of declared dividends in Leamington to the defendant La Braña. Because Xela Enterprises held Arturo's interest in Villamorey, and because Villamorey was Leamington's parent corporation, the Controlling Nephews damaged Xela Enterprises by diverting these dividends to La Braña.

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66. The Plaintiffs further plead that the Controlling Nephews have usurped the executive compensation framework in Villamorey by using defendant La Braña to purchase the shares of the executives at the time of re-sale thereby increasing their effective ownership of the Avicola Group to the detriment of Xela Enterprises. These actions through La Braña have been actively concealed from Xela to the present day by the refusal of the Controlling Nephews to make any meaningful financial disclosure.

67. The Plaintiffs plead and rely on the findings of the Bermuda Supreme Court with respect to the Bermuda Action, particularly as it relates to Multi-Inversiones, Villamorey and Avicola Villalobos.

**(g) Settlement Negotiations Between Xela and the Controlling Nephews**

68. After entry of the Bermuda Judgment in September 2008, the Controlling Nephews contacted Arturo's family about the prospect of a global settlement through the purchase of Xela's interest in the Avicola Group.

69. Settlement discussions began in February 2009 and ended in January 2011. Xela was not aware, however, that the settlement discussions were not being conducted in good faith by the Controlling Nephews, who were already pursuing the conspiracy alleged below.

70. From February 2009 through January, 2011, Xela's negotiating team met with the Multi-Inversiones negotiating team on twelve occasions. At the negotiating table for Defendants was Juan Jose, representing the Gutiérrez Mayorga family, Felipe, representing the Bosch family, and Eduardo Lopez, a long-time executive of Avicola Group. These individual defendants were also attending on behalf of the two corporate defendants that they controlled, defendants Multi-

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Inversiones and Villamorcy. On the side of Xela were Xela CEO Juan Guillermo, Xela director Margarita, and Juan Hernandez, a business consultant for Xela. Margarita, however, was removed from Xela's negotiating team after the first meeting and was replaced with another Xela executive.

71. In the early stages of the negotiations, the first issue considered was financial disclosure. It was not until May 2010, however, that Multi-Inversiones finally produced financial results of the Avicola Group for the years 2007, 2008, and 2009, and then only in a three-page summary. Despite promises, the Controlling Nephews never produced any financial statements for the Avicola Group to the Plaintiffs.

72. By May 2010, the settlement negotiations were nearing an impasse. After reviewing the purported financial information provided by the Controlling Nephews, Xela calculated past-due dividends owed to Xela of approximately US \$135,000,000.00, excluding interest and the value of Xela's one-third interest in the Avicola Group. The all-inclusive offers from the Controlling Nephews ranged from US \$40,000,000.00 to US \$65,000,000.00.

#### **D. FACTS OF THE CONSPIRACY**

73. During the settlement negotiations, the Controlling Nephews conspired with the other defendants to unlawfully harm Xela's ownership interest in the Avicola Group.

74. The intent to harm included, *inter alia*, the filing of the Application in Ontario with the ulterior purpose of forcing Xela to sell, at a significant discount, its interest in the Avicola Group, while facilitating the wholesale seizure by the Controlling Nephews of Xela's shares in the Avicola Group.

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75. The acts of the conspiracy include, *inter alia*:
- (a) the theft and misuse of Xela's confidential financial information;
  - (b) meetings in Ontario in furtherance of the conspiracy;
  - (c) the filing of a false criminal complaint against Xela and its executives;
  - (d) the diversion of dividends to which Xela was entitled, and use of those funds to finance the Application against Xela; and
  - (e) ultimately the misappropriation of Xela's ownership interest in the Avicola Group through an "exclusion" resolution of the majority shareholders.
- (a) **October 2009 Initial Organizational Meeting**

76. The conspiracy commenced on or about October 27, 2009 at a meeting at the Hotel Inter-Continental in Guatemala City. All of the individual defendants except Isabel were in attendance. The purpose of the meeting was to plan the conspiracy. All of the subsequent acts discussed below took place on behalf of, and with full knowledge, of all of the Defendants.

(b) **December 2009 Toronto Meetings**

77. From December 7, 2009 to December 13, 2009, the Defendants conducted a series of vital meetings in Toronto in furtherance of the conspiracy. Two of those meetings were conducted at the offices of Bennett Jones LLP ("Bennett Jones"), counsel for the Castillo Defendants.

78. During these meetings, the participants discussed, among other things:
- (a) the support for and financing of the Application by the Controlling Nephews; and
  - (b) the filing of criminal charges in Guatemala or Canada, alleging that Xela and its executives had engaged in money laundering through a Xela subsidiary, Boucheron Universal Corp. ("Boucheron").

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79. Present during the meetings at Bennett Jones were:

- (a) the Castillo Defendants (with their legal counsel at Bennett Jones), who, in violation of their fiduciary duties to Xela, provided confidential and privileged information regarding Xela to the Controlling Nephews and to Barillas;
- (b) Margarita, who, in violation of her fiduciary duty to Xela, actively participated in the meetings while serving as a director of Xela;
- (c) Barillas, who, in violation of his fiduciary duty to Xela, attended the meetings and, with the knowledge and consent of the other participants, accepted payments from the Controlling Nephews to participate in the conspiracy;
- (d) Jorge Porras ("Porras"), a Guatemalan lawyer and business partner of Barillas, who, at the time of the meetings, served as legal counsel for Xela's subsidiaries in Guatemala and as a member of the Board of Directors of certain Xela subsidiaries, and who, in violation of his fiduciary duties to Xela, attended the meetings and, with the knowledge and consent of the other participants, accepted payments from the Controlling Nephews to participate in the conspiracy;
- (e) Katherine Kay, an Ontario litigation lawyer who represents the Controlling Nephews and Isabel, and who discussed their financing of, and support for, the Application; and
- (f) Peter McFarlane, Margarita's proposed expert for the Application.

**(c) Barillas Is Recruited To Steal Xela's Confidential Financial Information; Margarita is Removed from Xela's Board**

80. In 2001, Barillas, as Xela's advisor at PricewaterhouseCoopers ("PwC"), recommended that Xela incorporate a subsidiary in Panama called Boucheron.

81. On November 29, 2001, Boucheron was incorporated in Panama with an initial capital of US \$10,000.00 represented in 100 shares of \$100.00. Porras acted as Xela's lawyer and took custody of the original notarized Articles of Incorporation, the original authorized Stock Register, and the initial share certificate No. 1 issued to bearer for one share in the company. Shortly thereafter, Xela acquired Boucheron, and PwC was hired by Xela to maintain

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Boucheron's accounting books and records, and to disburse payments from Boucheron at Xela's direction.

82. In or about July, 2003, Barillas and Porrás left PwC to form their own firm, Business Professionals Associates, S.A. ("BPA"). At the request and recommendation of the Castillo Defendants, Xela's accounts at PwC were transferred to BPA. Barillas and BPA became the outside auditors for Xela's operating subsidiaries in Guatemala, including Boucheron. Porrás continued as legal counsel for Xela's Guatemalan subsidiaries. BPA, Barillas, and Porrás each owed fiduciary duties to Xela.

83. Unbeknownst to Xela, Barillas acted as a mole for the Defendants to infiltrate Xela's operations and unlawfully obtain confidential information. Additionally, unbeknownst to Xela, Margarita and Ricardo, while directors of Xela, systematically shared confidential and proprietary Board of Directors meeting documentation with Barillas, knowing that Barillas was an imposter and was passing information to the Controlling Nephews. These repeated acts of information theft took place in Toronto and elsewhere in Ontario, and are referred to herein collectively as the "Xela Information Theft."

84. In late 2008, Xela learned that Barillas had misappropriated and converted in excess of \$100,000.00 of Xela's funds on deposit with Boucheron. Xela demanded that Barillas immediately return the funds and that he turn over the books and records of Xela's subsidiaries to Xela's new auditors, Grant Thornton. Barillas refused.

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85. In February 2010, Xela's Board of Directors authorized criminal prosecution of Barillas in Guatemala for his theft of the US \$100,000.00. When this occurred, Margarita angrily and abruptly left the Board meeting.

86. Almost immediately thereafter, the Castillo Defendants met in Guatemala with the Controlling Nephews to discuss actions in furtherance of the conspiracy. On April 29, 2010, Margarita was removed from Xela's Board.

87. The Plaintiffs plead that Margarita breached her fiduciary duties to Xela when she met with the Controlling Nephews in furtherance of the conspiracy as early as October 2009, and thereafter as alleged herein.

**(d) Ricardo Recruits Willy Aguilar to Steal Xela's Computer Files**

88. In furtherance of the conspiracy, Ricardo illegally recruited Willy Aguilar ("Aguilar"), an employee in Xela's IT Department, to steal financial documents from Xela's computer server located in Toronto.

89. In late 2008, Aguilar approached Ricardo to seek his assistance in funding Aguilar's purchase of a food distribution company in Ontario. In exchange for agreeing to provide funding, Ricardo required that Aguilar steal electronically stored confidential financial records (the "Confidential Information") from Xela's computer system.

90. On or about January 9, 2009, Aguilar illegally accessed financial records on Xela's server and e-mailed 2,403,090 bytes of information from his Xela e-mail to his personal e-mail account. Shortly thereafter, Aguilar sent Ricardo a setup file from Aguilar's Xela e-mail account to



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Ricardo's personal e-mail account. Aguilar scheduled a web meeting to help Ricardo install software for accessing the information. Aguilar's theft of the Confidential Information is referred to herein as the "Aguilar Computer Theft of Confidential Information."

91. Aguilar subsequently admitted to the theft and was terminated for cause. He informed Xela that after receiving the Confidential Information, Ricardo not only renegeed on his promise to fund Aguilar's purchase of the food-distribution company, but threatened to sue Aguilar (and presented a draft complaint prepared by Bennett Jones) unless Aguilar continued to provide further confidential Xela information.

92. The information obtained by Ricardo on behalf of the Defendants by virtue of the Aguilar Computer Theft of Confidential Information was then filed by Margarita in the Application (see Part (j), paragraphs 114-119 below). The Plaintiffs plead that these documents, which included documents subject to solicitor-client privilege, were filed in the Application for no legitimate reason, but rather as a way to make them public, thus enabling the Controlling Nephews to use information in the documents as a pretext for seizing Xela's interests in the Avicola Group.

**(e) The February 2010 Meeting at the Pepsi Building**

93. On February 24, 2010, the Castillo Defendants traveled from Toronto to meet with the Controlling Nephews at the Pepsi Building in Guatemala City. Margarita was a director of Xela at the time of the meeting. The defendant Barillas was also present.

94. At this meeting, the Defendants continued their discussions about having the Controlling Nephews fund the anticipated Ontario Application. Although the Application was not issued

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until January 2011, counsel and experts for the Castillo Defendants became very active in the file beginning in February 2010.

95. During this meeting, the Defendants also plotted to have Juan Guillermo and other Xela executives arrested in Guatemala when attending settlement discussions with the Controlling Nephews.

96. To accomplish this goal, the Controlling Nephews and the Castillo Defendants enlisted the help of Barillas to file a false criminal complaint in Guatemala against Xela and its key executives, after which arrest warrants would be sought. The Xela executives would then be subject to arrest when they returned to Guatemala for further settlement negotiations.

**(f) The Boucheron Stock Purchase**

97. To induce Barillas to participate in the conspiracy, the Controlling Nephews and the Castillo Defendants agreed to pay Barillas US \$1,500,000.00 and an additional US \$350,000.00 as a contingency legal defence fund (in anticipation of counter-charges for the filing of a false criminal complaint).

98. The Controlling Nephews and the Castillo Defendants devised a scheme for making the payments to Barillas. The Controlling Nephews and Barillas entered into a Purchase and Sale Agreement of Stock and Litigation Rights (the "Boucheron Stock Purchase Agreement"). Pursuant to the Boucheron Stock Purchase Agreement, the Controlling Nephews, through a Panamanian corporation, agreed to:

- (a) purchase Stock Certificate No. 1 for one share in Boucheron, "which has an authorized capital of \$625.00 representing in 625 shares of \$1.00";

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- (b) purchase any causes of action and litigation rights Boucheron may have against Xela and its executives, including controlling the disposition of civil and criminal actions to be brought by Boucheron;
- (c) installment payments to Barillas of
  - (1) \$333,333.33 as a down payment;
  - (2) \$666,666.67 upon issuance of arrest warrants for Xela's executives, including Juan Guillermo Gutierrez, Xela's CEO;
  - (3) \$500,000.00 when the criminal action is "resolved;" and
- (d) establishment of a \$350,000.00 legal defence fund for Barillas.

99. The purported issuance of Boucheron stock was baseless, as Boucheron is a Xela subsidiary over which none of the Defendants has any authority:

- (a) The purported share certificate No. 1 is a forgery. Boucheron was incorporated in Panama on November 27, 2001 with a stated capital of \$10,000.00, not \$625.00; and
- (b) Xela is in possession of the only authorized Stock Register and is in possession of all 100 issued and outstanding shares of Boucheron.

100. The purpose of the purported issuance of Boucheron stock was to supply Barillas with a pretext for filing a criminal complaint in Guatemala against Xela and its executives.

101. Of the total US \$1,850,000.00, the Controlling Nephews have already paid Barillas the first installment of \$333,333.33, of which \$80,000.00 was used to pay Porras "legal fees" for his attendance at the December 2009 meetings in Toronto, including the meetings at Bennett Jones.

102. In or about April 2010, Margarita agreed in writing to fund the US \$1,850,000.00 in payments to Barillas. The agreement incorporates by reference and ratifies the Boucheron Stock

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Purchase Agreement. Margarita executed the agreement knowing that one of its terms included seeking the false arrest and imprisonment of her brother, Juan Guillermo.

**(g) The April 23, 2010 Power of Attorney**

103. On April 23, 2010, in furtherance of the conspiracy and in anticipation of confirmation of the Controlling Nephews' agreement to fund the Ontario Application, Margarita flew from Toronto to Miami, Florida to execute a power of attorney in favor of Barillas (the "Power of Attorney").

104. The Power of Attorney authorized Barillas to execute documents on Margarita's behalf to facilitate a transfer of US \$2.5 million from the Controlling Nephews to Margarita, through GTC Bank in Panama. The purpose of the money was to fund the Application.

105. Porras notarized the Power of Attorney.

106. Plaintiffs plead that Margarita executed the Power of Attorney knowing that the monies she would be receiving actually belonged to Xela, as they were dividends owed to Xela by Villamorey:

**(h) Barillas Files The False Criminal Complaint**

107. On April 28, 2010, Barillas, purportedly on behalf of Boucheron but in reality on behalf of the Controlling Nephews and the Castillo Defendants, filed a false criminal complaint in Guatemala against Juan Guillermo, Xela and others alleging that Xela had used Boucheron for the purpose of illegal money laundering. This is referred to herein as the "False Criminal Complaint."

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108. The Attorney General's office in Guatemala has since pronounced that there was no substantiation for the allegations in the False Criminal Complaint. Before that pronouncement, however, the Defendants used the False Criminal Complaint to seek arrest warrants against Xela's executives who were expected to travel from Canada to Guatemala for continued settlement negotiations.

**(i) The October 20, 2010 Meeting and the Petition for Arrest Warrants**

109. On October 20, 2010, Ricardo traveled from Toronto to meet with Defendants Juan Luis, Felipe, Isabel and Barillas at Isabel's home in Guatemala.

110. At this meeting, it was agreed by those defendants in attendance that Barillas would use the False Criminal Complaint as a basis to seek arrest warrants against Xela's executives, including Juan Guillermo, who were expected to travel from Canada to Guatemala in December 2010 for another round of settlement negotiations. The Castillo Defendants and Barillas also agreed to provide the other Defendants with the Aguilar Computer Theft of Confidential Information to effectuate the exclusion of Xela's interest in the Avicola Group.

111. On or about November 18, 2010, Barillas, in furtherance of the conspiracy, filed a petition with a Guatemalan court, claiming to be the sole shareholder of Boucheron and seeking the issuance of arrest warrants for Juan Guillermo and other Xela executives. This is referred to herein as the "False Petition for Arrest Warrants."

112. Xela uncovered the scheme on December 18, 2010 at a time when the Guatemalan court had not pronounced itself on the issuance of arrest warrants. The December 2010 settlement meeting was later postponed.

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113. In early January 2011, Juan Jose e-mailed Xela's CEO, Juan Guillermo, requesting to schedule a settlement meeting in January 2011.

**(j) The Ontario Application and the GTC Funds**

114. The Controlling Nephews in concert with the Castillo Defendants then orchestrated the filing of the Application in Ontario to coincide with the False Petition for Arrest Warrants filed by Barillas in Guatemala in time for a round of settlement negotiations which was being scheduled for the third week of January 2011.

115. On January 3, 2011, Juan Jose communicated by e-mail to Juan Guillermo that Multi-Inversiones had gathered information about the Avicola Group that would be shared at the next settlement meeting. Juan Jose stated the information would be ready by the following week and inquired about available meeting dates in January. Juan Jose copied Margarita and the Controlling Nephews on his e-mail message.

116. On January 12, 2011, Juan Guillermo responded to Juan Jose's e-mail and expressed willingness to meet as soon as Multi-Inversiones had a concrete proposal to make. Juan Guillermo copied Arturo, Margarita, the Controlling Nephews and all those involved on the negotiating teams on both sides.

117. On January 18, 2011, Margarita filed the Application.

118. The Plaintiffs plead that the Application's true purposes were: (1) to pressure Xela in settlement negotiations; and (2) to provide a pretext for a purported uncompensated confiscation of Xela's interest in the Avicola Group:

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- (a) First, the Defendants filed the Application to intimidate and pressure the Plaintiffs into selling Xela's interest in the Avicola Group at a significant discount. The goal was to put Arturo in the difficult position of having been sued by his daughter in Ontario at the same time that Juan Guillermó was to be falsely imprisoned (as a result of the False Criminal Complaint and the False Petition for Arrest Warrants) upon arrival in Guatemala for the January 2011 settlement round. The Defendants intended thus to handicap Xela in its settlement negotiations with the Controlling Nephews.
- (b) Second, the Defendants filed the Application as a vehicle for publishing the unlawfully obtained Confidential Information, which included information subject to solicitor-client privilege, and which the Defendants intended to then use, along with the Application itself, as a pretext for an unlawful, uncompensated confiscation of Xela's entire interest in the Avicola Group.

119. Settlement negotiations broke down when the arrests did not occur because the petition for arrest warrants was denied. Subsequent to the filing of the Ontario Application, Xela became aware of the conspiracy.

**(k) The Diversion of Xela's Dividends to Fund the Application**

120. The Defendants knew that litigation of the Application would be very expensive, particularly considering the fees of the Bennett Jones law firm, which filed the Application on Margarita's behalf, and the fees for expert testimony.

121. To finance the Application, the Controlling Nephews, on behalf of the Defendants and in furtherance of the conspiracy, had Villamorey declare dividends due to Xela for 2009 and 2010 in the amount of US \$4,350,000.00. The Controlling Nephews then diverted those dividends and used them to post a certificate of deposit ("CD") at GTC Bank of Panama through Villamorey in the amount of approximately US \$4,350,000.00. The diverted dividends are referred to herein as the "GTC Funds."

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122. The GTC Funds constitute trust property of which Xela is the beneficiary.
123. Margarita, acting through Barillas as her "attorney-in-fact," executed documentation that allowed her to receive US \$2,500,000.00 from the GTC Funds, to fund the Ontario Application. Her access to the US \$2,500,000.00 million is referred to herein as the "Trust Proceeds".
124. The Plaintiffs plead that the Controlling Nephews unlawfully pledged the GTC Funds to facilitate the Trust Proceeds for Margarita.
125. The Plaintiffs plead that Margarita's legal invoices are routinely submitted to the Controlling Nephews for their approval. If approved, Margarita pays Bennett Jones with the Trust Proceeds.
126. The balance of the US \$4,350,000.00 unlawfully diverted from Xela, after accounting for the Trust Proceeds, is US \$1,850,000.00. The Plaintiffs plead that the Controlling Nephews unlawfully used this US \$1,850,000.00 to fund the \$1,850,000.00 in payments to Barillas for the account of Margarita who also agreed to this funding arrangement.
127. The Plaintiffs plead that, at all material times, the Castillo Defendants knew that the GTC Funds are monies belonging to Xela as declared dividends from Villamorey, and that the Controlling Nephews were thus using Xela's own funds, diverted from dividend payments, to fund the Application and fund the payments to Barillas for the filing of false criminal actions against Xela and its executives.



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**(i) The Exclusions in Guatemala**

128. When the arrest warrants and concomitant negotiating leverage failed to materialize, the Controlling Nephews instead proceeded with the unlawful, uncompensated confiscation of Xela's interest in the Avicola Group. They premised their action on the allegations of the Ontario Application and particularly relied on the unlawfully obtained Confidential Information, which had been improperly made public in the Application and which included documents of Xela protected by solicitor-client privilege.

129. To construct a premise for the Controlling Nephews' access to the Confidential Information, the Castillo Defendants, on behalf of the Defendants and in furtherance of the conspiracy, attached to the Ontario Application the documents they had unlawfully obtained through the Aguilar Computer Theft of Confidential Information. These documents were attached to the Application solely for the ulterior purpose of making them public.

130. In April 2011, three months after Margarita filed the Application, the Defendants caused each of the 23 companies that comprise the Avicola Group to adopt a corporate resolution (together, the "Exclusions") at its annual shareholder meeting "excluding" Xela Enterprises as a shareholder of the Avicola Group and thus purporting to appropriate for themselves Xela's entire ownership interest in the Avicola Group. The Exclusions were adopted on motion by Villamorey and on the affirmative vote of the Controlling Nephews as the majority shareholders in the Avicola Group.

131. The Exclusions specifically rely on the Application and on the Confidential Information made public in the Application. In particular, the grounds alleged for the Exclusions refer line

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by line to the documents stolen from Xela by the Defendants as part of the Aguilar Computer Theft of Confidential Information.

132. The intended legal effect of the Exclusions is the seizure of the Plaintiffs' share interests in the Avicola Group without compensation.

**E. CIVIL CONSPIRACY AGAINST ALL DEFENDANTS**

133. Beginning in October 2009, the Defendants made an agreement and acted in concert for the purpose of injuring the Plaintiffs. The primary purpose of the conspiracy was to cause injury to the Plaintiffs. The Defendants did act in furtherance of their agreement to injure the Plaintiffs.

134. The primary purpose and goal of the conspiracy was to extort the Plaintiffs into accepting a price substantially below fair market value for their ownership interest in the Avicola Group and to manufacture a premise for an unlawful, uncompensated takeover of the Plaintiffs' interest in the Avicola Group.

135. The conspiracy includes, among other things, the following unlawful acts, committed in Ontario and elsewhere, described above:

- (a) the October 2009 Initial Organizational Meeting;
- (b) the December 2009 Toronto Meetings;
- (c) the Xela Information Theft;
- (d) the Aguilar Computer Theft of Confidential Information;
- (e) the February 2010 Meeting at the Pepsi Building;
- (f) the Power of Attorney Authorizing the GTC Funds;
- (g) the October 20, 2010 Meeting;

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- (h) the False Criminal Complaint;
- (i) funding the False Criminal Complaint with \$1.85 Million;
- (j) the Boucheron Stock Purchase;
- (k) the False Pétition for Arrest Warrants;
- (l) the Filing of the Ontario Application;
- (m) the Publication of Xela's Stolen Confidential Information in the Application;
- (n) the \$2.5 Million GTC Funds for Margarita to fund the Application;
- (o) providing the GTC Funds with Dividends Owed to Xela; and
- (p) the Exclusions.

(collectively, the "Conspiracy").

136. The predominant purpose of the Conspiracy was to cause injury to the Plaintiffs in Ontario by wrongfully depriving them of the value of their ownership interest in the Avicola Group.

137. All actions of the Defendants in furtherance of the Conspiracy were committed willfully, intentionally, maliciously, and with the express purpose of causing harm to Xela.

138. As a direct result of the Conspiracy, the Plaintiffs have suffered damages and will continue to suffer damages in Ontario, which total approximately \$400,000,000.00.

**F. ABUSE OF PROCESS AGAINST ALL DEFENDANTS**

139. The filing, financing and continued prosecution of the Application in this Court as part and in furtherance of the Conspiracy constitutes abuse of process.

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140. The Application was filed for a collateral and improper purpose, and not to resolve any legitimate legal dispute, namely, (i) to extort the Plaintiffs during settlement negotiations between Xela and the Controlling Nephews, and (ii) to attempt to cloak the publication of Xela's stolen confidential information under the guise of judicial immunity for the unlawful purpose of using the information as a basis to effectuate the Exclusions. The Controlling Nephews and the Castillo Defendants hoped to extort the Plaintiffs into selling Xela's interest in the Avicola Group, while at the same time forcing the premature redemption of Xela's preferred shares held in 696096. At the same time, Xela also faced forfeiture of its interest in the Avicola Group through the Exclusions.

141. The Defendants intended to injure the Plaintiffs through this abuse of process.

142. As a direct and proximate result of this abuse of process, the Plaintiffs have suffered damages and will continue to suffer damages in Ontario.

143. All actions of the Defendants in furtherance of the abuse of process were committed willfully, intentionally, maliciously and with the express purpose of causing harm to Xela.

#### **G. UNJUST ENRICHMENT OF THE DEFENDANTS**

144. In addition or in the alternative, the Plaintiffs plead that the Defendants are liable to Xela on the grounds of unjust enrichment:

145. The Defendants have been unjustly enriched by seizing Xela's shares in the Avicola Group without compensation. The Plaintiffs have been correspondingly deprived of the fair value of the shares. There is no juristic reason justifying this enrichment.

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146. The Plaintiffs plead that the Defendants are liable to Xela in the amount of \$400,000,000.00 due to the unjust enrichment.

#### **H. KNOWING RECEIPT OF THE CASTILLO DEFENDANTS AND BARILLAS**

147. In addition or in the alternative, the Plaintiffs plead that the Castillo Defendants and Barillas are liable to the Plaintiffs on the grounds of knowing receipt of trust property belonging to Xela.

148. In August 2010, a cash dividend in the sum of US \$4,350,000.00 was declared by Villamorey and owed to Xela (the "Cash Dividend"). On August 22, 2010, the Cash Dividend was unlawfully transferred by the Controlling Nephews to an account in GTC Bank of Panama without the consent of Xela.

149. The Plaintiffs did not become aware of the transfer of the Cash Dividend until September 2012.

150. When the transfer of the Cash Dividend occurred, a trust was formed for the benefit of Xela.

151. The Defendants knowingly and unlawfully used the Cash Dividend to facilitate the GTC Funds for use by the Castillo Defendants (the Cash Dividend and the GTC Funds are collectively the "Collective Trust Proceeds"). The Collective Trust Proceeds have been used by the Castillo Defendants in their personal capacity, including but not limited to use by Margarita to fund the Application and to fund the Boucheron Stock Purchase.

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152. The Castillo Defendants and Barillas knew, were reckless, or were willfully blind to the fact that:

- (a) they received the Collective Trust Proceeds due to a breach of trust by the Controlling Nephews; and
- (b) they received the Collective Trust Proceeds without the consent of Xela.

153. The Castillo Defendants and Barillas have benefited from receiving the Collective Trust Proceeds, and have been enriched at the expense of the Plaintiffs. The use of the Collective Trust Proceeds by the Castillo Defendants has occurred in Toronto.

154. The use and disbursement of the Collective Trust Proceeds by the Castillo Defendants and Barillas continues today.

#### **I. BREACH OF FIDUCIARY DUTY BY MARGARITA AND RICARDO**

155. Margarita and Ricardo owed Xela fiduciary duties of loyalty and good faith towards the corporation and its shareholders:

- (a) as directors of Xela, Margarita and Ricardo owed fiduciary duties of loyalty and good faith towards the corporation and its shareholders.
- (b) as an officer of Xela, Ricardo owed fiduciary duties of loyalty and good faith towards the corporation and its shareholders.

156. Margarita and Ricardo knowingly breached their fiduciary duties to Xela, by acting in a manner that was contrary to the best interests of Xela. These breaches include, but are not limited to, the following:

- (a) providing confidential information to the other Defendants knowing that providing such information was contrary to company policy and in breach of their duties as directors, and with knowledge that such conduct would cause damage to Plaintiffs;

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- (b) participating in the Conspiracy;
- (c) accepting and converting corporate assets to their personal benefit;
- (d) facilitating Barillas' participation in the conspiracy and access to confidential financial information regarding Xela;
- (e) granting a Power of Attorney to Barillas while Margarita was still a Director of Xela, and authorizing Barillas to obtain money on her behalf that was unlawfully collateralized by Xela's own funds and used to sue Xela in this Court; and
- (f) participating, and agreeing to participate, in the Boucheron Stock Purchase.

157. As a result of breaches of fiduciary duty by Margarita and Ricardo, the Plaintiffs have suffered damages in Ontario.

**J. BREACH OF FIDUCIARY DUTY BY BARILLAS**

158. The Plaintiffs plead that Barillas owed a duty of loyalty and good faith to Xela due to his role in providing professional services to Xela's subsidiary corporations.

159. The Plaintiffs plead that Barillas breached his fiduciary duties to Xela by, *inter alia*:

- (a) disclosing information confidential to Xela to the Controlling Nephews;
- (b) accepting money from the Controlling Nephews and the Castillo Defendants to pursue a false criminal complaint against Xela and its executives;
- (c) participating, and agreeing to participate, in the Boucheron Stock Purchase scheme;
- (d) exercising a Power of Attorney to obtain money for Margarita, knowing that the funds were unlawfully collateralized by Xela's own funds and used to sue Xela in this Court; and
- (e) participating in the Conspiracy.

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160. As a result of breaches of fiduciary duty by Barillas, the Plaintiffs have suffered damages in Ontario,

**K. EQUITABLE LIEN AGAINST MARGARITA'S PREFERRED XELA SHARES**

161. The Plaintiffs claim an equitable lien over Margarita's interest in 696096 in an amount equal to the sum of the Collective Trust Proceeds and the additional damages sustained by the Plaintiffs due to the Conspiracy,

162. Margarita's actions alleged above have caused substantial damages to Xela.

163. In addition, Margarita knew that the Collective Trust Proceeds were rightfully owned by Xela but nevertheless used and continues to use the proceeds to fund the Application and to sustain the lifestyle of the Castillo Defendants.

**L. PUNITIVE DAMAGES**

164. The Plaintiffs plead that the Defendants have wilfully, maliciously and deliberately acted in bad faith, with a view to harming the Plaintiffs, which is high-handed and reprehensible conduct for which punitive damages should be awarded.

165. The Plaintiffs plead that punitive damages in the amount of \$1,000,000.00 should be awarded to demonstrate this Honourable Court's disapproval of the Defendants' conduct.

166. The Plaintiffs claim entitlement to serve this statement of claim outside Ontario, pursuant to rules 17.02(g), (h) and (o) of the *Rules of Civil Procedure*.



- 41 -

167. The Plaintiffs propose that the trial of this action be held in Toronto.

*Page 12-11*  
February 28, 2013 *M.*

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Lawyers for the Plaintiffs

XELA ENTERPRISES LTD. et al.

Plaintiffs

- and - CASTILLO et al.

Defendants

Court File No. CV-11-9177-00CL

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**  
In the Matter of Xela Enterprises Ltd., and  
In the Matter of 696096 Alberta Ltd. and  
In the Matter of the *Ontario Business Corporations Act*  
PROCEEDING COMMENCED AT TORONTO

**FRESH AS AMENDED STATEMENT OF CLAIM**

**GOWLING LAFLEUR HENDERSON LLP**  
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Lawyers for the Plaintiffs

File Number: T983544

TOR LAW311957\1

**TAB KK**

THIS IS EXHIBIT "KK" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.

**REDEMPTION NOTICE****TO: XELA ENTERPRISES LTD.****Notice by 696096 Alberta Ltd. of its intention to require Xela Enterprises Ltd. to redeem 6,999 Class B Preference Shares and 1 Class D Preference Share**


In accordance with the Articles of Amalgamation (the "**Articles**") of Xela Enterprises Ltd. ("**Xela**"), 696096 Alberta Ltd. ("**696096**") hereby gives notice to Xela that it wishes to require Xela to redeem the 6,999 Class B Preference Shares and 1 Class D Preference Share that 696096 currently holds in Xela with an effective date for the redemption of January 31, 2017, being at least 20 days from the date of this Notice.

696096's share certificates representing its Class B Preference Shares and Class D Preference Share are held in the minute book of Xela, and therefore not in 696096's possession. Effective January 31, 2017, 696096 hereby surrenders such share certificates to Xela upon the payment by Xela of the redemption amount to 696096 by way of certified cheque or bank draft. In accordance with the redemption amount provisions set forth in the Articles for the Class B Preference Shares and the Class D Preference Shares, 696096 calculates the redemption amount for the Class B Preference Shares at \$12,353,654 and the redemption amount for the Class D Preference Share at \$1,625,000 respectively.

A copy of this Notice is concurrently being delivered by registered mail to 696093 Alberta Ltd., 696087 Alberta Ltd., Tropic International Limited and 1996 Gutierrez Family Trust as holders of Class B Preference Shares, Class C Preference Shares and Class D Preference Shares, as applicable, pursuant to the Articles.

DATED the 11<sup>th</sup> day of January, 2017.

**696096 ALBERTA LTD.**

Per:   
Name: Margarita Castillo  
Title: Director

# TAB LL

THIS IS EXHIBIT "LL" TO  
THE AFFIDAVIT OF MARGARITA CASTILLO  
SWORN JANUARY 14, 2019



---

Katrina Crocker

A Commissioner for Taking Affidavits in and for the Courts in Ontario

**Katrina Elizabeth Crocker, a Commissioner, etc.,  
Province of Ontario, while a Student-at-Law.  
Expires March 22, 2020.**



Martin Mendelzon  
Direct Line: (416) 203-4475  
Email: mmendelzon@groiaco.com

January 31, 2017

**VIA EMAIL**

BENNETT JONES LLP  
Mr. Jeffrey S. Leon  
Mr. Jason Woycheshyn  
1 First Canadian Place  
Suite 3400  
Toronto, ON M5X 1A4

Dear Sirs:

**Re: 696096 Alberta Ltd., Redemption Request**

Please find enclosed a courtesy copy of Xela Enterprises Ltd.'s response to your client's redemption notice. A copy has also been mailed to your client.

Yours truly,

Martin Mendelzon  
MM/cwk  
Encl.



January 31, 2017

TO: 696096 Alberta Ltd.  
696093 Alberta Ltd.  
696087 Alberta Ltd.

**Re: Notice by 696096 Alberta Ltd. of its intention to require Xela Enterprises Ltd. to redeem 6,999 Class B Preference Shares and 1 Class D Preference Share**

Xela Enterprises Ltd. ("**Xela**") confirms receipt of 696096 Alberta Ltd.'s ("**696096**") redemption notice, dated January 11, 2017, requesting a redemption of its 6,999 Class B Preference Shares and 1 Class D Preference Share ("**696096's Redemption Notice**"). Xela understands that 696096's Redemption Notice was provided to all other shareholders as required.

Xela also confirms receipt of redemption notices, in response to 696096's Redemption Notice, on behalf of 696093 Alberta Ltd. ("**696093**"), requesting a redemption of its 6,999 Class B Preference Shares and 1 Class D Preference Share ("**696093's Accompanying Notice**") and 696087 Alberta Ltd. ("**696087**"), requesting a redemption of its 25,661 Class B Preference Shares ("**696087's Accompanying Notice**", together with 696096's Redemption Notice and 696093's Accompanying Notice, the "**Redemption Notices**").

On January 30, 2017, Xela held a meeting of its Board of Directors (the "**Meeting**") to consider the Redemption Notices. One of the members of the Board of Directors, Juan Guillermo Gutierrez, attended the meeting, declared a conflict in that his company, 696093 Alberta Ltd., submitted 696093's Accompanying Notice, and he did not vote at or otherwise participate in the Meeting.

After carefully considering the Redemption Notices in connection with Xela's obligations pursuant to the Articles of Amalgamation of Xela and the Ontario *Business Corporations Act* (the "**OBCA**"), with the senior Class D Preferred Shares being considered separately and in priority to the Class B Preferred Shares, Xela has determined that it is prohibited from fulfilling the Redemption Requests. Specifically, Xela is prevented from fulfilling the Redemption Notices with respect to either the Class D or Class B Preferred Shares pursuant to section 32(2) of the OBCA, which provides as follows:

***Restriction on redemption***

*(2) A corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that,*

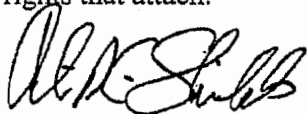
*(a) the corporation is or, after the payment, would be unable to pay its liabilities as they become due; or*

*(b) after the payment, the realizable value of the corporation's assets would be less than the aggregate of,*

*(i) its liabilities, and*

*(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or before the holders of the shares to be purchased or redeemed, to the extent that the amount has not been included in its liabilities. R.S.O. 1990, c. B.16, s. 32 (2); 2006, c. 34, Sched. B, s. 9.*

As such, each of 696096, 696093, and 696087 will retain their respective Preferred Shares and any rights that attach.



Xela Enterprises Ltd.

**TAB 3**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

THE HONOURABLE )  
 )  
JUSTICE ) DAY OF , 2019

MARGARITA CASTILLO

Applicant

- and -

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED,  
FRESH QUEST, INC., 696096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ  
and CARMEN S. GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**ORDER**  
**(appointing Receiver)**

THIS MOTION made by the Applicant for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Kofman Inc. as receiver and manager (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of Xela Enterprises Ltd. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Margarita Castillo sworn January 14, 2019 and the Exhibits thereto and on hearing the submissions of counsel for Margarita Castillo and Xela Enterprises Ltd., and on reading the consent of KSV Kofman Inc. to act as the Receiver,

**SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**APPOINTMENT**

2. THIS COURT ORDERS that pursuant to section 101 of the CJA, KSV Kofman Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

**RECEIVER'S POWERS**

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and

on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in



that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

**NO PROCEEDINGS AGAINST THE RECEIVER**

8. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

**NO EXERCISE OF RIGHTS OR REMEDIES**

9. THIS COURT ORDERS that all rights and remedies against the Receiver are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA"), and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

**NO INTERFERENCE WITH THE RECEIVER**

10. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Receiver or leave of this Court.

**CONTINUATION OF SERVICES**

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each

case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

### **RECEIVER TO HOLD FUNDS**

12. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

13. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

### **PIPEDA**

14. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such

information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

#### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

15. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

#### **LIMITATION ON THE RECEIVER'S LIABILITY**

16. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order

shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

17. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

20. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together

with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

#### **SERVICE AND NOTICE**

24. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'http://www.ksvadvisory.com/insolvency-cases/case/xela-enterprises'.

25. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

26. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

27. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

28. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

29. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

30. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

31. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

---



**SCHEDULE "A"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Kofman Inc., the receiver (the "Receiver") of the assets, undertakings and properties Xela Enterprises Ltd. acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the \_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Order") made in an action having Court file number CV-11-9062-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$\_\_\_\_\_, being part of the total principal sum of \$\_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

KSV Kofman Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**MARGARITA CASTILLO**  
Applicant

-and-

**XELA ENTERPRISES LTD. et al.**  
Respondents

Court File No.: CV-11-9177-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Commercial List)**

Proceeding commenced at Toronto

**MOTION RECORD  
(For Appointment of Equitable Receiver)**

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