

Court File No. CV-11-9062-00CL
Divisional Court File No. 703/22

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

B E T W E E N:

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

**MOTION RECORD ON BEHALF OF
THE RESPONDENT JUAN GUILLERMO GUTIERREZ
(*Motion for leave to appeal*)**

VOLUME 1 OF 2

January 23, 2023

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TAB 1

Court File No. CV-11-9062-00CL
Divisional Court File No.703/22

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

B E T W E E N:

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

NOTICE OF MOTION FOR LEAVE TO APPEAL

The Respondent, Juan Guillermo Gutierrez, will make a Motion to the Divisional Court to be heard in writing, at 330 University Avenue, 9th Floor, Toronto, Ontario, M5G 1R7, on a date to be fixed by the Registrar from the Order of Justice McEwen dated December 1, 2022 (the “**Order of Justice McEwen**”).

PROPOSED METHOD OF HEARING: The Motion is to be heard in writing as an opposed motion under subrule 62.02(2) or in such other manner as the Court may direct.

THE MOTION IS FOR

- (a) An Order granting leave to appeal the Order of the Honourable Justice McEwen, made on December 1, 2022;

- (b) An Order granting leave to appeal the Costs Order of the Honourable Justice McEwen, made on December 1, 2022;
- (c) The costs of this Motion, if opposed; and,
- (d) Such further and other Relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE

Background

- (a) The within Application relates to execution of a Judgment (the “**Judgment**”) against, among others, Xela Enterprises Inc. (“**Xela**”) and Mr. Gutierrez in favor of Margarita Castillo (“**Castillo**”). By order dated July 5, 2019 (the “**Appointment Order**”) the Receiver, KSV Kofman Inc. (the “**Receiver**”) was appointed over the undertakings, property and assets of Xela, in accordance with s. 101 of the Courts of Justice Act to aid in the execution of the Judgment.
- (b) Mr. Gutierrez is Castillo’s brother and the president of Xela and owner of 100% of Xela’s voting shares. Xela’s only significant assets are (a) Gabinvest S.A. (“**Gabinvest**”) a wholly owned subsidiary of Xela; and (b) Lisa S.A. (“**LISA**”), a wholly owned subsidiary of Gabinvest. Both are Panamanian entities. Mr. Gutierrez has never been employed by, or been an officer or director of, either.

- (c) Prior to the appointment of the Receiver, Judgment was partially satisfied with all of Mr. Gutierrez's personal assets, with approximately \$4 million remaining unsatisfied.
- (d) As part of the enforcement efforts, Mr. Gutierrez';
 - (i) Bank accounts were frozen;
 - (ii) Home was sold;
 - (iii) Cottage was sold; and,
 - (iv) Cars were sold.
- (e) On or about July 25, 2017, Mr. Gutierrez was examined in aid of execution.
- (f) The Applicant was not able to collect any more money and/or assets to realize on the Judgment as all of Mr. Gutierrez assets/money was taken by the Applicant to satisfy the Judgment.
- (g) After all of Mr. Gutierrez' assets were seized by the Applicant, the Applicant brought an application for appointment of a receiver.
- (h) On July 5, 2019, the Receiver was appointed. In or around January 2020, Mr. Gutierrez sought to bring a motion to terminate the Receivership. The Receiver did not bring a motion for security for costs at that time.
- (i) On January 18, 2021, the Receiver brought a motion to compel Mr. Gutierrez to, inter alia, provide passwords to devices. On February 9, 2021,

the Receiver brought a second contempt motion against Mr. Gutierrez, as its first contempt motion was adjourned sine die.

- (j) On the same day, Mr. Gutierrez delivered a notice of motion seeking to vary the Appointment Order to replace the Receiver with another receiver. No security for costs motion was brought at this time.
- (k) In December 2021, the Receiver commenced a separate civil proceeding against Mr. Gutierrez and his family. The receiver did not disclose that it had commenced that proceeding until approximately 6 months after the claim was issued.
- (l) On September 12, 2022, Mr. Gutierrez delivered his notice of motion to vary the Appointment Order by replacing the Receiver (“the Recusal Motion”). On September 27, McEwen J. scheduled the Recusal Motion, despite opposition from the Receiver.
- (m) On September 27, 2022, the Receiver, for the first time, communicated its intention to bring a motion for security for costs.
- (n) On December 1, 2022, the Motion Judge ordered Mr. Gutierrez to pay \$100,000 in security for costs and Ordered Mr. Gutierrez to pay \$30,092 in costs for the motion.

Security for Costs Motion

(o) At the security for costs motion, the Receiver relied upon r. 56.01(1) (c) and r. 56.01(1)(e) to ground its motion for security for costs.

(p) Rules 56.01(1)(c) and (e) provide as follows:

The Court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that:

(c) The defendant or respondent has an order against the plaintiff or applicant for costs in the same or another proceeding that remains unpaid in whole or in part;

(e) there is good reason to believe that the action or application is frivolous and vexatious and that the plaintiff or applicant has sufficient assets in Ontario to pay the costs of the defendant or respondent.

(q) Mr. Gutierrez seeks leave to appeal the Order of Justice McEwen on the question of whether the Motion Judge erred in law:

(i) in ordering that security for costs be paid despite the fact that the Appointment Order expressly permits any interested party to apply to the Court to vary the Appointment Order on not less than seven days' notice;

(ii) in ordering a respondent to pay security for costs in the context of an Application under R. 56.01 of the *Rules of Civil Procedure*;

(iii) in ordering that security for costs be paid in favour of a non-party to a proceeding;

- (iv) in finding that section 101 of the *Courts of Justice Act* and Rule 56.01(2) can be invoked within a context of an application to order security for costs against a Respondent;
- (v) in exercising his discretion to order security for Costs against Mr. Gutierrez where Mr. Gutierrez is a respondent who has no cross-claim or counterclaim in the proceeding;
- (vi) in applying *Di Paolo Re*, 2006 CanLii 37117, a bankruptcy court case where there was no respondent or plaintiff, and using that decision to order security for costs against a respondent in the context of an application;
- (vii) in relying upon *Kramer Henderson Sidlofsky LLP v Monteiro*, 2009 98 O.R. (3d) 286, an assessment hearing where there was no plaintiff/applicant and/or defendant/respondent, to support the order for security for costs;
- (viii) In relying upon r. 56.01(2) of the *Rules of Civil Procedure* to find that Gutierrez was a 'claimant', even though the word 'Applicant' and 'Respondent' are clearly defined within the context of an application and therefore, Rule 56.01(1) should apply;
- (ix) in ordering security for costs against a respondent in an application, where no other case law was presented where a Judge has ordered

security for costs against a respondent (without a cross-claim or counterclaim) in the context of an application;

- (x) in ordering security for costs where the Receiver did not have an outstanding cost order against the Respondent as required by r. 56.01(1)(c) of the *Rules of Civil Procedure* and where all costs orders had been paid by the Respondent;
 - (xi) in ordering security for costs where the purported outstanding costs order is not owed to the party bringing the motion for security for costs and conflating the Applicant's rights with those of the Receiver, an independent officer of the court;
 - (xii) in ordering security for costs where the Receiver had failed to show how a motion within an Application can be equated to an application and/or action within the meaning of r. 56.01(1)(e) of the *Rules of Civil Procedure*;
 - (xiii) In ordering security for costs where to do so, results in the interference with a Defendant and/or Respondent's ability to defend themselves within a proceeding in which they were involuntarily added as a party; and,
- (r) The Motion Judge erred in fact and law by;
- (i) finding that the Motion to Vary the Order Appointing the Receiver was frivolous and/or vexatious;

- (ii) in failing to consider the Receiver's delay in bringing the security for costs motion;
- (iii) in ordering \$100,000 in security for costs;
- (iv) In ordering costs payable to the receiver in the amount of \$30,092.10;
- (v) In failing to consider access to justice when exercising his discretion to order security for costs;
- (s) There are a number of conflicting decisions, which state that; (1) it is trite law that security for costs cannot be awarded against a respondent or defendant with no cross-claim or counterclaim, and (2) no party should have to post security for costs as a condition of defending themselves, including:
 - (i) *Willets v Colalillo* [2007] O.J. No. 4623
 - (ii) *ICC International Computer Consulting & Leasing Ltd. v. ICC Internationale Computer & Consulting & Leasing Ltd. v. ICC Internationale Computer & Consulting GmbH* [1989] O.J. No. 70
 - (iii) *Gaming Lottery Corp. v. Digital Motors Corp.* [1997] O.J. No. 5245
- (t) Rules 1.04, 2, 3.02, 56, 57 and 61 of the Rules of Civil Procedure; of the *Rules of Civil Procedure*;
- (u) Such further and other grounds as the lawyers may advise.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion: (List the affidavits or other documentary evidence to be relied on)

- (a) The Order of the Honourable Justice McEwen, made on December 1, 2022;
- (b) The Affidavit of Nanda Singh;
- (c) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 16, 2022

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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISES LTD. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Juan Guillermo Gutierrez

Tab 2

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE
MR. JUSTICE MCEWEN

)
)
)

THURSDAY, THE 1ST
DAY OF DECEMBER, 2022

B E T W E E N:

(Court Seal)

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 KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings, and properties of Xela Enterprises Ltd. (“**Xela**”) for an Order for Security for Costs (the “**Security for Costs Motion**”) with respect to Juan Guillermo Gutierrez’s motion to replace the Receiver (the “**Recusal Motion**”), was heard on November 24, 2022 via Zoom at the court house, 330 University Avenue, Toronto, Ontario, M5G 1R7.

-2-

ON READING the Affidavit of Grace Tsakas sworn November 15, 2022, the Affidavit of Nanda Singh sworn November 22, 2022, the Affidavit of Dave Burton sworn November 22, 2022, the Affidavit of Grace Tsakas sworn November 23, 2022, and on hearing the submissions of the lawyer(s) for the parties,

1. **THIS COURT ORDERS** that the Respondent, Juan Guillermo Gutierrez, shall post security for Costs in the amount of \$100,000.
2. **THIS COURT ORDERS** that the Respondent, Juan Guillermo Gutierrez, shall pay costs of the Security for Costs Motion to the Receiver fixed at \$30,092.10.
3. **THIS COURT ORDERS** that another judge on the commercial list shall hear the Recusal Motion.

THIS ORDER BEARS INTEREST at the rate of 4.0% per year commencing on December 31, 2022.

(Signature of judge, officer or registrar)

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

ORDER

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Juan Guillermo Gutierrez

Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Castillo

Plaintiff(s)

AND

Xela Enterprise Ltd et al

Defendant(s)

Case Management ☒ Yes ☐ No by Judge: McBewT

Counsel	Telephone No:	Facsimile No:
<u>see counsel slip</u>		

- ☐ Order ☐ Direction for Registrar (No formal order need be taken out)
☐ Above action transferred to the Commercial List at Toronto (No formal order need be taken out)

- ☐ Adjourned to: _____
☐ Time Table approved (as follows):

KSV Restructuring Inc, as the receiver and manager (the "Receiver") of Xela Enterprise Ltd ("Xela") brings this motion seeking security for costs from Juan Guillermo Gutierrez ("Gutierrez") with respect to Gutierrez's motion to replace the Receiver.

The Receiver seeks security for

1 Dec 22
Date

McBewT
Judge's Signature

☒ Additional Pages 14 total

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsement Continued

costs in the amount of \$150,000.00

I have been managing this action for some time and have released several endorsements to date. The facts are well-known to all parties, and the Receiver, and need not be repeated in detail.

Of import with respect to my analysis of this motion is the following:

- The Receiver is not a party in the action and thus is not directly pursuing any claims.
- This motion is being brought with respect to a motion not a proceeding.
- Gutierrez has not delivered any affidavit evidence with respect to the issues on this motion. He relies upon the affidavits of his lawyer's law clerk and

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

David Bell, a digital forensic investigator who provides evidence with respect to the Receiver's handling of

Gutierrez's personal data, which Gutierrez alleges has been mishandled.

- The Notice of Motion served by Gutierrez does not make any mention of the above complaint.

- Justice Conway recently found Gutierrez liable in civil contempt - by swearing a Declaration to support a Criminal Complaint made against the Hatstone directors in Panama. The Hatstone directors were appointed by the Receiver (the decision is under appeal).

- Based on evidence filed by the Receiver ^{in at the motion}, the Prosecutor in Panama has closed its case against the Hatstone directors on the basis that

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

"The Facts complained are not considered the crime of Falsehood accused."

I will now turn to the issues raised on this motion.

① Gutierrez submits that the Receiver cannot bring this motion pursuant to Rule 56.01(1) since it is not a party with a claim.

I disagree.

Although the Rule does speak of parties with claims, s. 101 of the Courts of Justice Act provides this Court with jurisdiction to grant receivers orders where it is just or convenient to do so. Further, Rule 56.01(2) expands the provisions of Subrule (1).

A proper reading of s. 101 and Rule 56.01 provides this Court with the necessary

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Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsment Continued

jurisdiction. And for that matter Rule 1004(1).
 ✓ I note that Gutierrez also argued at the motion that the Receiver cannot bring this motion against him as he has no claim in the action.

Again, based on the above I ~~disagree~~

✓ Further, if Gutierrez is correct, this would result in a situation where a Court officer (here the Receiver) could face any number of spurious motions brought directly against it and have no recourse to ask for security for costs. Also, since the Receivership is funded by the Applicant such motions will deplete the estate as the Applicant indirectly funds

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Superior Court of Justice
Commercial List

FILE/DIRECTION/ORDER

Judges Endorsment Continued

The motions brought by the Receiver.
Surely this cannot be the case
and is neither fair nor just."

Last, on this issue, I accept
the Receiver's submission that a
security for costs motion can
be brought with respect to a
pending motion and is not
restricted to a proceeding.

This premise accords with
common sense and has been
accepted clearly by the OCA: see
Di Paolo, Re, 2006 CanLII 37117 (ONCA) at
para 12th.

Having determined that I have
jurisdiction and the Receiver is
entitled to bring the motion I
now turn to the other issues raised
on this motion.

(2) Gutierrez submits that since his

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Judges Initials TM

1. This conclusion is generally supported by the OCA
in Kerner Henderson Siddhly LLP v. Monteiro 2018 FC 286 at paras 15, 18, 22 and 23.

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FILE/DIRECTION/ORDER

Judges Endorsement Continued

unpaid costs relate to Justice Newbould's order concerning the Applicant (\$889,858.21) and not the Receiver, the provisions of Rule 56.01(1)(c) do not apply.

Again I disagree. A proper reading of the above OCA jurisprudence and s.101 of the CTA lead to a conclusion that the Receiver ought to be able to rule on subrule (1)(c).

Cutierrez is a judgment debtor to the Applicant who is funding this receivership. He ought not be able to bring this motion in these circumstances without paying security for costs.

③ The Receiver also brings this motion pursuant to Rule 56.01(1)(c) submitting that there is good reason to believe that the motion

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FILE/DIRECTION/ORDER

Judges Endorsement Continued

is frivolous and vexatious and Gutierrez has insufficient assets to pay the the costs of the motion.

Gutierrez in his notice of motion makes a number of allegations but again to date has not delivered any supporting affidavit.

Generally, to date the ReceiverTM has not been the subject of any negative judicial comment, unlike Gutierrez who has been found in contempt. The Receiver has not been unsuccessful at any motion.

Further, in a number of my previous endorsements I have commented that many of the complaints Gutierrez now raises have been litigated and/or unsupported by evidence.

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

Specifically in my March 25/01 Endorsement I noted that the Receiver had been acting in a neutral fashion to that point in time.

With respect to Gutierrez's most significant complaints I note:

- The criminal complaints in Panama, as noted, have ceased and Gutierrez was found in contempt for his participation.

- Again, there is no mention in the noticed ~~of~~ motion of complaints concerning computer security and Mr Bell's affidavit wasTM served 2 days before this motion.

- I have previously rejected Gutierrez's complaints about the involvement of "The Cousins" and the Receiver's alleged interference with secured funding due to lack of evidence.

Overall, based on the above,

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Judges Endorsment Continued

I accept that the Receiver has demonstrated that "it appears" that the motion is frivolous and vexatious and "suggests a tentative conclusion of absence of merit": McArthur v Neumann 2020 ONSC 66 at para 17 & 18.

In this regard I note that Gutierrez seeks to have the Receiver replaced with someone of his choosing.

Lastly, in considering the test I need to determine whether Gutierrez has sufficient assets in Ontario to pay the Receiver's costs. I agree with the Receiver that there is good reason to believe Gutierrez has insufficient assets in Ontario for the reasons set out in para 37 of the Receiver's Factum.

Gutierrez claims in his Factum that he is impecunious. He has not, however,

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Judges Endorsment Continued

as noted, delivered any evidence on this motion to support this assertion. Further, according to the Bill Costs Filed at his Contempt hearing he has paid Mr. Greenspan \$150,000.00 between April - September 2022. He continues to be represented by two sets of counsel. Also, it appears from Gutierrez's litigation conduct to date and moving forward with his motion, that he has not been deterred by legal costs.

I am also satisfied, based on the above, that this motion is not being used as a litigation tactic to prevent the motion from being heard on its merits.

④ Gutierrez also submits that this motion ought to be dismissed since the Receiver delayed in bringing this motion.

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Judges Endorsment Continued

This argument has to merit. The motion to replace the Receiver and this motion were scheduled at the same time. Since then Gutierrez has been found in contempt.

The fact that the Notice of Motion was served approximately one year ago is immaterial as I only agreed to schedule it and this motion in the Fall of this year.

⑤ Insofar as quantum is concerned I agree with Gutierrez that the amount sought is high. Having reviewed the nature of the motion and the steps likely required up to and including the motion, I am satisfied that \$100,000.00 is fair and reasonable on a partial indemnity basis after reviewing the Receiver's draft Bill of Costs.

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FILE/DIRECTION/ORDER

Judges Endorsment Continued

Based upon foregoing I order that security for costs be paid in the amount of \$100,000. This includes some costs vis a vis the Receiver, as per my Jul, 2021 decision where I allowed these costs pursuant to s.13(1) of the CTA on the basis that stakeholder ought not be saddled with costs they ought not have to incur.

Insofar as costs of this motion are concerned I have reviewed the parties' draft Bills of Costs. Since the Receiver was successful it ought to receive its costs on a partial indemnity basis in the amount of \$30,092.10 inclusive as claimed. This amount is fair & reasonable.

MCC

Court File Number: _____

Superior Court of Justice
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FILE/DIRECTION/ORDER

Judges Endorsement Continued

Addendum

Since preparing this endorsement I have concluded that, given my findings concerning Rule 54.01(1)(e), it would be appropriate to have another judge on the Commercial List hear the motion to replace the Receiver.

mzt

m

**COUNSEL SLIP**COURT FILE NO. CV-11-9062-CLDATE: Thursday, November 24, 2022THE HONOURABLE: MISTER JUSTICE MCEWENNo. ON LIST: 10amCOURTROOM: 330 UA

TITLE OF PROCEEDING

CASTILLO v XELA ENTERPRISES LTD et al

RESPONDENT COUNSEL: **Chris Macleod**Email: cmacleod@cambridgellp.comRESPONDENT COUNSEL: **N. Joan Kasozi**Email: jkasoz@cambridgellp.com

RECEIVER COUNSEL: **Monique Jilesen**Email: mjilesen@litigate.comRECEIVER COUNSEL: **Derek Knoke**Email: dknoke@litigate.comCOUNSEL: **Brendan Peters**Email: bpeters@stewartmckelvey.com

COURT FILE NO.: CV-11-9062-00CL

DATE: December 1, 2022

ONTARIO

SUPERIOR COURT OF JUSTICE COMMERCIAL LIST

RE: 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

BEFORE: The Honourable Justice Thomas J. McEwen**COUNSEL:** *Monique Jilesen and Derek Knoke* for the Receiver*Chris MacLeod and Joan Kasozi* for Juan Guillermo Gutierrez**HEARD BY ZOOM HEARING:** December 1, 2022**ENDORSEMENT**

[1] KSV Restructuring Inc., as the receiver and Manager (the “Receiver”) of Xela Enterprises Ltd. (“Xela”) brings this motion seeking security for costs from Ivan Guillermo Gutierrez (“Gutierrez”) with respect to Gutierrez’s motion to replace the Receiver.

[2] The Receiver seeks security for costs in the amount of \$150,000.00.

[3] I have been managing their action for some time and have released several endorsements to date. The facts are well-known to all parties, and the Receiver, and need not be repeated in detail.

[4] Of import with respect to my analysis of this motion is the following:

- The Receiver is not a party in the action and this is not directly pursuing any claims.
- This motion is being brought with respect to a motion not a proceeding.
- Gutierrez has not delivered any affidavit evidence with respect to the issues on this motion; He relies on the affidavits of his lawyer’s law clerk and David Bell, a digital forensic investigator who provides evidence with respect to the Receiver’s handling of Gutierrez’s personal data, which Gutierrez alleges has been mishandled.
- The Notice of Motion served by Gutierrez does not make any mention of the above

complaint.

- Justice Conway recently found Gutierrez liable in civil contempt – by swearing a Declaration to Support a Criminal Complaint made against the Hafstave directions in Panama. The Hafstave directions were appointed by the Receiver (the decision is under appeal).
- Based on evidence filed the Receiver at the motion, the Prosecutor in Panama has closed its case against the Hafstave directions on the basis that “the facts complained are not considered the crime of falsehood accused.”

[5] I will now turn to the issues raised on this motion.

1.

[6] Gutierrez submits that the Receiver cannot bring this motion pursuant to Rule 56.01(01) since it is not a party with a claim.

[7] I disagree.

[8] Although the Rule does speak of parties with claims, s. 101 of the Courts of Justice Act provides this Court with jurisdiction to grant receivers orders where it is just as convenient to do so. Further, Rule 56.01(2) expands the provisions of subrule (1).

[9] A purposeful reading of s.101 and Rule 56.01 provides this Court with the necessary jurisdiction. (and for that matter Rule 1.04(1)).

[10] I note that Gutierrez also argued at the motion that the Receiver cannot bring this motion against him as he has no claim in the action.

[11] Again based on the above I disagree.

[12] Further, if Gutierrez is correct, this would result in a situation where a Court officer (here the Receiver) could face any number of spurious motions brought directly against it and have no recourse to ask for security for costs. Also, since the Receivership is funded by the Applicant such motion will deplete the estate as the Applicant indirectly funds the motion brought by the Receiver. Surely this cannot be the case and is neither fair nor just. Footnote: This conclusion is generally supported by the OCA in *Kamer Henderson Sodlofsky v. Monteiro A8 OR (3d) 286 at para. 15, 18, 22, and 23*.

[13] Last, on this issue, I accept the Receiver’s submission that a security for costs motion can be brought with respect to a pending motion and is not restricted to a proceeding.

[14] This premise accords with common sense and has been accepted clearly by OCA: see *Di Paola, Re, 2006 CanLII 371178 (ON CA) at para. 12*.

[15] Having determined that I have jurisdiction and the Receiver is entitled to bring the motion I now turn to the other issues received in this motion.

2.

[16] Gutierrez submits that since his unpaid costs relate to Justice Newbould's order concerning the Applicant (\$889,858.21) and not the Receiver, the provisions of Rule 56.01(1)(e) do not apply.

[17] Again, I disagree. A purposeful reading of the above OCA jurisprudence and s.101 of the CJA lead to a conclusion that the Receiver ought to be able to rule a subrule (1)(c). Gutierrez is a judgement debtor to the Applicant who is funding this receivership. He ought not be able to bring this motion in these circumstances, without paying security for costs.

3.

[18] The Receiver also brings this motion pursuant to Rule 56.01(1)(e) submitting that there is good reason to believe that the motion is frivolous and vexatious, and Gutierrez has insufficient assets to pay the costs of the motion.

[19] Gutierrez in his notice of motion makes a number of allegations but again to date has not delivered any supporting affidavit.

[20] Generally to date the Receiver has not been the subject of any negative judicial comment, unlike Gutierrez who has been found in contempt. The Receiver has not been unsuccessful at any motion.

[21] Further, in a number of my previous endorsements I have commented that many of the complaints Gutierrez now raises have been litigated and/or unsupported by evidence.

[22] Specifically, in my March 25/01 Endorsement I noted that the Receiver had been acting in a neutral fashion to that point in time.

[23] With respect to Gutierrez's most significant complaint I note:

- The criminal complaints in Panama, as noted, have ceased and Gutierrez was found in contempt for his participation.
- Again there is no mention in the Notice of Motion of complaints concerning computer security and Mr. Bell's affidavit was served 2 days before this motion.
- I have previously rejected Gutierrez's complaints about the involvement of "the cousins" and the Receiver's alleged interference with secured funding due to lack of evidence.

[24] Overall, based on the above, I accept that the Receiver has demonstrated that "it appears" that the motion is frivolous and vexatious and "suggests a tentative conclusion of absence of merit": *McArthur v. Neeumann* 2020 ONSC 66 at para. 17 and 18.

[25] In this regard I note that Gutierrez seeks to have the Receiver replaced with someone of his choosing.

[26] Last, in considering the test I need to determine whether Gutierrez has sufficient assets in Ontario to pay the Receiver's costs. I agree with the Receiver there is good reason to believe Gutierrez has insufficient assets in Ontario for the reasons set out in para. 37 of the Receiver's factum.

[27] Gutierrez claims in his factum that he is impecunious. He has not, however, as noted, delivered

any evidence in the motion to support this assertion. Further, according to the Bill of Costs filed at his contempt hearing he has paid Mr. Greenspan \$150,000.00 between April – September 2022. He continues to be represented by two sets of counsel. Also, it appears from Gutierrez’s litigation conduct to date and moving forward with is motion, that he has not been deterred by legal costs.

[28] I am also satisfied, based on the above, that this motion is not being used as a litigation tactic to prevent the motion from being heard and on its merits.

4.

[29] Gutierrez also submits that this motion ought to be dismissed since the Receiver delayed in bring this motion. This argument has no merit. The motion to replace the Receiver and this motion were scheduled at the same time. Since Mr. Gutierrez has been found in contempt.

[30] The fact that the Notice of Motion was served approximately one year ago is immaterial as I have agreed to schedule it and this motion in the fall of this year.

5.

[31] In so far as quarantine is concerned I agree with Gutierrez that the amount sought is high. Having reviewed the nature of the motion and the steps likely required up to and including the motion, I am satisfied that \$100,000.00 is fair and reasonable on a partial indemnity basis after reviewing the Receiver’s draft of Bill of Costs.

[32] Based upon foregoing I therefore order that security for costs be paid in the amount of \$100,000.00. This includes some costs vis a vis the Receiver, as per my July 2021 decision where I allowed these costs pursuant to s.131(1) of the CJA on the basis that stakeholder ought not be saddled with costs she ought not have to incur.

[33] Insofar as costs of this motion are concerned, I have reviewed the parties draft Bill of Costs. Since the Receiver was successful it ought to receive its costs on a partial indemnity basis in the amount of \$30,092.10 inclusive as claimed. This amount is fair and reasonable.

Addendum

[34] Since preparing this endorsement I have concluded that, given my findings concerning Rule 56.01(01)(e), it would be appropriate to have another judge on the Commercial List hear the motion to replace the Receiver.

Justice Thomas J. McEwen

Date: December 1, 2022

Tab 3

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

AFFIDAVIT OF NANDA SINGH

I, Nanda Singh, of the City of Brampton, in the Regional Municipality of Peel, MAKE
OATH AND SAY:

1. I am a law clerk with the law firm of Cambridge LLP, lawyers for the Respondent Juan Guillermo Gutierrez, and, as such, have knowledge of the matters contained in this Affidavit. Where the information herein is obtained from others, I state the source of that information and I believe it to be true.
2. In or about October 2015, the Applicant obtained a Judgment against Xela Enterprises Inc. ("**Xela**") and Mr. Gutierrez in favor of Margarita Castillo.
3. On or about July 25, 2017, Juan Gutierrez was examined in aid of execution. The examination continued on August 30, 2018. Attached hereto and marked as **Exhibit "A"**

is true copy of the Transcript of the continued examination in aid of execution dated August 30, 2018.

4. On or around July 2019, a Receiver was appointed. Attached hereto and marked as **Exhibit “B”** is a true copy of the Appointment Order.

5. I am informed by N. Joan Kasozi and I verily believe that in or around January 2020, Mr. Gutierrez served a motion to terminate the receivership.

6. I am informed by N. Joan Kasozi and I verily believe that in or around March 2020, the Receiver brought a contempt motion against Juan Gutierrez. Attached hereto and marked as **Exhibit “C”** is a true copy of the Notice of Motion.

7. I am informed by N. Joan Kasozi and I verily believe that the contempt motion was adjourned *sine die*.

8. On October 27, 2020 Justice McEwen made an order for disclosure of certain documents. Attached hereto and marked as **Exhibit “D”** is a true copy of the October 27, 2020 Order.

9. I am informed by N. Joan Kasozi and I verily believe that on January 18, 2021, the Receiver brought a motion to, *inter alia*, relating to Receiver’s investigative powers.

10. On February 22, 2021, Mr. Gutierrez swore an Affidavit in response to the receiver’s motion relating to investigative powers. Attached hereto and marked as **Exhibit “E”** is a true copy of Mr. Gutierrez’s Affidavit.

11. On March 5, 2021, Mr. Gutierrez was cross-examined on his Affidavit dated February 22, 2021. Attached hereto and marked as **Exhibit “F”** is a true copy of the Transcript of the Cross examination of Mr. Gutierrez dated March 5, 2021.

12. On February 9, 2021, the Receiver brought another contempt motion against Mr. Gutierrez. Attached hereto and marked as **Exhibit “G”** is a true copy of the Notice of Motion for the Contempt motion.

13. On February 9, 2021, Mr. Gutierrez delivered a Notice of motion seeking to vary the appointment Order, to replace KSV with another Receiver. Attached hereto and marked as **Exhibit “H”** is a true copy of Mr. Gutierrez’ notice of motion dated February 9, 2021.

14. In or around December 2021, the Receiver commenced a civil proceeding against Mr. Gutierrez and his family. Attached hereto and marked as **Exhibit “I”** is a true copy of the Statement of Claim.

15. On March 25, 2022 the parties attended a case conference before Justice McEwen. Attached hereto and marked as **Exhibit “J”** is a true copy of the Case Conference Brief of Mr. Gutierrez.

16. In or around June 2022, the Receiver provided Mr. Gutierrez’s counsel with a copy of the Statement of Claim. Attached hereto and marked as **Exhibit “K”** is a true copy of the Email from Counsel for the Receiver.

17. On September 12, 2022, Mr. Gutierrez delivered his notice of motion to replace the Receiver (the “**Recusal Motion**”). Attached hereto and marked as **Exhibit “L”** is a true copy of the Notice of Motion for the Recusal Motion dated September 12, 2022.

18. On September 27, 2022 Justice McEwen scheduled the Recusal Motion. Attached hereto and marked as **Exhibit “M”** is a true copy of the Case Conference Brief and the Endorsement of Justice McEwen.

19. I swear this Affidavit in response to the Motion for Security for Costs and for no other or improper purpose.

SWORN by Nanda Singh of the City of Brampton, in the Regional Municipality of Peel, before me at the City of Toronto, in the Province of Ontario, on November 22, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

}



Commissioner for Taking Affidavits
(or as may be)

N. JOAN KASOZI (LSO# 70332Q)



NANDA SINGH

This is Exhibit "A" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', is centered above a horizontal line.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Court File No. CV-11-9382-0001

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 QUINN, INC., 896096 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, 2013.

A P P E A R A N C E S:

WILLIAM BORTOLINI

Solicitor for the Plaintiff

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I N D E X O F P R O C E E D I N G S

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--- EXHIBIT NO. 1: Application/Information EX Financial (Canada) dated November 17, 2016.	150
--- EXHIBIT NO. 2: JCG Drawings, October 2015 to August 2016.	168
--- EXHIBIT NO. A: Organizational Chart regarding Xela and subsidiaries.	184
--- EXHIBIT NO. B: Directors Xela and Subsidiaries.	185
--- EXHIBIT NO. 3: Consolidated List of Undertakings and Refusals from previous cross-examination of Mr. Gutierrez, dated March 20, 2018.	223
--- EXHIBIT NO. 4: Listing Analysis for 2 Gordon Road, dated January 20, 2018.	237
--- EXHIBIT NO. 5: Agreement of Purchase and Sale for 2 Gordon Road for \$3 million by Elliott Sud, dated July 9, 2018.	258
--- EXHIBIT NO. 6: Agreement of Purchase and Sale for 2 Gordon Road dated July 27, 2010 by Larry Mowara.	267
--- EXHIBIT NO. 7: Q5 for 2018; Statement of Investment Income for Mr. Gutierrez.	289
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No Under advisements noted in transcript

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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

JUAN GUILLERMO GUTIERREZ - 196

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 RSPs, 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 car away, you forced my house to be
25 sold and you forced me to forfeit or sell my half of

JOAN GUILLERMO GUTIERREZ - 132

1 the collater: 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 Arbor 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?

JOAN 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.

JOAN GUILLERMO GUTIERREZ - 134

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.

8 091. 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?

20 092. 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

JUAN GUILLERMO GUTIERREZ - 136

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 got 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?

JOAN GUILLERMO GUTIERREZ - 136

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 A. 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?

JUAN GUILLERMO GUTIERREZ - 149

1 A. Yes.

2 709. Q. I am showing you a document that was
3 provided to me following your last examination. Is
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

JUAN GUILLERMO GUTIERREZ - 147

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 held 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 want 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 got 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 pay
25 anything new. The company I was running is completely

JOAN GUILLERMO GUTIERREZ - 144

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 cars, 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 stress.
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

JUAN GUILLERMO GUTIERREZ - 145

1 trial and you know it, and Mr. Leon and Roycheethyn
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

JOAN GUILLESIMO GUTIERREZ - 146

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. Woychessyn 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

JUAN GUILLERMO GUTIERREZ - 147

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

JUAN GUILLERMO GUTIERREZ - 148

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

JUAN GUILLERMO GUTIERREZ - 149

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.

JOAN GUTHRIE: SUTTEREE - 150

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 what 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 EX Financial Canada Ltd., dated November 17, 2016.
22 That's Exhibit number 1.

23 --- EXHIBIT NO. 1: Application/Information EX Financial
24 (Canada) dated November 17, 2016.

25 BY MR. BORTOLINI:

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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 ID" 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?

JUAN GUILLERMO GUTIERREZ - 152

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

JOAN GONZALEZ GUTIERREZ - 153

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 nonexistent; 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

JUAN GUILLERMO GUERRERO - 114

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. Koycheshyn
12 and my sister and her husband in your office, and
13 another lawyer named Catherine Koy 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 Granat 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

JOAN WILLIAMS-GUTIERREZ - 155

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 20 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 MIC 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.

JUAN GUILLERMO GUTIERREZ - 136

741. Q. And what you're talking about rescuing
the business, are you talking about resolving the
litigation with your cousin regarding Avicola?

A. Repeat the question?

742. Q. And when you talk about trying to
resolve things, are you talking about resolving the
Avicola issue?

A. Resolving with whom?

743. Q. With whenever. We've talked about this
before: you've given testimony about it before, about
the expected value of settling litigation with your
cousin.

A. Obviously for Xela resolving the case
with the cousins would have allowed Xela to pay the
judgment. But Xela can't pay the judgment because
it's a completely unviable operation; it has no
business. And the case has not been settled -- has
not been resolved yet.

744. Q. What I was just getting at was the
expectation that you had or the hope that you had in
2016 that Xela could turn things around, and what I
was asking is if that was based on optimism about
resolving things with respect to Avicola?

A. In 2016, around this time my optimism
was to be able to rescue our business operations by

JUAN GUILLERMO GUTIERREZ - 157

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.

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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. So, 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

JUAN GUILLERMO GUTIERREZ - 159

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 Xels.

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.

JUAN GUILLERMO GUTIERREZ - 160

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 \$100,000.

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 understood 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, \$207,921. 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.

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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,

JUAN GUILLERMO GUTIERREZ - 169

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

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1 already know the answer.

2 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 last 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 \$'00,000?

14 A. I already answered -- I don't know
15 those 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

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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 --- UNDEERTAKING

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

LUAN GUILHERME GUTIERRES - 167

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;

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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. BORUCHOIN:

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 1 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

JUAN GUILLERMO GUTIERREZ - 169

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 --- KK-USA

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.

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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

JUAN GUTIERREZ GUTIERREZ - 171

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

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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 Ailuros International
7 (Bathbados). 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 Tropic 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,

JUAN GUILLERMO CUTIERRER - 173

1 Xela International or Tropic.

2 790. Q. And so, you're telling me you are not
3 the VP of Finance of Empresas Arceos International?

4 A. I am not.

5 791. Q. Have you ever been the VP Finance of
6 Empresas Arceos 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

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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 don'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 taking 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.

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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. BORTOLINI:

11 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 transparent. 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.

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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 me 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

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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.

4 905. 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.

11 906. 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 Leah 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

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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

JUAN GUILLERMO GUTIERREZ - 103

1 agreed to refer to this chart as selling 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 maneuvers, 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 college 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

JUAN GUILLERMO GUTIERREZ - 184

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 Weytheshyn, 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 Q13. 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 E 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. ROBINLIN:

3 Q14. 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. ROBINLIN:

9 Q15. 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 Q16. 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 Q17. Q. Stop interrupting me while I'm asking
25 these questions.

JUAN GUILLERMO GUTIERREZ - 136

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

JUAN GUILLERMO GUTIERREZ - 187

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

JUAN GUILLERMO GUTIERREZ - 133

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

19 322. 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

JUAN GUILLERMO CUTIERREZ - 188

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. HORTON:

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

JUAN GUILLERMO GUTIERREZ - 130

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 or companies?

JUAN GUILLERMO GUTIERREZ - 191

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.

JUAN GUILLERMO GUTIERREZ - 162

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 now, 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

JUAN GUILLERMO GUTIERREZ - 195

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 ---

JUAN GUILLERMO GUTIERREZ - 194

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

JOAN GUILLERMO GUTIERREZ - 195

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 came 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 Q46. 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 Q47. 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

GUAN GUTIERREZ GUTIERREZ - 196

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.

JUAN GUILLERMO GUTIERREZ - 199

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 got 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

JOAN GUILLERMO GUTIERREZ - 198

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

JUAN GUILLERMO GUTIERREZ - 199

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

JUAN GUILLERMO HERRERA - 200

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.

JUAN GUILLERMO CUTIERREZ - 291

1 A. You see you're trying to trick me with
2 your statements and your questions.

3 065. Q. Again, I'm not trying to trick you.

4 A. Yes, you are.

5 066. 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 Marana Republic situation,
25 not like Canada and I'm horrified. It horrifies me to

JUAN GUILLERMO GUTIERREZ - 202

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?

JOAN GULLIFORD GUTTERBERG - 203

1 That's what you're saying?

2 866. 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

JUAN GUILLERMO GUTIERREZ - 204

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

LUAN GUILLERMO GUTIERREZ - 205

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

JUAN GUILLERMO GUTIERREZ - 206

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 at 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.

JUAN GUILLERMO GUTIERREZ - 207

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

JUAN GUILLERMO GUTIERREZ - 200

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 1/4 Anker 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

JUAN GUILLERMO GUTIERREZ - 109

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 -- 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.

JUAN GUILLERMO GUTIERREZ 210

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

JUAN GUILLERMO GUTIERREZ - 211

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

JUAN GUTIERREZ GUTIERREZ - 212

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.

6 339. 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.

12 690. Q. I request that you obtain a copy of the
13 mortgage agreement that was used to fund the \$780,000
14 bid for 124 ---

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

JUAN GUILLERMO GUTIERREZ - 211

1 because you're playing these little games and this
2 conspiracy thing; you got money from Parana 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 Q91. 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 Q92. Q. You described earlier that there were
25 some things that were seized and sold off like the

JEAN GUILLERMO GUTIERREZ - 214

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. It's 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. Weychesnyx 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.

CLARK GUTIERREZ GUTIERREZ - 215

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.

JOAN GUILLERMO GUTIERREZ 216

1 696. 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?

8 697. 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.

18 698. 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.

22 699. Q. Where would that money have come from
23 a bank account? A CD account?

24 A. Whatever I gave her before you froze my
25 bank accounts came from me. After that I didn't give

JUAN GUILLERMO GUTIERREZ 217

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

JUAN GUILLERMO CUTIERSSEZ - 218

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

JUAN GUILLERMO GUTIERREZ - 219

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 ---

JUAN GUILLERMO GUTIERREZ - 110

1 A. So I already told you I don't know the
2 answer. I don't know how Mr. Mandalzon 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 --

JUAN GUILLERMO GUTIERREZ - 221

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

JORN CUILLEMO GUTIERREZ 222

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 31. 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

JUAN GUILTERMO GUTIERREZ - 223

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 Q22. 2. 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

JUAN GUILLERMO GUTIERREZ - 224

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 than 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

JUAN GUILLERMO GUTIERREZ - 22:

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 US Financial
18 Loan Application. And you advised at your examination
19 last July that some of that money was applied towards
20 paying Xela's 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's expenses. And the

JUAN GUILLERMO GUTIERREZ - 226

1 answer that you gave was \$261,593.50. Is that -- do
2 you remember providing your counsel with some 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, must 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 details; 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

JUAN GUILLERMO GUTIERREZ - 127

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 B. We marked earlier as Exhibit B
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?

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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; \$261,592.50?

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

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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

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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 ID 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

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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. What 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 CD 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, 2016. 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;

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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. BORTOLINI: 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. BORTOLINI:

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 those; 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

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1 when it's posted for letting it look 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 out 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

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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 26,
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 He 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 12, 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

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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 those 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 got 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 Roycheshyn 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.

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1 934. 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 those 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 at
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 of 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

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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 take
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 \$0,000 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 order 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

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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 assure 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 those 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?

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1 A. Except that the buyers backed off at
2 the last minute.

3 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

JUAN GUILLERMO GONZALEZ - 251

1 I never got it.

2 996. Q. And I'll explain why this is important,
3 because if any of those 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

JUAN GUILLERMO HERNANDEZ - 252

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 --- UNDERSTANDING

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

JUAN GUILLERMO CUTIERRIZ - 253

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 Utah. 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

JOAN GUILLERMO GUTIERREZ - 254

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

JUAN GUILLERMO GUTIERREZ - 295

1 increased their deposit?

2 A. I can ask the real estate agent to see
3 if they know.

4 1003. 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

JUAN GUILLERMO GUTIERREZ - 256

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 came 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

JUAN GUILLERMO GUTIERREZ - 257

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 Sod.

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 inspector -- 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.

JOAN GUILLERMO SUTTERBERG - 258

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 Sod, dated July 9,
16 1983.

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

JUAN GUILLERMO GUTIERREZ - 259

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.

JUAN GUILLERMO GUTIERREZ 260

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 out 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

JUAN GUILLERMO GUTIERREZ - 261

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...

JUAN GONZALEZ GUTIERREZ - 102

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: all this deal

10 ---

11 1025. Q. I'm going exactly where I just said.

12 A. If this Elliott SLD deal would have
13 happened, then my sister would have got 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

JUAN GUILLERMO GUTIERREZ - 063

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 33% -- 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

JUAN GUILLERMO SOUTERREZ - 264

1 received, and I'm looking again, we marked as Exhibit
2 5, the July 9, 2010 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

JUAN GUILLERMO CUTIERRIZ - 265

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 Snd that did not include the 24 months
25 free rent?

JOAN GUILLERMO GUTIERREZ - 266

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 given
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

JUAN GUTIERREZ GUTIERREZ - 267

1 on the first page of Exhibit number 5.

2 A. I'll try to see if I can get that.

3 --- UNDERSTANDING

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

JUAN GUILLERMO CUTLERREZ - 268

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 Howens 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?

JUAN GUILLERMO GUTIERREZ - 369

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 2,174 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?

JUAN GUILLERMO GUTIERREZ - 270

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

JUAN GUILLERMO GUTIERREZ - 271

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. Sue 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

JOAN GUTIERREZ GUTIERREZ - 172

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 1040. 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 mortgages -- 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

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1 effort going as much as we could. Now, I don't have a
2 miracle thing that I say, (clinking 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. Woyaneshyn okay,
4 just like Willie Aguilera, our former TV 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 (1:33 P.M.) ---

17 -- UPON RESUMING (1:34 P.M.) ---

18 CONTINUED EXAMINATION BY MR. BORCOWIK:

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.

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1 of that \$1,739,398.42 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 BX 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 \$52,459.90.

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

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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 than 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.

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1 And you keep asking me the same damn
2 questions over and over again. Just looking for what,
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. Ruh?

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 those 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

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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 Lathau, 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 1964, in June. The company started; I

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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 67 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

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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 2016. 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.

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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 1060. 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.

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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 started 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, 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

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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 8315 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 118. 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

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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. Where 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
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

JUAN GUILLERMO SUTIERREZ - 736

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 52,361. 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

JUAN GUILLERMO GUTIERREZ - 297

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 those
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

JUAN GUILLERMO GUTIERREZ - 298

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 those charges were
6 for?

7 A. Not on 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.

JUAN GUILLERMO GUTIERREZ - 299

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, Fort Collins.
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 :

JUAN GUILLERMO GUTIERREZ - 200

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.

JUAN GUILLERMO CUTIERREZ - 001

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 1st 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

JOAN GUILLERMO GUTIERREZ - 302

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 look 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. PORTO: X:

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 5th 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

JUAN GUILLERMO CUTIERRIZ - 304

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 - 309

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 G.
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

JOAN GUILLERMO GUTIERREZ 306

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

JUAN GUILLERMO GUTIERREZ - 307

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 BX 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 Margaret'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

JUAN GUILLERMO GUTIERREZ - 308

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. BOPTOLIN:

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 Kela. 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 \$96,225. Do
24 you remember receiving that reassessment?

25 A. These tax things are so complicated; I

JUAN GUTIERREZ GUTIERREZ - 310

1 don't understand them. So I always rely on the tax
2 adviser 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 6639". 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 GONZALEZ - 311

1 your 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 MS. BORTOLINI:

12 1161. Q. There's also a reference on the back of
13 this page, page 2 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 6, the Income Tax
25 Return and Notice of Reassessment for 2016 for Juan

JUAN GUILLERMO GUTIERREZ - 312

1 Guillermo Gutierrez.

2 -- EXHIBIT NO. 3: Income Tax Return and Notice of
3 Reassessment for 2010 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

JUAN GUILLERMO GUTIERREZ - 313

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.

JUAN GUILLERMO GUTIERREZ - 314

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 A. 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. BORTOLINI: Subject to answers to
25 undertakings, realsals, those are my questions.

JUAN GUILLERMO GUTIERREZ - 316

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--- WHEREUPON THE EXAMINATION WAS ADJOURNED AT 2:23 P.M.

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I hereby certify that this is the
Examination in Aid of Execution of
JUAN GUILLERMO GUTIERREZ, taken
before me to the best of my skill
and ability on the 30th day of
August, 2018.

TALLA A. STEPHEN - Certified Court Reporter

Reproductions of this transcript are in direct
violation of O.G. 587/91 Administration of Justice Act
January 1, 1993, and are not certified without the
original signature of the Court Reporter

This is Exhibit "B" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE.

LA PRÉSENT ATESTATION DE DOCUMENT, CHAQUE PAGE DESQUELS EST REVÊTUE DU SÉAL DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU.

DATED AT TORONTO THIS 6th DAY OF February 2020
Fait à Toronto le

DAY OF
JOUR DE

February 20

ROBSTRAR

Registrar

GRIFFIER

Court File No. CV-11-9062-00C1.

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

JUSTICE MCEWEN

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)

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FRIDAY, THE 5th

DAY OF July, 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.

- 2 -

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;

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DATED AT TORONTO THIS 14th DAY OF February 2020
FAIT À TORONTO LE 14^e JOUR DE février 2020

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- (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;

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DATED AT TORONTO THIS 6 DAY OF February 20 20
 FAIT À TORONTO LE 6 JOUR DE Février 20 20
 REGISTRAR C. IRWIN
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- (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

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FAIT À TORONTO LE

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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.

4. THIS COURT ORDERS that, notwithstanding any other provision in this Order, the Receiver shall not take any steps to commence, direct, interfere with, settle, interrupt or terminate any litigation between the Debtor and its subsidiaries and/or affiliates and any third party, including the litigation involving or related to the Avicola companies (as defined and further set out in the affidavit of Juan Guillermo Gutierrez ("Juan"), sworn June 17, 2019). Such steps shall include but not be limited to:

- a) selling or publicly marketing the shares of Lisa S.A., Cahinvest S.A., or any shares owned by these entities;
- b) publicly disclosing any information about the above-mentioned litigation and/or the Receiver's conclusions or intentions, provided that the Receiver may disclose such information to Juan and Margarita Castillo ("Margarita") and their counsel upon Juan and Margarita each executing a non-disclosure agreement in a form reasonably acceptable to the Receiver, and if the Receiver does disclose such information, conclusions or intentions, the Receiver shall disclose equally to Juan and Margarita;

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DATED AT TORONTO ON 16 DAY OF February 20 20
FAIT À TORONTO LE 16 JOUR DE Février 20 20

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- c) replacing counsel in the above mentioned litigations; and
- d) engaging in settlement negotiations or contacting opposing parties in the above-mentioned litigation.

This paragraph applies only until December 31, 2019 or such other date as this Court may order.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. 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. The Receiver shall treat as confidential all information received relating to litigation involving or related to the Avicoin companies.

6. 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.

7. 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

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DATED AT TORONTO THIS 16th DAY OF February 2019.

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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.

8. 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

9. 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

10. 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

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DATED AT TORONTO THIS 20th DAY OF February 1996.
FAIT À TORONTO LE 20 JOUR DE Février 1996.

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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

11. 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

12. 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

13. 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

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DATED AT TORONTO THIS 10th DAY OF February 2009
 FAIT À TORONTO LE 10th JOUR DE Février 2009

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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

14. 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(3) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. 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

16. 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

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DATED AT TORONTO THIS 27th DAY OF February, 2021.

DAY OF

February, 2021

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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

17. 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

18. 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

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DATED AT TORONTO THIS
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or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. 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.

20. 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

21. 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 amount of such borrowing shall not, subject to further order of this Court, exceed \$500,000 before December 31, 2019. 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.

22. 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.

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DATED AT TORONTO THIS 6th DAY OF February, 2020
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23. 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 Certificate") for any amount borrowed by it pursuant to this Order.

24. 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.

TERMINATION OF RECEIVERSHIP

25. THIS COURT ORDERS that the Debtor may make a motion to this Court for the termination of the receivership upon receipt by Margarita of the judgment debt owing to her by the Debtor, plus receivership fees and expenses, and that upon such motion the burden shall be on Margarita to justify that it remains just and equitable to continue the receivership.

SERVICE AND NOTICE

26. 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.kavadvisory.com/insolvency-cases/case/xela-enterprises/>.

27. 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

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DATED AT TORONTO THIS 20th DAY OF February 2010
 FAIT A TORONTO LE 20 JOUR DE Février 2010

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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

28. 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.

29. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.

30. 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, Panama, Guatemala, Barbados, Bermuda, Venezuela or Honduras 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.

31. 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.

32. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, in the amount of \$40,000, all inclusive, to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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33. 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.



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DATED AT TORONTO THIS 6th
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SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Kolman 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.

THIS IS TO CERTIFY THAT THIS DOCUMENT, EACH PAGE OF WHICH IS STAMPED WITH THE SEAL OF THE SUPERIOR COURT OF JUSTICE AT TORONTO, IS A TRUE COPY OF THE DOCUMENT ON FILE IN THIS OFFICE.

LA PRÉSENT ATTESTE QUE CE DOCUMENT, DON'T CHAQUE DES PAGES EST REVÊTUE DU SCAU DE LA COUR SUPÉRIEURE DE JUSTICE À TORONTO, EST UNE COPIE CONFORME DU DOCUMENT CONSERVÉ DANS CE BUREAU.

DATED AT TORONTO THIS 6th DAY OF February 2011
F.A.T. TORONTO

DAY OF February 2011
JOUR DE 6th FÉVRIER 2011
Registrar

- 2 -

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: _____

THIS IS TO CERTIFY THAT THIS
DOCUMENT, EACH PAGE OF
WHICH IS STAMPED WITH THE
SEAL OF THE SUPERIOR COURT
OF JUSTICE AT TORONTO, IS A
TRUE COPY OF THE DOCUMENT
ON FILE IN THIS OFFICE

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CONSERVÉ DANS CE BUREAU

DATED AT TORONTO THIS
FAIT À TORONTO LE

DAY OF February 20 20
JOUR DE 6. 11 20

Registrar

REGISTRAR

GREFFIER

MARGARITA CASTILLO
Moving Party

-and-

XELA ENTERPRISES LTD. et al.
Respondents
Superior Court File No. CV-11-9062-0001

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at Toronto

ORDER

BENNETT JONES LLP

2400 One First Canadian Place
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Toronto, ON M5X 1A4

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Telephone: (416) 863-1200

Fax: (416) 863-1716

Lawyers for the moving party, Margarita Castillo

This is Exhibit "C" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

BETWEEN:

MARGARITA CASTILLO

Applicant

and

**XELA ENTERPRISES LTD., TROPIC INTERNATIONAL LIMITED, FRESH QUEST,
INC., 69096 ALBERTA LTD., JUAN GUILLERMO GUTIERREZ and CARMEN S.
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**AMENDED NOTICE OF MOTION
(returnable March 24, 2020)**

KSV Kofman Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Debtor**”), will make a motion to the Honourable Justice McEwen of the Commercial List on March 24, 2019 at 10:00 a.m., or as 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 orally.

1. **THE MOTION IS FOR** an Order including, amongst other things:

- (a) approving the second report of the Receiver dated February 18, 2020 (the “**Second Report**”) and the activities of the Receiver set out therein;
- (b) approving the Supplement to the Second Report dated March 17, 2020 (the “**Supplemental Report**”) and the activities of the Receiver set out therein;

- (c) approving the fees and disbursements of the Receiver and its legal counsel, Aird & Berlis LLP (“**A&B**”);
- (d) approving and ratifying the Gabinvest Resolution, as defined in paragraph 1(bb) below;
- (e) ordering and declaring that, unless retained by the Receiver, no person or law firm shall act as counsel to the Debtor except for the limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Appointment Order (as defined in paragraph 1(d) below);
- (f) declaring that the respondent, Juan Guillermo Gutierrez (“**Juan Guillermo**”), is in contempt of the Appointment Order and the Disclosure Order (as defined in paragraph 1(r) below); and
- (g) such further and other relief as counsel may advise and this Court may permit.

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

- (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 (“**Juan Arturo**”), and brother, Juan Guillermo, with respect to her status as a director and minority shareholder of Tropic International Limited, a family company majority owned by the Debtor;
- (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, respectively, the Debtor, Juan Guillermo and Juan Arturo became jointly obligated to pay Margarita \$5,083,866.04 (plus accrued interest and reimbursable enforcement expenses, the “**Judgment Debt**”);

- (c) the outstanding balance of the Judgment Debt is approximately \$4.1 million, plus interest and costs which are accruing;
- (d) pursuant to an Order of Justice McEwen dated July 5, 2019 (the “**Appointment Order**”), KSV was appointed as the Receiver, without security, of all of the assets, undertakings and properties of the Debtor;
- (e) the Debtor is or was the parent company of more than two dozen subsidiaries, located predominantly in Central America and the Caribbean, that carry on or carried on business in the food and agricultural sectors;
- (f) presently, the Debtor’s most significant asset is its indirect, one-third interest in a group of family-owned Guatemalan-based poultry companies (collectively, the “**Avicola Group**”), which interest is held as follows:
 - (i) 25% through the Debtor’s wholly-owned, indirect subsidiary, Lisa S.A. (“**Lisa**”), a Panamanian holding company; and
 - (ii) 8.3% through a second Panamanian holding company and subsidiary of Lisa, Villamorey S.A. (“**Villamorey**”);
- (g) the Debtor’s indirect equity interest in the Avicola Group is currently the subject of litigation in the jurisdictions of Canada, the State of Florida, the Republic of Panama, the Republic of Guatemala, Barbados, Bermuda, and the Bolivarian Republic of Venezuela (collectively, the “**Avicola Litigation**”), which Avicola Litigation has been ongoing, in one aspect or another, for over twenty years;
- (h) prior to April, 2016, the Debtor also wholly owned, through its subsidiary Barbados company, Empress Arturo International (“**EAI**”), and EAI’s subsidiaries BDT Investments Ltd. (“**BDT**”) and Corporacion Arven, Limited (“**Arven**”), which apparently operated a profitable Venezuelan restaurant chain, known as “Arturos”;

- (i) in April 2016, EAI transferred its shares in BDT and Arven to Juan Arturo, allegedly in partial repayment of a debt owed by EAI to Juan Arturo, and Juan Arturo then transferred the shares to the ARTCARM Trust (the “**Trust**”), a Barbados domiciled trust, the beneficiaries of which are Juan Guillermo’s children (collectively, the “**EAI Transaction**”);
- (j) Alexandria Trust Corporation (“**ATC**”) is the trustee of the Trust;
- (k) the Receiver is concerned that EAI may have received inadequate consideration when it sold, conveyed or transferred the shares of BDT and Arven to Juan Arturo;
- (l) the Receiver is also concerned that, in January, 2018, the Debtor caused or allowed Lisa to assign all or a considerable portion of its interest in the Avicola Litigation to BDT for inadequate consideration when it assigned such interest in return for litigation funding and a covenant to pay Lisa thirty percent of any litigations proceeds net of costs and any amounts owing by Lisa to BDT (the “**Lisa Transaction**” and, together with the EAI Transaction, the “**Reviewable Transactions**”);
- (m) as a result of the Reviewable Transactions, which all took place after Margarita obtained judgement in these proceedings, the majority of the economic value of the Debtor has been transferred to the Trust for the benefit of Juan Guillermo’s children;
- (n) another effective transfer of value by Lisa to BDT was made when Lisa consented to a 2012 Panamanian judgment in favour of BDT for approximately US\$25,323,773, allegedly in respect of debts owed by Lisa to BDT, Arven and an Arven subsidiary for litigation funding connected to the Avicola Litigation (the “**BDT Judgement**”), which BDT Judgement was consented to at a time when both BDT and Lisa were wholly-owned, indirect subsidiaries of the Debtor under the management of Juan Guillermo;

- (o) pursuant to the Appointment Order, the Receiver is entitled to access any and all information relating to the business or affairs of the Debtor in the possession or control of (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 the Appointment Order;
- (p) the Receiver has made numerous information requests to Juan Guillermo about the Reviewable Transactions and the alleged debts underlying the BDT Judgement, which requests have been refused by individuals and entities taking direction from Juan Guillermo;
- (q) as a result of the Receiver's inability to obtain information about the Reviewable Transactions, the Receiver moved for, and was granted, an Order dated October 29, 2019 requiring Lisa, BDT, Arven, the Trust and ATC to deliver information to the Receiver about the Reviewable Transactions (the "**Disclosure Order**");
- (r) BDT, Arven and the Trust have failed and/or refused to provide any of the information required by the Receiver under the Disclosure Order;
- (s) during a conference call in which Juan Guillermo participated, Lisa's international litigation counsel advised the Receiver that Juan Guillermo directed and represented Lisa despite not being an officer or director, but that the Receiver should contact Lisa's board of directors to obtain any information required under the Disclosure Order;
- (t) Lisa's counsel also advised that Lisa had obtained a US\$18 million judgment against Villamorey in 2012 in Panama, for unpaid dividends (the "**Alleged Panamanian Judgement**"), which judgment debt now totalled approximately US\$25 million and would soon be paid out to Lisa;

- (u) Lisa's counsel did not provide a copy of the Alleged Panamanian Judgement, despite the Receiver's request for it, and the Receiver's Panamanian counsel, Hatstone Group ("**Hatstone**"), has been unable to locate it in its searches of Panamanian court proceedings or any proceedings connected therewith;
- (v) upon request by the Receiver for information relating to the Lisa Transaction, Lisa's counsel provided only a copy of the assignment agreement (a copy of which has already been obtained by the Receiver), but no information or documentation relating to advances purportedly made by BDT to or on behalf of Lisa in consideration for the assignment, as the Receiver requested;
- (w) on December 31, 2019, new purported Canadian counsel to the Debtor, Cambridge LLP, served a motion seeking an extension of the effect of paragraph 4 of the Appointment Order (the "**Extension Motion**") pursuant to which paragraph the Receiver could not, among other things, involve itself in the Debtor's foreign litigation proceedings until December 31, 2019;
- (x) the Debtor's basis for the Extension Motion was an alleged third party loan that Lisa had procured in order to repay the Judgement Debt and the costs of the Receivership (the "**Loan**");
- (y) in a January 9, 2020 Endorsement, Justice McEwen declined to amend paragraph 4 of the Appointment Order or schedule the Extension Motion;
- (z) despite repeated requests by the Receiver for more information about the Loan so that the Receiver could consider its effects on the Debtor's business and stakeholders, none of Juan Guillermo, counsel to the Debtor or counsel to Lisa provided any useful information to the Receiver;
- (aa) the Receiver has no information about the current status of the Loan or any advance to Lisa thereunder;

- (bb) on January 16, 2020, pursuant to its authority under paragraph 3(q) of the Appointment Order to exercise the Debtor's shareholder rights, the Receiver passed a resolution of the Debtor as the sole shareholder of Lisa's parent, Gabinvest S.A. ("**Gabinvest**") replacing the directors of Gabinvest with three lawyers from Hatstone (the "**Gabinvest Resolution**");
- (cc) on January 22 and 27, 2020, at the direction of the Receiver, the new Gabinvest board caused Gabinvest to resolve, by way of shareholder meetings, to increase the maximum number of directors of its wholly-owned subsidiary, Lisa, from five to six and then to appoint the same three Hatstone lawyers as new directors while leaving the existing three directors in place (collectively, the "**Lisa Resolutions**");
- (dd) the initial purpose of the Gabinvest Resolution and the Lisa Resolutions was to allow the Receiver access to the books and records of Lisa to uncover any evidence of consideration given by BDT for the Lisa Transaction and any evidence of the loans by BDT and its subsidiaries on which the BDT Judgement was based;
- (ee) in response to the Gabinvest Resolution and the Lisa Resolutions:
 - (i) Juan Guillermo instructed Panama counsel to make filings on the public registry that have reversed the effect of the Lisa Resolutions and will undo the effect of the Gabinvest Resolution; and
 - (ii) the non-Hatstone directors of Lisa have threatened criminal and civil litigation against the newly appointed directors from Hatstone;
- (ff) in addition to the steps he has taken, or has caused others to take, to frustrate the appointment of the new directors of Gabinvest, Juan Guillermo has advised Hatstone that he, purportedly on behalf of Gabinvest, will not agree to the Gabinvest board changes made by the Receiver and instead has proposed a split board comprised of equal numbers of appointees by the Receiver and by himself;

- (gg) the non-Hatstone directors have also frustrated attempts by Hatstone to obtain corporate records from Lisa's and Gabinvest's Panamanian registered corporate agent, leading the corporate agent to resign without having provided any of the requested information;
- (hh) Juan Guillermo, a Toronto resident, has caused, or directed, the non-Hatstone directors of Lisa and Gabinvest and professionals representing Lisa, BDT and the Trust to not cooperate and generally frustrate the Receiver's exercise of its powers under the Appointment Order and the Disclosure Order and has exploited the foreign jurisdictions of Lisa, Gabinvest, BDT, Arven and the Trust for this purpose;
- (ii) Juan Guillermo's interference with the Receiver has been to the ultimate benefit of his children, as the beneficiaries of the Trust that has profited, or stands to profit, from the Reviewable Transactions and the BDT Judgement;
- (jj) in light of:
 - (i) the conflict of interest caused by Juan Guillermo interfering with the Receiver for the benefit of his children and to the detriment of all other stakeholders;
 - (ii) the pattern of substantial unpaid legal accounts incurred by the Debtor while under Juan Guillermo's control; and
 - (iii) the Receiver's exclusive power to retain and instruct counsel for the Debtor, which power the Receiver has exercised in retaining, among others, A&B and Hatstone, and which power is no longer limited by paragraph 4 of the Appointment Order,

unless retained by the Receiver, no person or law firm including, without limitation, Cambridge LLP, should be permitted to act as counsel to the Debtor in these proceedings, in any foreign legal proceedings or otherwise, except for the

limited and specific purpose of bringing a motion for discharge of the Receiver pursuant to paragraph 25 of the Appointment Order;

(kk) the Appointment Order states clearly and unequivocally that all Persons (as defined in the Appointment Order, and including Juan Guillermo) shall, forthwith:

- (i) advise the Receiver of the existence of any corporate records;
- (ii) provide the Receiver with unfettered access to such corporate records;
- (iii) permit the Receiver to make copies of such corporate records; and

refrain from interfering with the Receiver without written consent of the Receiver or the leave of this Court;

(ll) the Appointment Order also states clearly and unequivocally that the Receiver has the power to exercise of the Company's rights as 100% shareholder of Gabinvest and that power is exclusive once exercised;

(mm) Juan Guillermo, having had knowledge of the Appointment Order since the date it was issued, has repeatedly, and in contravention of the Appointment Order:

- (i) failed to advise the Receiver of the existence of corporate records relating to the Reviewable Transactions;
- (ii) failed to provide the Receiver with unfettered access to such corporate records;
- (iii) failed to permit the Receiver to make copies of such corporate records;
- (iv) interfered with and attempted to defeat the Receiver's exercise of the Company's shareholder rights;

and has directed others to do the same; and

- (nn) the Disclosure Order states clearly and unequivocally that:
- (i) all current and former directors, officers, employees, agents, accountants and shareholders of EAI, the Trust, Arven, BDT or Lisa, and all other persons acting on their instructions or behalf; and
 - (ii) any other party having notice of the Disclosure Order;
- were to forthwith provide to the Receiver any and all information and records in their possession or control relating to the Reviewable Transactions;
- (oo) Juan Guillermo, having had knowledge of the Disclosure Order since the date it was issued, has repeatedly, and in contravention of the Disclosure Order, failed to provide to the Receiver information and records in his possession and control relating to the Reviewable Transactions, and has directed others to do the same;
- (pp) the Receiver has filed with the Court the Second Report outlining, among other things, the actions of the Receiver since its First Report, dated October 17, 2019, the matters discussed above and the professional fees of the Receiver and its counsel;
- (qq) the Receiver has filed with the Court the Supplemental Report outlining, among other things, the actions of the Receiver since the Second Report and certain of the matters discussed above;
- (rr) the Appointment Order authorizes the Receiver to pass its accounts from time to time, and to include any necessary solicitor fees and disbursements in the passing of the accounts;
- (ss) the Receiver and its legal counsel, A&B, have accrued fees and expenses in their capacity as Receiver and counsel thereto, respectively, which fees and expenses require the approval of this Court pursuant to the Appointment Order;
- (tt) the other grounds set out in the Second Report;

- (uu) the terms and conditions of the Appointment Order, and in particular, paragraphs 3, 5, 6, 7, 9, 10, 11, 19, 20 and 28 thereof;
- (vv) section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (ww) rules 1.04, 2.01, 2.03, 3.02, 16, 17, 30, 37, 41.05, 60.11 and 60.18(5) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (xx) such further and other grounds as counsel may advise and this Court may permit.

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

- (a) the Second Report and its appendices;
- (b) the Supplemental Report and its appendices; and
- (c) such further and other material as counsel may submit and this Court may permit.

Date: March 17, 2020

AIRD & BERLIS LLP

Barristers and Solicitors
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Sam Babe (LSO # 49498B)

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Email: sbabe@airdberlis.com

Lawyers for the Receiver

TO: ATTACHED SERVICE LIST

MARGARITA CASTILLO- and - **XELA ENTERPRISES LTD. et al.**

Applicant

Respondents

CV-11-9062-00CL

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

Proceedings commenced at Toronto

**AMENDED NOTICE OF MOTION
(returnable March 24, 2020)**

AIRD & BERLIS LLP

Barristers and Solicitors

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Email: sbabe@airdberlis.com

Lawyers for the Court-appointed Receiver

This is Exhibit "D" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', with a large 'X' or 'K' shape.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

TUESDAY, THE 27th

)

JUSTICE MCEWEN

)

DAY OF OCTOBER, 2020

B E T W E E N:

(Court Seal)

MARGARITA CASTILLO

Applicant

and

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

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES
LTD.

ORDER

THIS CASE CONFERENCE, requested by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property of Xela Enterprises Ltd. (the “**Company**”) was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario due to the COVID-19 crisis.

ON READING the material filed by the parties, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present and listed on the Counsel Slip.

JUAN GUILLERMO'S DEVICES

1. **THIS COURT ORDERS** that within seven (7) business days of the Order, Juan Guillermo Gutierrez (“**Juan Guillermo**”) will provide the Receiver’s Forensic Specialist, Duff & Phelps, with possession of all devices used by him, including, but not limited to, cellphones, iPads, and computers which do or may include Xela information or data (including its subsidiaries, affiliates, or former subsidiaries and affiliates) (the “**Devices**”).
2. **THIS COURT ORDERS** that Juan Guillermo will confirm under oath that the Devices are the only devices in his power, possession, or control which do or may include Xela information or data (including its subsidiaries, affiliates, or former subsidiaries and affiliates).
3. **THIS COURT ORDERS** that Duff & Phelps will be authorized to make a single forensic image of each of the Devices (the “**Images**”) in the presence of Juan Guillermo or his agent and an IT expert of Juan Guillermo’s choice within seven (7) business days of the Order.
4. **THIS COURT ORDERS** that Duff & Phelps shall be permitted to employ whatever methods it deems appropriate to image the Devices without interference by Juan Guillermo or his IT expert.
5. **THIS COURT ORDERS** that forthwith after imaging the Devices, Duff & Phelps shall return the Devices to Juan Guillermo.
6. **THIS COURT ORDERS** that Duff & Phelps will make no additional copies or images of the Devices or any of the data extracted therefrom except as necessary to comply with this Order.

7. **THIS COURT ORDERS** that, at the request of the Receiver, Duff & Phelps will be authorized to conduct forensic analyses of the Images to determine whether, when, and how many files have been deleted from the Devices. Upon completion of the analyses, Duff & Phelps shall be authorized to provide the result of such analyses (but no documents shall be released to the Receiver unless such documents are released pursuant to the protocol below) to the Receiver and Juan Guillermo.

8. **THIS COURT ORDERS** that, at the request of the Receiver, Duff & Phelps will be authorized to load the data onto the Relativity document review platform (the “**Platform**”).

9. **THIS COURT ORDERS** that once the data is loaded onto the Platform, Duff & Phelps shall grant Juan Guillermo and his authorized agents access to the Platform.

10. **THIS COURT ORDERS** that Juan Guillermo, but not the Receiver or its agents, shall have thirty-five (35) days after Duff & Phelps grants Juan Guillermo and his authorized agents access to the Platform to assert any objections to disclosure to the Receiver of any documents on the Platform based on privilege, personal information, or any other reasonable basis (the “**Objections**” or the “**Objections Date**”).

11. **THIS COURT ORDERS** that a motion for an extension of the Objections Date may be made by Juan Guillermo by motion served no less than five days before the Objections Date. Such motion for an extension must be returnable within 7 (seven) days of the Objections Date, subject only to the Court’s availability (collectively, the “**Extension Deadlines**”).

12. **THIS COURT ORDERS** that, after the Objections Date, or if a motion for extension of the Objections Date is made in accordance with the Extension Deadlines, then after the Court’s judgment thereon, the Receiver shall be given access to all the documents on the document review platform except for Objections documents. If the Receiver has not received Objections by the

Objection Date or Juan Guillermo fails to comply with any of the Extension Deadlines, the Receiver will be entitled to review all documents in the document review platform.

13. **THIS COURT ORDERS** that Juan Guillermo, in advance of the Objections date, shall prepare and provide to the Receiver, a list of documents objected to (the “Objections Documents”). The list of all Objections Documents shall include, subject to paragraph 14 below, at a minimum, the following fields: date, date sent, author, sender, all recipients, title and subject.

14. **THIS COURT ORDERS** that Juan Guillermo may assert privilege over portions of the title and/or subject descriptions by the Objections Date. Duff and Phelps shall redact the subject and/or title line in all cases where privilege has been asserted over the title and/or subject. For all claims of privilege over the title or subject, Juan Guillermo shall within 14 days of the Objections Date or extension, provide the Receiver with a basis for the assertion of privilege.

15. **THIS COURT ORDERS** that the Receiver shall be permitted to challenge any of the Objections and claims of privilege. The parties shall attempt to resolve any such challenges within three (3) business days, failing which the Receiver may address any such challenges before the Court. In the event of a challenge, the challenged document shall be provided to the Court for non-public, confidential review outside the presence of any person(s) other than counsel for the Receiver and counsel for Juan Guillermo.

16. **THIS COURT ORDERS** that the Receiver and Duff & Phelps shall not use any files from the Devices for any purpose other than the Receivership.

17. **THIS COURT ORDERS** that the Receiver shall preserve Xela and its subsidiaries privilege, except where the Receiver deems it necessary to fulfill its mandate.

18. **THIS COURT ORDERS** that the Receiver shall not disclose any files from the Devices to anyone other than its agents without approval of the Court, except as necessary to fulfill the Receiver's mandate. Agents include individuals or entities that represent and/or are retained by the Receiver to fulfill its mandate.

19. **THIS COURT ORDERS** that, upon the discharge of this receivership, Duff & Phelps shall delete the subject database in its entirety, and the Receiver shall destroy all documents and/or data retrieved from the Devices.



(Signature of Judge)

MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISE LTD. et al.
Respondents

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

27 Oct 20

Order to go on consent as per the draft filed and signed.



ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT
TORONTO

ORDER

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers

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This is Exhibit "E" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ

(Sworn February 22, 2021)

I, Juan Guillermo Gutierrez, resident of Toronto, Ontario, Canada, **MAKE OATH AND SAY:**

1. I have historically been the President and owner of 100% of the voting shares of Debtor Xela Enterprises Ltd., (**“Xela”**), subject to the above-entitled receivership and the Appointment Order dated July 5, 2019 (**the “Appointment Order”**), by which KSV Restructuring Inc. (**“KSV”**) was appointed receiver over Xela (**the “Receiver”**). I swear this Affidavit in response to the Motion for Investigative Powers and Recognition Order (returnable March 22, 2021) (**the**

“Motion”), by which the Receiver requests: (a) broad investigative authority, including the right to seek recognition in foreign countries of the Appointment Order; (b) enforcement of the Receiver’s interpretation of the consent Order dated October 27, 2020, relating to inspection of my personal electronic devices (**the “Consent Order”**); (c) immediate, unfettered access to computer servers sold by Xela to Arturo’s Technical Services (**“ATS”**); (d) approval of the Receiver’s fourth report (**the “Fourth Report”**); and (e) approval of the fees and expenses incurred by the Receiver during calendar year 2020 (through November 19, 2020)

I. INTRODUCTION

2. The Motion should be denied in its entirety. First, it should be denied because, as explained below, it is unfounded on its merits in every respect: (a) the new investigative authority requested by the Receiver is virtually unlimited, without any valid, articulated relationship to the receivership, and the Appointment Order already authorizes the Receiver to seek recognition overseas; (b) the Receiver’s interpretation of the Consent Order is patently incorrect and prejudicial; (c) the ATS servers targeted by the Receiver contain all of my emails, without limitation, and other potential information that is unrelated to Xela, and therefore outside the scope of the receivership; (d) the Fourth Report contains numerous errors and omissions, and lacks evidentiary support; and (e) the latest fees and expenses incurred by the Receiver were utterly unnecessary and therefore inappropriate.

3. Second, and more significantly, the Receiver’s behavior has made it impossible, as a practical matter, to achieve the purpose of the receivership. Almost immediately upon its appointment, the Receiver set a course of conduct that – rightly or wrongly – gives the impression that the Receiver is actually coordinating with my deceased father’s Nephews (**the “Nephews”**), who control a lucrative agricultural conglomerate of companies in Guatemala (**collectively the**

“Avicolas”) that has improperly refused for more than 20 years to disburse hundreds of millions of dollars in dividends to LISA, S.A. (“LISA”), an indirect subsidiary of Xela in Panama that holds a 1/3 stake in the Avicolas.¹ The unpaid dividends owed to LISA by the Avicolas and Villamorey represent Xela’s largest asset, and – except for the LISA shares themselves – its only asset.

4. The Receiver’s pattern of conduct is detailed below, but in summary, rather than help persuade the Nephews to disburse the dividends, the Receiver’s actions to date have promoted the Nephews’ interests by pursuing matters that do not advance the purpose of the receivership, while accumulating massive, unnecessary fees and expenses. To date, the Receiver has spent more than one million dollars: (a) investigating “reviewable transactions” that are entirely valid and rational; (b) taking action overseas without any attempt to satisfy recognition prerequisites; and (c) even scuttling a private loan commitment that could have discharged the receivership in January 2020. All of those fees will presumably be charged to Xela as a condition of discharge, and the initiatives they have funded have drained time and financial resources from me and my family, not to mention the personal stress and anxiety they have generated.

5. Further, the invoices for this million-dollar excursion reflect a pattern of communication between the Receiver’s lawyers and the Nephew’s lawyers. I know of no justification for any communications between the Receiver and the Nephews, much less for discussions on an ongoing basis, as has happened here. Attached as **Exhibit 1** is a compilation of all legal bills submitted by the Receiver for approval, with the relevant communications highlighted.

¹ LISA is wholly owned by Gabinvest S.A., a Panama company (“**Gabinvest**”), which in turn is wholly owned by Xela.

6. As detailed below, the timing and billing descriptions of those communications suggest ongoing coordination between the Receiver and the Nephews, which I believe constitutes – independent of the Receiver’s overall pattern of conduct – an insurmountable conflict of interest that should disqualify KSV from continuing to act as receiver. It is now clear to me why the Receiver ignored and eventually rejected repeated requests from my lawyers for copies of all communications between the Receiver and/or its counsel, on the one hand, and the Nephews and/or their counsel, on the other hand. Given the content of attached billing records, I believe the Court should now require the Receiver to honour our request.

7. The Receiver has also asserted at every turn that I have been uncooperative, when in fact the exact opposite is true. I have answered volumes of duplicative questions, produced reams of documents, and I have begged repeatedly to meet with the Receiver to discuss compelling the Nephews to disburse LISA’s dividends, which is the only possible way to actually satisfy the judgment in this case (**the “Castillo Judgment”**). The Receiver, however, has flatly refused to speak with me (aside from two initial meetings shortly after the receivership was authorized), except on the condition that I somehow compel LISA – a Panamanian indirect subsidiary of Xela subject to Panama law and run by its own management – to voluntarily turn control of its board of directors over to the Receiver. In the next breath, however, the Receiver is quick to remind me that I have no authority over Xela.

8. Meanwhile, the Receiver has never pursued foreign recognition proceedings, even though Paragraph 31 of the Appointment Order expressly authorizes it. Nevertheless, the Receiver instructed Mr. Alvaro Almengor, a partner with the Hatstone law firm in Panama City (**Mr. Almengor**), to file in the Public Registry of Panama the purported minutes of a Gabinvest

shareholder meeting (the “**Gabinvest Minutes**”), a copy of which is attached as **Exhibit 2**.² In pertinent part, the Gabinvest Minutes incorrectly state that Gabinvest’s sole shareholder (*i.e.*, Xela) was present at the meeting in Panama City, either in person or through its “authorized” representative, “duly representing” the totality of Xela’s shares. The ultimate effect of the meeting was to give the Receiver ostensible control of the Gabinvest board of directors, which later purported to modify the composition of LISA’s board of directors.

9. It is worth noting that the Gabinvest Minutes also omitted several items required by Panama law; specifically, the minutes do not identify the person who allegedly “authorized” Mr. Almengor to “duly represent” Xela’s shareholder rights at the meeting, nor do they attach a copy of the documentation establishing that person’s right to give Mr. Almengor his supposed authorization. In this instance, Panamanian law applicable to minutes of shareholder meetings for Panamanian companies – with which I am very familiar after decades of operating under them – would require a copy of the Appointment Order naming KSV as Receiver, along with the official Panamanian document(s) recognizing that Appointment Order in Panama. Further, a power of attorney duly signed by the Receiver, authorizing Mr. Almengor to act for Xela, would be attached.

10. It is also significant that the Receiver instructed Mr. Almengor to change the board of directors of both Gabinvest and LISA – entities that are at the heart of the 20-year controversy with the Nephews – without any advance notice to me, LISA or Gabinvest. As a result, when LISA and Gabinvest discovered Mr. Almengor’s filings, they believed that the Nephews were

² I have requested a more legible copy of the Gabinvest Minutes from the Public Registry in Panama. Upon receipt, my lawyers will have the minutes translated and filed with the Court. In the meantime, I have set out the two cited lines in the body of this affidavit below, both in English and Spanish (a close examination of the attached copy will confirm that I am citing the Spanish lines correctly), and I am confident that the official translation will mirror my own.

perpetrating an unlawful corporate attack on LISA, particularly as the minutes nowhere reference the Receiver. (Of course, depending on the content of the communications between the Receiver and the Nephews, that assumption may be shown to be correct.) In any case, it is no wonder that lawyers for LISA and Gabinvest promptly raised the defects with the Public Registry in Panama, which reversed Mr. Almengor's actions.

11. Shortly thereafter, the Receiver began to demand that Gabinvest and LISA voluntarily adopt the Receiver's choice of directors. The Receiver made those demands directly to Gabinvest and LISA, as if he had a legal basis to do so. He also made similar demands to me, as if I had the right to compel them. When Gabinvest and LISA declined, the Receiver filed a motion for contempt against me on March 17, 2020, arguing that I somehow violated my obligation to "cooperate" with the Receiver as set out in the Appointment Order. The assumption must be that I have some authority over Gabinvest and LISA, despite the legal reality that the receivership divests me of any such authority. The fact that LISA's President also happens to be my brother-in-law is immaterial; Mr. Johannessen answers to a board of directors, he duly takes advice from legal counsel, and he has his own mind. On that point, the Receiver might remember that the judgment creditor ("**Margarita**") is also my sister.

12. Separately, as this Court is now aware, Mr. Johannessen filed a criminal complaint in Panama against Mr. Almengor, apparently believing that he was under a legal obligation to do so. As part of that process, I signed a sworn statement the thrust of which, to my understanding, was that I was not the unidentified person who had "authorized" Mr. Almengor to "duly represent" Xela at the Gabinvest shareholders meeting. I did not believe at the time that I was doing anything other than truthfully clarifying the facts, and I certainly did not believe that I was violating that part of the Appointment Order that bars me from taking legal action against the Receiver without

the Court's leave. If indeed my actions were violative of the Appointment Order, I assure the Court that it was unintentional, and I have since fully complied with this Court's instructions by withdrawing my statement, notifying the prosecutor's office, and directing both Mr. Johannessen and Javier Alcides de Leon, the attorney who filed the criminal complaint, to withdraw it.

13. Setting aside whether Mr. Almengor violated a criminal statute in Panama by misrepresenting that he was "authorized" to "duly represent" Xela at a Gabinvest shareholder meeting, it is inexplicable to me why the Receiver believed he could authorize anybody to attend a shareholder meeting in Panama City as the sole shareholder of a Panamanian company, without prior recognition of the Appointment Order in that country. It is also strange to me, as detailed below, that Mr. Almengor did not have the Receiver's power of attorney – a strict legal requirement in Panama – at the time he filed the Gabinvest Minutes in the Public Registry. The larger point, however, is that the Receiver took these actions surreptitiously, without identifying himself in the minutes and without notifying LISA or Gabinvest (or me) in advance. Such conduct seems untoward, when I remember the centrality of LISA and Gabinvest to the international dispute.

14. As surprising as the Receiver's conduct in Panama has been, the more serious issue is the timing and prejudicial effect of this conduct. As noted, the Receiver could have begun the recognition process in Panama as early as July 6, 2019, immediately after the Appointment Order was issued. However, it was only after LISA informed the Receiver in writing in December 2019 that it had secured a loan commitment sufficient to discharge the receivership that the Receiver sprang into action.

15. Over the course of several letters and emails, the Receiver demanded the details of the loan, including a copy of the loan agreement. I provided the general terms as best I could, but LISA had

not shared the details with me or any documents. LISA itself also responded to the Receiver and explained that it was legally barred from sharing the details of the loan with anybody, including me. Even while the Receiver's counsel was still corresponding with LISA and requesting documentation, Mr. Almengor filed the Gabinvest Minutes in the Public Registry. Regrettably, facing uncertainty over who controlled LISA's board of directors, the lender withdrew its loan commitment. Now, more than 12 months later, the expenses of the receivership have exceeded a million dollars, most or all of which could have been avoided had the Receiver cooperated with LISA and simply waited for the loan to fund.

16. The Receiver's pattern of conduct sends a message that is counterproductive to the purpose of the receivership. The Nephews – who are monitoring these proceedings and communicating with the Receiver through their counsel – are unlikely to disburse LISA's dividends voluntarily so long as they believe that the Receiver's actions will exhaust the resources required to pursue the dividends in Panama and Guatemala, or so long as they believe that the Receiver might eventually transfer LISA's shares to them in exchange for satisfaction of the Castillo Judgment.

17. The Receiver's coordination with the Nephews is particularly troubling insofar as it relates to that part of the Motion concerning my personal electronic devices and my personal emails, owing primarily to a history of misappropriation and misuse of electronic data by Margarita and the Nephews. Specifically, in or around 2010, a former Xela IT employee made an unauthorized copy of all electronic documents on Xela's servers, which he delivered to Margarita, who had secretly breached her fiduciary duties as a director of Xela and allied herself with the Nephews. Margarita and her lawyers then arbitrarily attached a trove of those illegally obtained documents as an exhibit to the Complaint that eventually led to the Castillo Judgment, even though the documents were unrelated to the case itself. Once the documents were in the public domain, the

Nephews submitted some of them as alleged bases for various legal actions in Guatemala to exclude LISA from the Avicolas (**the “Exclusion Actions”**). The Exclusion Actions were unfounded, and LISA eventually defeated them all (subject to some pending appeals), but the process has taken more than ten years.

18. My personal devices contain nothing novel that would help the Receiver advance collection of LISA’s dividends. For example, my personal devices contain no evidence of undisclosed assets of Xela, as there are none, and the Receiver has already taken possession of Xela’s books and records. My personal devices may contain copies of some public-record documents from legal proceedings in Panama against Villamorey S.A. (**“Villamorey”**) – which is 1/3 owned by LISA and holds a 25% stake in the Avicolas – but as explained further below, the Receiver has already been offered access to the complete case file by BDT’s Panamanian lawyers who are suing Villamorey for LISA’s dividends, and the filings are also available from the public record in Panama. While I have consented to undergo a process whereby any discoverable data on my personal devices is provided to the Receiver, the Receiver has distorted the terms of that Order (**the “Consent Order”**) and would have me upload the entire contents to a server maintained by its agent before my lawyers and I have the opportunity to review and assess them. Such an active interest in exposing the entire contents of my personal devices is of grave concern to me, even if the custodian is under Court Order not to access the data, in light of the Receiver’s conduct and its coordination with the Nephews.

19. The fact that Kroll, a subsidiary of Duff & Phelps, was tapped by the Receiver to perform the imaging of my personal devices in early January 2021 only heightens my fear that the Receiver is coordinating with the Nephews on this issue because, during the course of the ongoing international dispute, the Nephews hired Kroll to conduct surveillance of my family. In fact, my

wife personally observed people taking photographs of our home and our children, which our lawyers reported to the RCMP. Our own investigators subsequently conducted countersurveillance and determined them to be Kroll employees. Whether Kroll's involvement here was intentional or coincidental, its connection to the Nephews I believe justifies my fear that personal documents – most or all of which the Receiver has no right to discover, including, for example my memoirs, family photos and videos, personal communications, business trade secrets unrelated to Xela, personal diaries, and various other similar items – are destined to fall into the hands of the Nephews, to be used improperly against my family and me.

20. Regardless of the Receiver's purpose, my interpretation of the Consent Order is that it does not mandate that my personal devices be uploaded to a database managed by Kroll (or the Receiver's replacement IT consultant) before my lawyers and I have had an opportunity to review the contents, provide objections to production if appropriate, and seek this Court's resolution of any disputes, if necessary. I believe that the Consent Order permits me to perform my review using a duplicate of the imaged hard drive taken by Kroll, from which I could identify the specific documents that are discoverable and/or non-discoverable, by reference to the indexing on the hard drive already in possession of the Receiver's agent. The Receiver, however, has denied my request for a duplicate hard drive, and has filed the Motion instead. (The Receiver apparently replaced Kroll with another IT expert to assuage that conflict, but that substitution does not ameliorate the Receiver's broader pattern of conduct, or the Receiver's own conflict stemming from its coordination with the Nephews.)

21. Third, my personal electronic devices – and, indeed, the entire investigation into the “reviewable transactions” – become irrelevant in light of the settlement offer proposed by BDT Investments Inc. (“**BDT**”), a Barbados company owned by the ArtCarm Trust in Barbados (**the**

“Trust”), of which my mother, my wife and my four children are the only beneficiaries. (I am not a beneficiary of the Trust.) The Motion should be denied because its primary purpose is to advance the Receiver’s ongoing investigation into the “reviewable transactions,” which would be mooted by BDT’s proposal. Specifically, BDT owns the rights to LISA’s unpaid dividends, by virtue of the settlement of a large debt dating to 2005 that funded a substantial part of LISA’s 20-year litigation drive to recover its rightful dividends. Although BDT has no duty to satisfy the Castillo Judgment, it is willing to do so on Xela’s behalf by committing to the receivership the first part of any dividends disbursed by Villamorey under well-advanced litigation in Panama. To date, the Receiver has incurred more than a million dollars in fees and expenses, yet the Receiver rejected BDT’s offer, preferring instead to continue an investigation that promises further fees and expenses but would in no event produce any more value than what BDT is already offering voluntarily.

22. To the extent the Motion seeks to wrest control from BDT over the litigation against Villamorey in Panama, there are at least two reasons to avoid that course. First, it would require preliminarily that the Receiver obtain recognition of the Appointment Order in Panama, which is a time consuming and expensive process. As discussed below, the Receiver ignored that step for the first 18 months of the receivership, creating serious problems in Panama. Second, Margarita, who is funding the receivership (with monies supplied by the Nephews, I believe), is allied with the Nephews against me and my family. Placing the Receiver in control of litigation against the Nephews in Panama would create a serious conflict of interest because, even if the Receiver were not working in coordination with the Nephews, Margarita could adversely impact the litigation by restricting the Receiver’s funds. The purpose of the receivership is best served by requiring the Receiver to accept BDT’s offer of settlement, while leaving BDT – the entity most strongly

motivated to recover all of LISA's rightful dividends – in control of the Villamorey litigation.

II. BACKGROUND

A. *The Multi-Jurisdictional Dispute over Non-Payment of LISA's Dividends*

23. The Motion – and, indeed, the receivership itself – should not be evaluated outside the context of the highly contentious, decades-old, multi-jurisdictional dispute over the Nephews' improper withholding of LISA's dividends, which have an estimated value in the range of US\$400 million. There should be no mistake about the identity of the bad actors in this running dispute.

24. After my father ceded operational control of the Avicolas to the Nephews when my family relocated from Guatemala to Toronto in 1984, the Nephews began to defraud my father as well as the Guatemalan tax authorities by understating the actual revenues of the Avicolas (and the corresponding amount of dividends disbursed to LISA) and concealing the truth with phony accounting records. It was only after the Nephews proposed to buy out LISA's interest in the Avicolas and inadvertently delivered to my father a genuine financial statement that we serendipitously discovered the truth, which was that we had been receiving false financial statements for years, along with less than the entitled sums as dividends.

25. Shortly thereafter, during the first quarter of 1998, the Nephews sent two high-level Avicola executives to Toronto to explain the discrepancies. The meeting was attended by me, along with Xela's CFO, Wayne Langdon, and Al Rosen, a forensic accountant Xela had hired to help us evaluate the financial records. Margarita's husband Ricardo Castillo ("**Ricardo**") was also present. The Avicola executives tried to explain that the Avicolas had been maintaining two separate sets of accounting records, which they justified as part of the Avicolas' "tax strategy." They revealed that the Avicolas had been selling large quantities of live chickens in the

Guatemalan countryside, where refrigeration was largely unavailable, and had been concealing those revenues in a separate set of books. As soon as I heard that fact, I immediately stopped the meeting and stressed that neither my father nor I would be participants in any kind of tax evasion scheme. We agreed to have a follow-up meeting in Miami as soon as possible, which would be attended by the Nephews themselves, along with me and my father.

26. Almost six months passed before the second meeting took place. A few days beforehand, the Nephews informed us that they would be unable to attend, but they suggested that the meeting go forward in Toronto. However, they said, because sensitive information would be disclosed at the meeting, it was important that I attend for Xela by myself alone. The next decision has cost us dearly, but my father and I believed that exposing the truth was the right thing to do. Specifically, due to concerns that the lack of any other witnesses on Xela's side of the table could later be manipulated by the Nephews, we consented to have our lawyers arrange to videotape the second meeting in Toronto under the supervision of a retired RCMP officer, without the knowledge of the Avicola executives. As the meeting went forward, the same two executives who had attended the first meeting explained the Nephews' fraudulent tax evasion scheme in great detail, all of which was captured on videotape. Although we did not intend to make the videotape public, litigation followed when the Nephews refused to give my father full value for his shares. The videotape eventually came out during a three-week trial in Bermuda in 2008, discussed below, and was an important part of the evidence proving fraud and money laundering. The Nephews cut off all dividend payments to LISA as of 1999, and embarked on what can only be described as a crusade to ruin my father and me.

27. The overarching strategy employed by the Nephews has been one of attrition, in which their lawyers use scorched-earth litigation tactics to delay distribution of LISA's dividends, while

consuming my family's resources. Consequently, in 2005, LISA was forced to begin borrowing from BDT in order to cover the cost of pursuing the dividends, and, over time, the accumulated debt to BDT grew to approximately US\$50 million, ultimately resulting in a settlement under which LISA assigned all of its dividends rights to BDT.

28. Along the way, although the process has been slow and arduous, justice has occasionally emerged. After the Nephews stops disbursing dividends in 1999, LISA sued companies controlled by the Nephews in Bermuda, alleging that they had misappropriated some of LISA's dividends and converted the monies to their own use, laundering illicit cash receipts through the sale of bogus insurance policies at an inflated premium issued by a Bermuda-based reinsurance company that they owned. Judgment was entered in favor of LISA on September 5, 2008 (**the "Leamington Judgment"**), from which the Nephews did not appeal. A true and correct copy of the Leamington Judgment is attached as Exhibit A to my Affidavit sworn on March 22, 2020 (**"my 2020 Affidavit"**). As indicated there, the Leamington Judgment establishes, among other things, the following unrefuted facts:

- a. That LISA was a victim of a conspiracy to defraud by the Nephews;
- b. That the Avicolas used accounting records that recorded only a portion of its true income;
- c. That a substantial portion of the income generated by the Avicolas was kept off the books and used to fund distributions to the Nephews but not to LISA;
- d. That the re-insurance policies at issue were not genuine;
- e. That some of the "black" money was being "whitened" by paying the insurance premiums that were then distributed as purportedly legitimate corporate profits, and

that the Nephews intended to deprive LISA of its rightful share of the profits generated by the Avicolas;

- f. That the Nephews used cash-only operations to conceal the Avicola's true earning from the Guatemalan tax authorities;
 - g. That the Nephews intended to injure LISA through a fraudulent conspiracy;
 - h. That LISA had been excluded from participating in the distributions made to the Nephews; and
 - i. That the members, officers and directors of the various Avicolas companies had "actual knowledge of all of the facts which made the conspiracy unlawful."
29. Justice Kawaley, who presided over the Leamington trial and issued the Leamington Judgment, also made one significant comment concerning the real mastermind behind the fraud, which LISA had formally alleged in its pleadings was Avícola Villalobos S.A. (referred to "AVSA"), the largest of the Avicola companies and the conduit for distribution of the laundered funds. While Justice Kawaley's observation was not a conclusive part of the judgment – which actually found *against* LISA on its allegation of fraud by AVSA – his observation as factfinder in the case are nevertheless interesting:

48. Bearing in mind the high standard of proof required for allegations of fraud, I am not satisfied that AVSA was either the de facto parent or controller of the operating Avicola companies so as to render AVSA liable for any frauds which such companies and/or Leamington may have committed. Even if AVSA alone could declare dividends and the operating companies were just cost centres, it does not follow that AVSA was the controlling corporate entity. It seems more plausible that a company wholly owned by the other two branches of the Gutierrez family such as Multi Inversiones was in reality the controlling corporate entity, if there was one. For example, in notes recording negotiations between the parties in Toronto on February 21, 1998, Juan Guillermo himself described the two sides as "Lisa's side" and "Multi-Inversiones' side". And paragraph 3 of these notes record Rossell indicating that "Multi-Inversiones provides strategic planning, legal advise [sic], fiscal strategy and high level administration services to the Avicola Companies."¹³ This is admittedly far from conclusive in terms of ascertaining

which corporate entity played a controlling role before Lisa sold its interest in Multi-Inversiones, however. This is because Juan Guillermo suggests that this sale happened as late as 1997. [Emphasis mine.]

30. Thus, LISA has established in a court of law, in a full-fledged trial lasting three weeks, that the Nephews systematically stole a portion of LISA's dividends and laundered them. The Leamington Judgment, however, involved a relatively small sum of money in comparison to the much larger pool of Avicola and Villamorey dividends that have been declared in LISA's favor since 1999, but withheld by the Nephews.

31. Further, as set out in my 2020 Affidavit, after the Leamington case was decided, the parties met through representatives more than a dozen times to discuss potential settlement of the dispute. It was during this extended period of negotiations that Margarita secretly joined forces with the Nephews, and conspired with them to plan a counterattack against Xela, my father and me, causing the settlement negotiations – which were quite advanced – to stop abruptly and fail.

B. The Nephews' Role in the Oppression Action

32. On its face, this receivership seems like nothing more than an ordinary attempt to collect a judgment. Taken in context, however, the Oppression Action, which led to the Castillo Judgment and ultimately to the receivership, was part of the well-planned counterattack by the Nephews, which weaponized Margarita's position as a trusted member of Xela's board of directors.

33. In 2010, shortly after the Leamington decision, Margarita and her husband Ricardo began surreptitiously to meet with the Nephews, including at least once in Guatemala City. The meetings occurred while Margarita was a director of Xela. Margarita was eventually removed from Xela's board in April 2010.

34. In early 2011, Margarita filed the Oppression Action, alleging (among other things) that

Xela, my father and I had oppressed her in connection with negotiations to purchase her shares of Tropic S.A. (**“Tropic”**), a distribution company for products produced by a Xela agricultural subsidiary. (My father, Margarita and I collectively owned all of the shares of Tropic, but Tropic was not a subsidiary of Xela.) Importantly, the Nephews played a key role in helping Margarita fund the Oppression Action by arranging for a friendly bank in Guatemala, G&T Continental Bank (**“G&T Bank”**), to give her a loan for US\$4.35 million (**the “Castillo Loan”**). The Castillo Loan appears to have been collateralized with a CD purchased by one of the Nephews with LISA’s unpaid 2010 Villamorey dividends. As detailed below, the Castillo Loan was reportedly transacted through Margarita’s nephew, Roberto Barillas – who acted as her legal representative – and repaid through foreclosure of the collateral.

35. Specifically, as I stated in my 2020 Affidavit, G&T Bank and other records indicate the following:

- a. Villamorey declared in LISA’s favor (but did not pay) dividends of US\$4,166,250 in 2010. A true and correct copy of Villamorey’s audited financial statements for 2009/2010 is attached to my 2020 Affidavit as Exhibit B.
- b. On May 6, 2010, Juan Luis Bosch, one of the Nephews, used those dividends, without LISA’s knowledge or consent, to open an account in Villamorey’s name with G&T Bank. A true and correct copy of the opening statement for G&T Bank account No. 900051264, showing the initial deposit of US\$4,166,250, is attached hereto as Exhibit C to my 2020 Affidavit; and
- c. On May 25, 2010, the initial deposit to Account No. 900051264 (*i.e.*, LISA’s dividends) was used to purchase Certificate of Deposit #010152676 in the amount of US\$4,166,250 (**the “CD”**). A true and correct copy of the CD is attached as Exhibit D to my 2020 Affidavit; see also Exhibit B to my 2020 Affidavit, referencing CD #010152676.

36. Further, during meetings in September 2012 and November 2012, Mr. Jorge Porras – at the time an attorney for one of Xela’s subsidiaries – provided information to Xela, of which he had personal knowledge, regarding an ongoing conspiracy between the Nephews and Margarita to injure Xela. During those meetings, Mr. Porras told Xela, among other things, that:

- a. Roberto Barillas had executed the Castillo Loan documents on Margarita’s behalf, under a power of attorney signed and delivered to Roberto by Margarita in Miami in March 2010;
- b. The Castillo Loan was for a total of US\$4.35 million;
- c. A portion of the Castillo Loan was intended to finance the Oppression Action; and
- d. He (Mr. Porras) had attended meetings in Toronto with Margarita and her lawyers, Jeffery Leon and Jason Woycheshyn (Bennet Jones). Katherine Kay (Stikeman Elliott), who represents the Nephews in various legal matters, was also present during at least one of those meetings. The subject of the meetings was Margarita’s oppression action against Xela, during which Margarita disclosed to her lawyers that the action would be financed through the Nephews.

37. Under cross-examination on April 17, 2012 in Toronto, Margarita admitted receiving the Castillo Loan, and she testified that G&T Bank had given her the loan solely on the basis of her “net worth,” as she had no assets in Guatemala and had not lived there in decades. A copy of an excerpt from Margarita’s cross-examination is attached to my 2020 Affidavit as Exhibit E. However, in an affidavit dated September 9, 2011, Margarita testified that she had been struggling financially, and that she had asked the Nephews for “help” securing the Castillo Loan. A copy of that Affidavit is attached to my 2020 Affidavit as Exhibit F. In any case, Margarita confirmed in cross-examination that she had used at least some of the Castillo Loan proceeds to pursue the Oppression Action against Xela, Arturo and me. (See Exhibit E to my 2020 Affidavit.)

38. These facts underscore the key role the Nephews played in bringing the Oppression Action, as Margarita could not have obtained the Castillo Loan and funded the litigation without their assistance. This background also sheds some light on the Nephews' interest in this receivership, along with their relationship with Margarita, who selected the Receiver.

C. The Theft and Misuse of Xela's Computer Records

39. Another element of the Nephews' counterattack after the Leamington Judgment involved the theft and malicious misuse of documents illegally downloaded from Xela's computer servers. The original complaint in the Oppression Action, which was filed in early 2011, attached as an exhibit a trove of confidential and/or privileged documents owned by Xela. Those documents included, among other things, confidential internal emails, invoices from lawyers and investigators, and privileged communications with counsel.

40. My father and I were shocked to see such sensitive and confidential documents attached to a public-record pleading, and we could not understand how Margarita and/or her lawyers had gained access to them, as Margarita herself was never privy to them while she served as a Xela director, and in any case, she had been removed from the board almost a year earlier. As it turns out, Margarita's husband Ricardo was ultimately responsible for the theft.

41. It seemed clear that the documents had been stolen from Xela's servers. Accordingly, I instructed the head of Xela's IT department, Julio Fabrini, to investigate. Mr. Fabrini performed an audit and discovered that files equivalent in size to the documents attached as the exhibit to Margarita's Complaint had been downloaded from Xela's servers to an encrypted USB stick at an identifiable moment in time. Further investigation of Xela's email servers uncovered an email from Willy Aguilar, one of Mr. Fabrini's subordinates in the IT department, to Ricardo shortly

after the documents had been downloaded to the USB stick. That email attached the encryption software necessary to open the Xela files contained on the USB stick.

42. When I confronted Mr. Aguilar, he broke down in tears and confessed that he had, in fact, downloaded the documents and given them over to Ricardo, along with the encryption software needed to access the data. He explained that he and Ricardo had been considering a joint business venture together, and that Ricardo claimed to have spent about \$25,000 in due diligence expenses, which he wanted Mr. Aguilar to reimburse. Mr. Aguilar further explained that Ricardo had demanded payment and had presented a draft complaint to Mr. Aguilar, listing him as a defendant, and alleging breach of contract and theft of corporate opportunity. The draft complaint coversheet listed as counsel Jason Woycheshyn, who at the time was with the Bennet Jones law firm, subsequently counsel for Margarita in the Oppression Action. Mr. Aguilar explained that Ricardo had promised not to file the lawsuit if only Mr. Aguilar would download all of the data from Xela's servers and hand them over to Ricardo. Mr. Aguilar agreed, and Ricardo gave Mr. Aguilar the draft complaint. Mr. Aguilar also confessed to emailing the encryption software to Ricardo so that he could open the files. Mr. Aguilar was dismissed from Xela at that point, but he left the draft complaint with me. A copy of that document is attached hereto as **Exhibit 3**.

43. Bennet Jones subsequently attached a massive trove of the stolen documents to the Complaint in the Oppression Action, apparently feeling unconstrained to place documents that were clearly confidential and privileged into the public record. The documents were unrelated to the claims in the Oppression Action, and were attached in bulk as a single exhibit.

44. Once Xela's confidential documents were in the public record, the Nephews took their turn. In April 2011, three months after Margarita filed the Oppression Action, the Nephews caused each

of the individual companies that comprise the Avicolas to adopt a corporate resolution purporting to exclude LISA as a shareholder, thereby seeking to appropriate for themselves LISA's entire interest in the Avicolas. The resolutions quoted some of the stolen Xela documents attached to the Complaint in the Oppression Action verbatim.

45. Further, the Nephews caused each of the Avicola companies to file Exclusion Actions in Guatemala against LISA, alleging in essence that the stolen documents demonstrated that everything LISA was doing to collect its unpaid dividends was intended to injure the Avicolas, which was patently false. As indicated, LISA ultimately prevailed in the Exclusion Actions (the Nephews are still pursuing appeals in some), but the process has taken more than a decade and has been quite expensive.

46. There was no doubt in my mind that Ricardo's draft complaint against Mr. Aguilar and the resulting theft of Xela's documents (which I saw as a form of extortion) was part of a broader conspiracy between Margarita, Ricardo, the Nephews and perhaps others, which included attaching the stolen documents as an exhibit to the Complaint in the Oppression Action so that the Nephews would have some semblance of above-board access to them for use in the Exclusion Actions to either appropriate LISA's interest altogether or at least delay LISA's collection efforts.

47. Accordingly, shortly after these events occurred, Xela, my father and I filed a complaint for civil conspiracy against Margarita, Ricardo, the Nephews and others, in the Ontario Superior Court of Justice (Commercial List) in Court File No. CV-11-9177-00CL (**the "Conspiracy Action"**), alleging these and other related facts. Regrettably, the Court declined to amalgamate the Conspiracy Action with the Oppression Action, and when the Nephews challenged service of process in the Conspiracy Action (which they lost in the Superior Court and eventually on appeal),

that case was delayed, while the Oppression Action proceeded on course to summary judgment. The Castillo Judgment and this receivership were the resulting outcome of the Oppression Action. The Conspiracy Case, by contrast, remains pending, although neither Xela nor I have the resources to prosecute it. If it is ever considered, I am confident that we will prevail and obtain judgment against Margarita in an amount that will eclipse the Castillo Judgment.

III. THE MOTION SHOULD BE DENIED BECAUSE IT WOULD PERPETUATE THE PATTERN OF CONDUCT THAT HAS ALREADY FRUSTRATED THE PURPOSE OF THE RECEIVERSHIP

48. The Motion seeks to perpetuate the same pattern of conduct the Receiver has embarked upon since its appointment, the highlights of which are detailed in the following paragraphs. In my view, the Receiver's actions have done nothing to advance the collection of LISA's dividends. For more than 18 months, it has ignored my requests to meet and discuss how we might collaborate in litigation against the Nephews in Panama and/or Guatemala, and has instead incurred more than a million dollars pursuing matters wholly unrelated to the dividends. Indeed, the Receiver has been quite disruptive by, as detailed below, preventing LISA from securing funding that could discharge the receivership, and secretly trying to take over the foreign entities that are at the heart of the 20-year dispute with the Nephews, all without any recognition of his authority abroad. That course is perfectly aligned with the interests of the Nephews, and is serious enough to thwart the purpose of the receivership altogether. Further, I believe that the issue can only be resolved by replacing KSV with an alternate receiver selected not by Margarita, but by this Court.

A. The Receiver's Refusal to Disclose Communications Suggesting Potential Coordination

49. Owing to the Receiver's pattern of conduct and the impression of coordination with the Nephews that it creates, my lawyers asked that the Receiver provide copies of any communications

between the Receiver and/or its lawyers, on the one hand, and the Nephews and/or their lawyers, on the other hand. My lawyers made the request initially by letter on May 4, 2020, a copy of which is attached as **Exhibit 4**, but the Receiver declined to answer. My lawyers renewed that request by letter dated November 16, 2020, a copy of which is attached as **Exhibit 5**. The Receiver responded to that letter on November 24, 2020, but refused to provide any documents, asserting that it had no duty. Notably, the Receiver did not deny communicating with the Nephews. A copy of the Receiver's letter dated November 24, 2020 is attached as **Exhibit 6**.

50. I now understand why the Receiver refused. It was not until after the Receiver filed its Motion on January 15, 2021 that I received copies of the billing records showing ongoing communications between the Receiver's lawyers at Aird Berlis and the Nephews' lawyers at Stikeman Elliott. Notably, all descriptions in the invoices from Lenczner Slaght, a second law firm representing the Receiver – and the law firm driving the Receiver's latest discovery push in Toronto – are redacted in their entirety.

51. Several points can be gleaned from a review of the Aird Berlis billings:

- a. Communications between the Receiver's lawyers and the Nephews lawyers span a period of more than 13 months (from August 29, 2019 through October 3, 2020), involving at least three separate Aird Berlis lawyers;
- b. A variety of communication methods are reflected, including emails, letters, teleconferences and Zoom calls;
- c. The available billing records stop at November 19, 2020, and therefore do not reflect any potential communications after that date;

- d. Katherine Kay – who attended at least one meeting with Margarita’s lawyers in or around 2010, where planning for the Oppression Action was discussed – is the Nephews’ lawyer who appears most frequently in the billings;
- e. Representatives of KSV participated directly in multiple calls involving the Nephews’ counsel; and
- f. At least one communication between the Receiver’s counsel and the Nephews’ counsel appears to have involved the Receiver’s Barbados counsel.

52. Thus, there is evidence to suggest that some level of coordination between the Receiver and the Nephews is ongoing. If – as is apparent from one billing entry on September 18, 2019 involving Steven L. Graff, the most senior of the Aird Berlis lawyers representing the Receiver – the discussions with Katherine Kay included the Receiver’s Barbados counsel, the implication is that the Nephews were involved in strategic decisions of the Receiver. Of course, it is impossible to determine the subject matter of any of the communications from the billing records.

53. The Receiver’s lack of transparency regarding its apparent coordination with the Nephews is troubling. The blanket redaction of billing descriptions in the Lenczner Slaght invoices, aside from making it impossible to evaluate the reasonableness of their bills, only exacerbates those concerns.

B. *The Receiver’s Focus on the “Reviewable Transactions”*

54. KSV was appointed Receiver on July 5, 2019. Shortly thereafter, the Receiver and I met two separate times in Toronto. On both occasions, I stressed that there was only one potential source of funds to satisfy the Castillo Judgment, the unpaid dividends owed to LISA by the Avicolas and by Villamorey. I also tried repeatedly to explain the background of LISA’s dispute with the Nephews, along with specifics concerning the litigation in Panama against Villamorey

and in Guatemala against the Avicolas to collect the dividends. Initially, Mr. Kofman was dismissive, changing the subject whenever I brought up any element of the dispute over LISA's dividends. However, as I continued to press the point, he became impatient and eventually told me plainly that the Receiver was not interested in hearing about LISA's dispute with the Nephews.

55. Indeed, the Receiver's attention for the past 18 months has been primarily on what it calls "reviewable transactions," all of which are perfectly justified and, in my opinion, should not be considered "reviewable" at all. The first involves what the Receiver has identified as the "EAI Transaction," which involved my father's estate planning culminating in 2016, shortly before he passed away. At the time, EAI owed him approximately \$9 million. In satisfaction, he accepted the shares of BDT and Arven, both of which were owned by EAI. A Deloitte valuation showed the combined value of the companies to be approximately \$6.5 million. My father then transferred the BDT and Arven shares to the ArtCarm Trust in Barbados, of which my mother, my wife and our four children are beneficiaries, but I am not. Further, I had no knowledge of the transaction at the time, as my father did all of his estate planning without my knowledge or input.

56. BDT's separate response to the Motion addresses the EAI Transaction in greater detail and demonstrates that the transfers were entirely valid and supported by adequate consideration. More importantly, the Receiver has never explained how its focus on the EAI Transaction might satisfy any part of the Castillo Judgment. The Receiver has not acknowledged the cost of unwinding the transactions abroad, even if that were legally possible, nor has the Receiver taken any steps to seek recognition in Barbados. Obviously, taking that path would entail substantial new expense for both the Receiver and BDT, not to mention the additional time required.

57. The same cost issues arise in connection with the other "reviewable transaction," which

relates to LISA's assignment to BDT of its claims to dividends, partially at first in 2018 in exchange for continued funding of LISA's litigation, and later in 2020, in full satisfaction of approximately US\$47 million of unreimbursed litigation financing from BDT. It is noteworthy on this issue that a substantial part of LISA's debt to BDT had been reduced in 2012 to a final judgment in Panama equivalent to US\$19,184,680, a copy of which is attached hereto as **Exhibit 7**. The Receiver's concerns over the fairness of the transaction are unfounded because any windfall that might inure to BDT is offset by the risk associated with what is obviously a hard-fought dispute. Additionally, the Receiver does not address the viability of unwinding the transaction, which would be particularly challenging in that LISA is a Panama entity and BDT is a Barbados company. Again, the Receiver has taken no steps to be recognized in either jurisdiction, or to explain the rationale behind foregoing that process.

C. The Receiver's Lack of Interest in the Castillo Loan

58. There is evidence to suggest that the Castillo Loan was secured by the CD (*i.e.*, LISA's 2010 Villamorey dividends), and that the loan was never repaid by Margarita, but was instead repaid by G&T Bank's foreclosure of the collateral. That transaction is, in my view, worthy of review by the Receiver because, if true, the Castillo Judgment has already effectively been satisfied by an indirect subsidiary of Xela. I have brought the transaction to the Receiver's attention multiple times, although the Receiver seems disinterested.

59. As I affirmed in my 2020 Affidavit, I participated in at least four meetings in Guatemala in 2016 with high-level representatives of G&T Bank about the Castillo Loan. Initially, I spoke with Mr. Estuardo Cuestas, a member of the Board of Directors of G&T Bank and a close advisor to the President. I told him that I believed G&T Bank had given a loan to Margarita that was collateralized with LISA's Villamorey 2010 dividends, which she had used to fund litigation

against me in Canada. Mr. Cuestas promised to look into the situation. During our second meeting, Mr. Cuestas confirmed that the Castillo Loan had indeed been collateralized with CD #010152676, and he seemed to recognize the seriousness of the situation. He arranged a meeting for me with Mr. Mario Granai, the President of G&T Bank. I shared my concerns with Mr. Granai, who provided no substantive commitment, although he seemed genuinely concerned about the bank's exposure.

60. Some weeks passed, after which Mr. Cuestas contacted me by telephone and informed me that G&T Bank would not be able to assist me, and that the Castillo Loan was "no longer an issue" for the Bank, as it had been "collapsed." I understood Mr. Cuestas' comments to signify that G&T Bank had satisfied the Castillo Loan by foreclosing the collateral (i.e., using the CD purchased with LISA's 2010 Villamorey dividends), without Margarita being required to repay any part of the Castillo Loan.

61. If indeed the CD was pledged as security for the Castillo Loan, and if in fact the loan was satisfied by G&T Bank's foreclosure of the collateral, it would appear that Margarita was never required to repay the Castillo Loan and has, in effect, already received the sum of US\$4.35 million from LISA, which is more than enough to satisfy what remains of the Castillo Judgment.

62. In my early meetings with the Receiver, I pointed out these facts, and of course I detailed them again under oath in my 2020 Affidavit. My lawyers have asked the Receiver to request copies of the Castillo Loan documents from Margarita (see Exhibit 4 hereto) which might at least offer a clue whether the Castillo Judgment was effectively satisfied with LISA dividends long before the Receiver was appointed. The Receiver has not so much as acknowledged the request. To my knowledge, the Receiver has never even raised this issue with Margarita, nor does the issue

appear in the Receiver's reports. It is certainly the case that the Receiver has never provided me with any documents showing that Margarita repaid the Castillo Loan, if there are any such documents.

D. The Receiver's Lack of Interest in the Gadais Limited Promissory Note

63. Margarita's husband Ricardo was employed by Xela until approximately 2007. Upon his departure from the company, my father became concerned about his ability to support Margarita and her daughters financially. Consequently, to provide some income for Ricardo, my father caused Xela to sell its 86.6% stake in Digalta LLC, a real estate management company in Russia, to Gadais Limited (**"Gadais"**), a Cyprus corporation owned by Ricardo. The purchase was in the form of a promissory note for \$400,000 from Gadais to Xela. A copy of the purchase/sale agreement and corresponding promissory note (**the "Gadais Note"**) are attached collectively as **Exhibit 8**.

64. The shares of Digalta LLC were duly transferred to Gadais, and the Gadais Note was signed, but the note has never been repaid, although, to my knowledge, neither has a payment demand been made. The purchase/sale agreement provides for enforcement through friendly consultation, failing which any disputes are to be resolved through final and binding arbitration proceedings in Toronto. (*See Exhibit 8, ¶13.*)

65. I informed the Receiver about the Gadais Note and its non-payment, and I suggested that some action should be taken on Xela's behalf to collect. The Receiver's reports, however, are silent on the subject. They give no indication that any payment demand has been made, or that the Receiver has initiated any "friendly consultations" with Ricardo concerning repayment.

E. *The Receiver's Lack of Interest in the Conspiracy Action*

66. As indicated above, Xela, my father and I filed the Conspiracy Action against Margarita, Ricardo, the Nephews, and others in early 2013, on the heels of Margarita's Oppression Action and the Exclusion Actions. A copy of the Amended Complaint in the Conspiracy Action (without exhibits) is attached hereto as **Exhibit 9**. The Conspiracy Action alleges broad misconduct by Margarita in breach of her fiduciary duties as a director of Xela, in conjunction with Ricardo, the Nephews and others.

67. The general overview of the Conspiracy Action is that:

- a. It is related to prior litigation before the Bermuda Supreme Court, which issued the Bermuda Judgment on September 5, 2008, which provided, *inter alia*, that the Nephews had conspired to defraud Xela. Following that decision, the Nephews attempted to negotiate a purchase of LISA's stake in the Avicolas as part of a global settlement. Negotiations ultimately failed due to: (i) the Nephews' failure to produce any legitimate financial statements for the Avicolas; (ii) the Nephews' refusal to pay fair value for LISA's shares; and (3) the defendants' pursuit of the conspiracy alleged in the Amended Complaint. Although not alleged specifically in the Amended Complaint, Margarita's breach of fiduciary duty in conspiring with the Nephews was an overarching factor in their decision to withdraw from the negotiations.
- b. The Conspiracy Action involves (among other things) the conspiracy of the Nephews who, acting in concert with Margarita, Ricardo and others, undertook a scheme to pressure Xela into selling, at a significant discount, LISA's one-third ownership interest in the Avicolas. The conspiracy included the filing of the Oppression Action in the Ontario Superior Court of Justice (Commercial List) with the ulterior and improper purpose of facilitating the confiscation of LISA's shares in the Avicolas without compensation. The Nephews also provided funding for the Oppression Action by diverting dividends that were due to LISA, in the form of the

Castillo Loan, which the Nephews helped arrange through G&T Bank using LISA dividends as collateral. The true purpose of the Oppression Action was two-fold. First, the defendants used the Oppression Action 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 Nephews purported to have confiscated LISA's entire ownership interest in the Avicolos.

- c. The defendants' acts constitute civil conspiracy, abuse of process, unjust enrichment, knowing receipt of trust proceeds, and breach of fiduciary duty.
- d. Tortious acts in furtherance of the conspiracy were committed in Ontario, and the plaintiffs suffered and continue to suffer significant damages in Ontario.

68. Preliminarily, as indicated above, the Receiver's aggressive approach to my personal electronic devices and all of my emails seems like a redux of these events, especially given the Receiver's apparent coordination with the Nephews. Neither the Nephews nor Margarita have been held accountable for their theft of Xela's documents or for the resulting Exclusion Actions that almost misappropriated LISA's stake in the Avicolos. The time and expense associated with defeating the conspiracy has been massive, and the human toll has also been significant.

69. As indicated, the Conspiracy Action is stalled in the Ontario Superior Court of Justice, due to the foibles of the system and the expense of prosecuting the case. Nevertheless, the claims asserted there are genuine and substantial, and they represent a potential direct offset against the Castillo Judgment. The Receiver has never acknowledged the pendency of the Conspiracy Action or the potential impact of the damages alleged there on the receivership. Although the Receiver might not be obligated to reactivate and prosecute the Conspiracy Case, there is little time or expense associated with, for example, asking Margarita to produce copies of her Castillo Loan

bank records and proof that she repaid the Loan. The Receiver is not viewing the Castillo Loan or the Xela document theft as “reviewable transactions,” nor are any of the allegations in the Conspiracy Action raised in any of the Receiver’s reports.

F. LISA’s Loan Commitment and the Receiver’s Response in Panama

70. The biggest point of contention in these receivership proceedings has, without question, been the Receiver’s reaction to a loan commitment secured by LISA that could have discharged the receivership, which included activities by the Receiver’s counsel in Panama, all of which is still the subject of judicial process in Panama City and in Toronto. In my opinion, the relevant facts and circumstances have never been fully or properly explained to this Court.

71. As I have stated, in late 2019, while the Receiver’s powers were still limited by Paragraph 4 of the Appointment Order, LISA secured a private loan commitment sufficient to satisfy the Castillo Judgment in full, along with the receivership expenses (**the “Loan Commitment”**). I played no part in identifying the lender, negotiating the terms or otherwise securing the Loan Commitment, nor was I given a copy of any related documents or told any of the details concerning the loan (**the “LISA Loan”**). My information was limited to the fact that the LISA Loan exceeded the amount required to discharge the Receivership, that its source was not one of the ArtCarm entities, and that it was secured by a percentage of LISA’s outstanding shares in Villamorey. I was also told that the lender had required strict agreement that LISA not disclose the identity of the lender to any person outside of LISA and its lawyers, and specifically not to me.

72. On December 17, 2019, Amsterdam & Partners LLP – which acted for LISA in connection with its dividend rights until those were assigned to BDT – wrote to inform the Receiver about the Loan Commitment, and requested a payoff amount for the Castillo Judgment and an estimate of

the total actual and anticipated receivership expenses. A copy of Amsterdam & Partners LLP's letter dated is attached hereto as **Exhibit 10**.

73. Because the proceeds of the LISA Loan would not be available until after Paragraph 4 of the Appointment Order gave the Receiver full powers over Xela on January 1, 2020, Cambridge LLP filed a motion on December 31, 2019, requesting an Order to vary Paragraph 4 and suspend the receivership under further Order (**the “Motion to Vary”**). The Motion to Vary included an affidavit by LISA's President indicating that LISA had secured the Loan Commitment, stated that the Castillo Judgment would be satisfied in full, and indicated that the sum of \$4,682,800 was expected to be transferred to the Receiver during the week of January 13, 2020. A copy of the Notice of Motion to Vary is attached hereto as **Exhibit 11**.

74. On January 8, 2020, Aird Berlis reacted in writing on behalf of the Receiver to the Motion to Vary. The Aird Berlis letter, a copy of which is attached as **Exhibit 12**, demands the following:

* * *

Even apart from Xela's motion, the Receiver needs to be able to determine how the economics of the proposed Lisa, S.A. loan affect the interests of other stakeholders of Xela or its subsidiaries. For that reason, on behalf of the Receiver, we formally request of Xela and of any officer, director or shareholder of Xela giving instructions to your firm, a copy of the Lisa, S.A. loan agreement described in the Hals Affidavit along with a copy of any closing agenda prepared in connection with contemplated loan transaction. Our authority for this request lies in paragraph 6 of the Appointment Order, which requires all persons to provide to the Receiver, among other things, any documents, contracts and information of any kind relating to Xela. Our authority for the request also lies in paragraph 3(p) of the Appointment Order, by which the Receiver is now authorized and empowered to exercise any shareholder rights that Xela might have, including Xela's 100% indirect ownership of Lisa, S.A. (through Gabinvest S.A.), to the exclusion of all other persons, including Xela itself. The limitations placed on this power by paragraph 4 of the Appointment Order only concerned exercise of the power in connection with litigation proceedings and, in any case, only applied until December 31, 2019.

75. With that letter, the Receiver set in place three erroneous principles under which it has

operated ever since, to the prejudice of Xela, LISA, Gabinvest and me personally: (a) it fails to recognize the territorial limitation of the Appointment Order, and specifically the Receiver's inability to act for Xela in foreign jurisdictions without advance recognition of its Appointment Order abroad; (b) it ignores the fact that duly established corporations – even if subsidiaries – are distinct and independent entities; and (c) it holds to the inconsistency that I have no authority over Xela, yet I should somehow be able to dictate to LISA, a foreign subsidiary of a foreign subsidiary of Xela.

76. On January 9, 2020, an email from Aird Berlis to Cambridge LLP, attached as **Exhibit 13**, perpetuated the same errors, incorrectly assuming that I had access to the details of the Loan Commitment, that I could control LISA without any authority over Xela, and that the Receiver had some authority over LISA, a Panama corporation, without formal recognition from the Panamanian authorities. It is worth noting that the Receiver seemed prepared at that juncture to take steps against LISA in Panama, even though the Receiver lacked recognition of its Appointment Order outside of Ontario:

In addition, and per our discussions following our attendance before His Honour, the Receiver hereby requests that your client provide to the Receiver any and all documentation and details relating to the proposed loan arrangement to be entered into by the Company's subsidiary, Lisa S.A., which is referenced in the Affidavit of Harald Johannessen Hals dated December 30, 2019 by no later than 12:00 pm tomorrow, January 10, 2020, so that the Receiver may review and consider the terms of such arrangement. If by noon tomorrow the Receiver is not provided with the full details of the loan arrangement or if the Receiver is not satisfied with the proposed terms of the loan, taking into account the interest of all stakeholders, the Receiver will take whatever steps it deems necessary (and that are in the best interest of Xela and its stakeholders), as permitted by the Receivership Order, to protect the assets and business. [Emphasis mine.]

77. On January 10, 2020, a follow-up email from Aird Berlis to Cambridge LLP, a copy of which is attached as **Exhibit 14**, further purports to instruct LISA through me:

No further steps should be taken by Lisa with respect to the loan until the Receiver has been able to review and make a determination as to the terms of the proposed loan documents.

78. The Receiver's demand that LISA suspend the LISA Loan was shocking to me, given the Receiver's knowledge that it would satisfy the Castillo Judgment in full and would cover any enforcement costs and expenses of the receivership, such that the receivership could be discharged. I still do not understand the basis for the Receiver's belief that it was entitled to further evaluate the Loan Commitment, knowing that it had no authority over LISA, and that the LISA Loan would fully satisfy the only ground for the receivership itself. Although the Receiver subsequently tried to justify its position by asserting that other creditors of Xela had objected to a discharge, it is my understanding that the basis for the receivership is limited to the Castillo Judgment.

79. Nevertheless, on January 13, 2020, Cambridge LLP responded to the Receiver and provided the limited information that I had concerning the Loan Commitment. A copy of that letter is attached as **Exhibit 15**. Cambridge LLP also assured the Receiver that I had instructed LISA to cooperate, and invited the Receiver to address LISA directly on the subject:

* * *

Second, we acknowledge your request for information to evaluate the loan arrangement through which Xela proposes to satisfy the Margarita Castillo judgment and all other creditors, fees and expenses of the receivership (the "Loan"). Xela's knowledge of the Loan is as follows: (1) it is being procured by LISA, S.A., a Panama corporation ("LISA"), from a third party that is unrelated to any Xela entity or any entity owned by The ArtCarm Trust; (2) the Loan is adequate to satisfy the monetary threshold for a motion to discharge the receivership, according to the totals provided by the Receiver when he learned of the Loan in December 2019; and (3) LISA will pledge some of its common shares of Villamorey, S.A. as collateral for the Loan, and nothing more.

We think this information is enough for a finding that the Loan is in the best interest of Xela and its stakeholders. However, in case the Receiver should disagree, we have instructed LISA to cooperate, and we respectfully invite the Receiver to direct any further questions directly to LISA.

80. Later in the day on January 13, 2020, KSV's Bobby Kofman (*i.e.*, the Receiver) responded personally to the email enclosing Cambridge LLP's letter. A copy of Mr. Kofman's email is attached as **Exhibit 16**, which states in its totality as follows:

Thank you.

This information is insufficient.

81. On January 14, 2020, Aird Berlis sent a letter, a copy of which is attached as **Exhibit 17**, more thoroughly responding to Cambridge LLP:

* * *

In your letter you state that Xela has the following knowledge of the Loan: (a) it is to be made by a party that is not owned by LISA or by The ArtCarm Trust; (b) the Loan proceeds will be adequate to repay the debts to the Receiver and the Applicant; and (c) the only security to be granted is a pledge of shares in Villamorey, S.A. This limited information is not sufficient for the Receiver to evaluate whether the Loan is in the best interests of the stakeholders of Xela. Without limitation, you have not informed us whether the Loan will be sufficient or purposed to pay debts of Xela to other creditors, a number of whom have requested that the Receivership not be terminated.

The following facts lead us to believe that the principal of Xela giving your firm directions has the draft loan documentation: (a) the Loan is being procured for Xela's ultimate benefit by one of its indirect 100% subsidiaries; (b) Xela's principal knows the identity of the lender and the terms of the Loan; and (c) Xela's principal had confidence enough in the Loan to cause Xela to bring the Motion. To repeat the request made in Kyle Plunkett's letter of January 8, 2020, please provide a copy of the Loan agreement and any closing agenda. We refer you again to paragraph 6 of the Appointment Order which imposes obligations on Xela's principal which cannot be shed simply through your suggestion that we seek any further information from LISA directly.

82. The Aird Berlis letter was simply wrong. As I had indicated to the Receiver, I had no documentation whatever relating to the Loan Commitment or the LISA Loan. Moreover, the Aird Berlis letter conveys a tone of mistrust that was simply not warranted, which the Receiver has continued to perpetuate in these proceedings, and which is personally offensive. LISA is a separate

corporate entity in Panama, governed by a duly constituted board of directors, subject to the laws of Panama, fully capable of taking independent legal advice and evaluating the potential impact of the receivership on its dividend rights. For those reasons, LISA undertook to identify potential funding that it could provide to Xela to help Xela extricate itself from the burden of the receivership, which in turn benefited LISA because it eliminated the risk that the Receiver might eventually take steps to liquidate its dividend rights in satisfaction of the Castillo Judgment. My input was not required for LISA to reach any of those conclusions, and LISA was aware enough to limit the information that was given to me, even if it would have been permitted by the non-disclosure agreement the lender had insisted upon. Further, because – as the Receiver reminds us – I no longer had any authority to act for Xela, either as its President or as a shareholder, I had no authority to demand information from LISA. The Receiver’s implication that because Mr. Johannessen is my brother-in-law, I must control him is insulting to both of us.

83. Xela may be the ultimate beneficial owner of LISA, but I was always required, before the receivership divested my shareholder rights, to follow corporate formalities applicable to Xela’s foreign assets, including strict Panamanian requirements concerning how Xela must prove its authority over Gabinvest within the actual minutes of every Gabinvest shareholder meeting. The Receiver is similarly required to follow the laws applicable to Xela’s assets. In this case, the Receiver sidestepped those requirements by ignoring the territorial limits of the Appointment Order and the Receiver’s obligation to seek recognition by Panamanian authorities before acting in that country, preferring instead to cast me as non-cooperative and threaten me with contempt motions. The fact that the Receiver is now asking this Court for further authorization (which the Receiver already had) to seek recognition in Panama demonstrates that the Receiver knows it acted misguidedly.

84. On January 16, 2020, Amsterdam & Partners LLP responded to Aird Berlis on behalf of LISA, a copy of which is attached hereto as **Exhibit 18**:

Dear Kyle:

As you know, we are international lawyers for LISA, S.A., a Panama corporation (“LISA”), and counsel of record for LISA in the garnishment case in Miami. We understand that the receiver is demanding documents and other details about the loan LISA is procuring to seek to discharge the receivership (the “Loan”). Xela has instructed LISA to cooperate as much as it can.

As you can appreciate, this is a unique receivership. It was created at the behest of Margarita Castillo, who – if allegations in pending litigation in Toronto are true – is acting in conspiracy with the majority stakeholders (i.e., the so-called “Cousins”) of the poultry conglomerate in Guatemala that has been trying for decades to avoid paying LISA its due share of dividends (approaching US\$400 million) while paying themselves in full. At the same time, LISA’s stake in the poultry conglomerate is Xela’s biggest asset. Thus, the Cousins have a special interest in the outcome of the receivership, as underscored by the presence of lawyers from Stikeman Elliott LLP at the case conference earlier this week. Make no mistake; the Cousins are using this receivership to try to achieve an inexpensive win in a high-stakes, 20-year-old multijurisdictional contest.

Therefore, in order to discharge the receivership, LISA’s Board of Directors gave its President, on or about December 30, 2019, the authority to procure the Loan. As you might anticipate in these circumstances, LISA did not share the details of the Loan with Xela beyond confirming that it was not a loan from any of the ArtCarm Trust entities, it was adequate to meet the threshold in Paragraph 25 of the receivership Order, and that some of LISA’s shares of Villamorey were being pledged as security, but nothing more. All of the details of the Loan, including loan documents, were and are held exclusively by LISA. More importantly – owing to past conduct of the Cousins and the unique circumstances of the receivership – the lender required LISA to make a confidentiality agreement as a condition for the Loan, barring LISA from disclosing the identity of the lender and any details of the Loan to any third parties, including without limitation Xela. Thus, LISA is under a contractual duty to withhold all information concerning the Loan in all circumstances short of a Panama Court Order compelling disclosure, which we are not certain would issue even if the receiver’s powers in Panama were recognized in principle by the Court.

Lastly, we emphasize that LISA considers the Loan to be integral to the preservation of its interest in the poultry conglomerate. LISA will therefore react to any improper interference with the Loan. Having said that, we are confident that the receiver can be relied upon to act appropriately in this regard, and we appreciate your courtesy and professionalism.

85. On January 17, 2020, Aird Berlis responded to Amsterdam & Partners LLP, a copy of which is attached as **Exhibit 19**. The Aird Berlis letter again ignores the territorial limitations of the Appointment Order, and presumes that the Receiver has authority over Xela's Panamanian assets without recognition of the Appointment Order in Panama. The letter further implies that I was lying about the information that had been provided to me – or, paradoxically, that I still had some authority over LISA to demand information – and it threatens me with a contempt motion.

86. Even more significantly in my mind, the Aird Berlis letter reveals that the Receiver's action in Panama to take over the Gabinvest board of directors, and subsequently the LISA board, was a direct reaction to the LISA Loan Commitment:

As you are aware, we are the lawyers for KSV Kofman Inc. (“KSV”), in its capacity as the court-appointed receiver and manager (in such capacity, the “Receiver”) of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued and entered on July 5, 2019 (the “Appointment Order”).

*I am writing in response to your email of January 16 and further to our letter to Canadian counsel for Mr. Juan Guillermo Gutierrez (“Juan Guillermo”), Cambridge LLP, dated January 14, a copy of which is enclosed as **Schedule A** hereto.*

In your email you refuse, on behalf of LISA, S.A. (“LISA”), to comply with the Receiver's repeated request for information and documentation relating the proposed loan (the “Loan”) to LISA (“LISA”), the proceeds of which are to be used to pay debts of Xela to the Receiver and to the applicant in the above-referenced receivership proceedings (the “Receivership”). As you note, LISA is a subsidiary of Xela and a significant asset and source of recovery for Xela's stakeholders. Such refusal by LISA and Juan Guillermo is contrary to the spirit of our chambers appointment before Justice McEwen on January 9, 2020. As counsel for Juan Guillermo can attest, Justice McEwen was very clear that full disclosure of the loan documentation by Juan Guillermo and LISA was to be provided to the Receiver prior to LISA entering into the Loan.

Your email is not an answer to our January 14 letter. In particular, your email does not relieve Juan Guillermo or any other principal of Xela from the Court-imposed obligation to comply with the Receiver's repeated request for information and documentation relating the Loan. By copying Cambridge LLP on this letter, I put

them on notice that we still expect an appropriate, timely response from them to our January 14 letter. It is the Receiver's position that the terms of the Appointment Order regarding disclosure trump any confidentiality provisions contained in purported loan agreement. The Receiver will respect an appropriate confidentiality provision. The fact that the potential lender insisted on keeping its identity confidential is a significant concern to the Receiver regarding the propriety and nature of the Loan. The Receiver will be bringing these concerns, among others, to the attention of the Court.

*Furthermore, Mr. Gutierrez and LISA have to date failed to comply with the Order of Justice McEwen dated October 29, 2019 (the "**Disclosure Order**"), pursuant to which various parties, including LISA, were ordered to produce all information pertaining to certain transactions, including the Assignment Transaction (as defined in the Disclosure Order, a copy of which was delivered to you previously).*

*Although the Receiver was appointed by the Court upon application of the applicant judgement creditor, Margarita Castillo (the "**Applicant**"), the Receiver's duties are to the Court and to all the stakeholders of Xela. The Receiver is not directed by nor specifically accountable to the Applicant, nor does it inappropriately disclose information to the Applicant or otherwise. Juan Guillermo has, at all times, had competent Canadian counsel acting for Xela to challenge any impropriety in the appointment of the Receiver or the conduct of the Receivership.*

As requested by the Receiver's representative, Bobby Kofman, in his reply to your email, please advise immediately if the Loan transaction has closed and if it the Loan has been advanced. If either has not occurred, please advise immediately when that is scheduled to occur.

To repeat what was said in our January 14 letter, the Receiver will not be in a position to approve of the procurement of the Loan or any loan for that matter until the Receiver receives and has evaluated the requested Loan documentation in full and, until such time, the Receiver explicitly objects to LISA completing the Loan transaction. As you are aware, any limitation imposed on the Receiver under the Appointment Order have automatically expired as of December 31, 2019. The Receiver will take any and all steps it deems necessary to protect and preserve the debtor's property, including its ownership interest in its various subsidiaries, which steps may include pursuing all recoveries and remedies available to the Receiver with respect improper transactions carried out by Xela and its subsidiaries prior to its appointment.

If Juan Guillermo continues to refuse to comply with the Receiver's information request, the Receiver will take such steps as it deems appropriate to protect the integrity of the Receivership and the interest of all stakeholders of Xela, all of which will be reported to the Court. Such steps may include, without limitation, a motion to hold Mr. Gutierrez in contempt of Court orders, which orders he continues to willfully disregard. [Emphasis mine.]

87. As it happens, even before Aird Berlis sent the above letter on January 17, 2020, the Receiver had already instructed Panamanian counsel to convene a Gabinvest shareholder meeting and to change the Gabinvest board of directors, and subsequently the LISA board of directors. The Gabinvest Minutes are Exhibit 1 hereto, as notarized before Hatstone's Alvaro Almengor, the Receiver's agent in Panama, and filed in the Public Registry of Panama. Of particular importance is that part of the Gabinvest Minutes that recites those in attendance:

* * *

***PRESENT:** The following were present at the meeting -----*

***ALL OF THE SHAREHOLDERS:** In person or through an authorized representation, who duly represents the totality of the shares that are issued, paid and in circulation, of the corporation (the "**Shareholder**") -----*

88. In fact, that representation was false. Mr. Almengor was not "authorized" and did not "duly represent" Xela, the sole shareholder of Gabinvest, in Panama City on January 16, 2020. Setting aside that the minutes do not identify the person who purportedly "authorized" Mr. Almengor to "duly represent" the totality of Xela's shareholdings, Mr. Almengor had no power of attorney from the Receiver, which I personally know, as explained further below. The requirement of a valid power of attorney is not a technicality that can be waived off; it is a strict prerequisite of Panama law that must precede any act by the designee of a Panamanian corporation's shareholder(s).

89. Further, even if Mr. Almengor had been in possession of a duly executed power of attorney from the Receiver, that power would have been invalid for purposes of exercising Xela's shareholder rights over Gabinvest, a Panama company, because the Appointment Order has never been recognized in Panama. The Receiver has no Xela shareholder rights apart from that Order, and the Receiver therefore had no authority to designate Mr. Almengor to act for Xela in Panama.

Moreover, nowhere in the Gabinvest Minutes is the Receiver identified or even referenced generally, which would have been required in any case. Thus, the statement in the Gabinvest Minutes that Mr. Almengor was sitting in “authorized representation” of Xela and “duly represented” the shareholder was false, and it was therefore unlawful for Mr. Almengor to file the Gabinvest Minutes in the Public Registry of Panama, purporting to alter the Gabinvest board. There may be other legal violations in connection with Mr. Almengor’s conduct, but the ones I reference are sufficient to underscore the problem.

90. I understand that Mr. Almengor also purported to convene a LISA shareholder meeting to alter LISA’s board of directors, based on the changes ostensibly made to the composition of Gabinvest’s board, as evidenced by the Gabinvest Minutes. I further understand that Mr. Almengor caused minutes of the LISA meeting (**the “LISA Minutes”**) to be filed with the Public Registry in Panama at or about the same time as the Gabinvest Minutes. To the extent the LISA Minutes and their contents were based on Mr. Almengor’s purported authority expressed in the Gabinvest Minutes, the LISA Minutes are similarly defective.

91. When LISA discovered the Gabinvest Minutes and the LISA Minutes in the Public Registry, it assumed that the Nephews were responsible. It therefore alerted the Public Registry to the defects, and the Public Registry withdrew the minutes.

92. Subsequently, as the Court knows, LISA’s President filed a criminal complaint against Mr. Almengor for filing a false statement in the Public Registry, which I understand he felt compelled by Panamanian law to submit. As the Court also knows, I signed a sworn statement in those criminal proceedings, although I did not believe (and still do not believe) that in doing so I was initiating or furthering some proceeding against the Receiver, or the Receiver’s agent, in

violation of the Appointment Order. If I was, it was certainly not intentional, as I stated earlier.

93. As noted, the Gabinvest Minutes are completely silent as to who had “authorized” Mr. Almengor to exercise Xela’s shareholder rights, or in what manner that had allegedly occurred. My sworn statement in December 2020 clarifies that the purported authorization did not come from me as President and shareholder of Xela. Thus, in my view, my sworn statement merely eliminated one possible (but erroneous) conclusion that could arise from a reading of the Gabinvest Minutes, which was that I had been the unidentified person, in my capacity as the shareholder of Xela, who had authorized Mr. Almengor to act. In any event, I provided no input whatsoever into the decision to file the criminal complaint; that decision was made solely by Mr. Johannessen in consultation with legal counsel.

94. Regarding the effectiveness of the Receiver’s purported authorization to Mr. Almengor, I am personally aware that the Receiver had not given Mr. Almengor a power of attorney until well after the Gabinvest Minutes were filed on or about January 16, 2020. I know this because I was present at a meeting in Bogotá, Colombia on February 21, 2020, the purpose of which was to give the Receiver copies of documents relating to the litigation in Panama against Villamorey, as well as documents concerning LISA’s assignment of its dividend rights to BDT. As indicated, I had been asking the Receiver for a face-to-face meeting to discuss collection of the dividends, and I was delighted that the Receiver had agreed to meet with me. As it happens, however, I made the trip from Toronto to Colombia in anticipation of meeting with the Receiver, but the Receiver backed out without letting me know. Once in Bogotá, we found ourselves meeting with lawyers from the Hatstone firm, without the Receiver. When LISA and BDT asked to see Hatstone’s power of attorney from the Receiver, Mr. Almengor was not able to provide one.

95. Owing to LISA's and BDT's inability to confirm Hatstone's mandate, they were unable to leave copies of the documents with the Hatstone lawyers, although the documents were shown to them on an informal basis on February 21, 2020. We all agreed to meet the following week in Panama, on February 28, 2020.

96. On February 24, 2020, Hatstone and LISA engaged in an email exchange, a copy of which is attached collectively as **Exhibit 20**. There, Hatstone transmitted its signed power of attorney from the Receiver for the first time.

97. Additionally, the Hatstone emails referred to the previous meeting on February 21, and confirmed February 28 for the upcoming meeting. Interestingly, Hatstone characterized both as settlement meetings, although I had understood their purpose was to share documents relating to litigation against Villamorey and the LISA/BDT assignment with the Receiver. Regardless, what is notable is that Hatstone conditioned the February 28 meeting on LISA's and Gabinvest's voluntary consent to the Receiver's desired board composition for Gabinvest and LISA:

The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

* * *

As mentioned in the previous email, in order for the meeting to proceed on Friday, it is a requirement from the Receiver that its changes to the boards of both Gabinvest and Lisa are accepted. Again, should a full and final settlement be concluded, then the boards can then be changed as you wish.

98. In response to the Receiver's conditions, LISA declined, responding that the Receiver had not obtained recognition of his appointment order, and also that Hatstone had not followed the requirements of LISA's and Gabinvest's articles of incorporation as they relate to modifications

to the board of directors. Consequently, the Receiver cancelled the February 28 meeting, where LISA had been scheduled to deliver documents relating to the Panama litigation, which the Receiver had been requesting. Thus, by failing to appear in person or to provide a valid power of attorney to Mr. Almengor in advance of the February 21 meeting, and by subsequently cancelling the February 28 meeting, the Receiver actually prevented LISA from cooperating with the Receiver.

99. On March 11, 2020, Hatstone sent a further email to LISA, a copy of which is attached as **Exhibit 21**. There, Hatstone indicated that it had conveyed LISA's views to the Receiver, and that the Receiver's response was as follows:

I am not prepared to meet with Juan in the absence of their agreement to our board changes. We will be asking for a contempt order. You can tell them that.
[Emphasis mine.]

100. The Receiver did indeed bring a contempt motion, as the Court will recall; however, the Receiver eventually adjourned that motion *sine die*. Unfortunately, my sworn affidavit in connection with the criminal complaint against Mr. Almengor in Panama has now invigorated the Receiver, although, as I said, I was only trying to clarify that I had not been the person who had authorized Mr. Almengor to exercise Xela's shareholder rights, and I certainly did not believe that I was violating the Appointment Order. In any case, I have followed to the letter the Court's requirements to withdraw my sworn statement and to direct Mr. Johannessen and Mr. Alcides de Leon to withdraw the criminal complaint. While I understand that both Mr. Johannessen and Mr. Alcides de Leon have responded negatively to that direction, I reiterate that it seems unfair, and it is in fact incorrect, to assume that I can control LISA and its representatives when I have no legal right to do so.

101. In my view, this series of events reflects some resistance by the Receiver to acknowledge the limits of its power and to conform its conduct to applicable legal requirements. I believe that it further demonstrates the Receiver's willingness to pressure me with threats of legal process and even incarceration to accomplish its objectives. These tactics seem heavy-handed to me, especially since the Receiver's motivation to change LISA's board was to challenge the LISA Loan, which, as indicated, would have fully satisfied the Castillo Judgment, thereby accomplishing the purpose of the receivership. Unfortunately, the Receiver ultimately succeeded in preventing the LISA Loan, as the lender withdrew the Loan Commitment in the face of the public-record controversy over LISA's board of directors.

G. The Receiver's Pursuit of Discovery in Toronto

102. The fiasco in Panama occurred in January 2020, and the Receiver was on notice even earlier that it needed recognition in Panama to exercise Xela's shareholder rights in that country. Still, the Receiver has yet to take steps in Panama in that regard. Instead, the Receiver changed tactics shortly after its contempt motion against me was adjourned *sine die* on or about April 8, 2020, and launched an expensive and time-consuming discovery initiative in Toronto against me and my family, where the Receiver's jurisdiction is unassailable.

103. First, the Receiver issued discovery requests to Arturo's Technical Services ("**ATS**"), a company owned by the ArtCarm Trust and operated jointly in Toronto by my sons Andres and Thomas. ATS had been storing some of Xela's physical archives, which the Receiver requested. Contrary to what the Receiver's Fourth Report says, ATS fully cooperated with the Receiver, and the Receiver took possession of all physical Xela documents. (Separately, the Receiver has never provided me with any index or other tracking method that would allow me to determine whether the document set is intact after the receivership is discharged.) The significant point about this

request is that it did not occur until April 2, 2020, some nine months after the Receiver's appointment, but in the same approximate timeframe as its contempt motion against me, which, as indicated, did not go forward beyond the initial case conference. In other words, it appears to me that the Receiver took stock of its efforts to change LISA's board of directors and its pending contempt motion – neither of which had any basis in fact or law, in my opinion – and settled on another way to continue its pattern of conduct, using new litigation specialists in Toronto.

104. Indeed, the discovery requests did not end with the physical documents stored by ATS. ATS also owns certain computer servers that it purchased from Xela in 2017, after Xela's operations were essentially shuttered. ATS uses those servers to provide cloud storage services to some of its clients. Apparently, some part of the ATS servers contain historical Xela documents, which the Receiver has requested. However, I understand that producing the Xela documents in the format requested by the Receiver will also expose documents owned by ATS's clients, who are third parties independent of Xela. Counsel for ATS is addressing those issues with the Receiver and this Court, but I understand from the Receiver's Motion that the Receiver is giving very little consideration to the privacy of ATS's clients, who are not covered by the scope of the receivership. I also understand that the Receiver's aggressive approach to this issue is a serious threat to ATS's viability as a company because of the potential access by the Receiver to documents that ATS's clients expect to keep private. Further, the process has already involved significant time and expense, and promises to continue doing so.

105. Additionally, my own emails are maintained on ATS servers, and the Receiver has demanded that ATS provide copies of all emails that I have ever sent or received. The Receiver's demand is not limited to emails written or received in my capacity as President and owner of Xela, but includes all personal and business emails, without limitation or restriction, regardless of

whether they have any bearing on Xela. I strongly object to this request for several reasons. First, it exceeds the scope of the Receiver's mandate and of the receivership. Second, it likely covers privileged communications concerning matters unrelated to Xela. Third, it is unduly burdensome and oppressive in that the amount of time and expense required to review and potentially challenge production of (not to mention translate) the entire universe of my emails is virtually incalculable. Fourth, I believe the request has been made for an improper purpose, that is, to consume my time and resources, and that of my two sons, without advancing the objective of the receivership, in keeping with the Receiver's pattern of conduct described above.

106. Finally, the Receiver has also asked to review my personal electronic devices, on the grounds that they may contain some documents that belong to Xela, and that therefore the Receiver would be entitled to see them. The Receiver and I have agreed to a consent Order governing the review and production of data on the devices, although we disagree about the interpretation of the Order, as discussed further below. In any case, it seems clear to me that the Receiver is targeting my personal devices as part of the same pattern of conduct, which does nothing but consume resources without advancing the purpose of the receivership, all of which is consistent with the interests of the Nephews. My disagreement with the Receiver over interpretation of the consent Order is discussed further below.

107. The overarching conclusions that I take from the Receiver's discovery requests are as follows: (a) none of the information will help the Receiver collect LISA's dividends; (b) the process will be intensely expensive and time consuming, as the amount of data is massive and the documents are largely in Spanish; (c) it seems clear that there will be significant disagreements concerning the discoverability of my emails and the documents on my personal devices, requiring the involvement of this Court and/or a special master; and (d) there is a substantial risk that some

of the information will fall into the Nephews' hands, through Margarita if not some other way, which would then be used by the Nephews, if at all possible, to avoid paying LISA's dividends and even to misappropriate LISA's interest in Villamorey and/or the Avicolas. I see no reasonable basis to think that the process will advance the purpose of the receivership, and even if it might, the potential benefit is eclipsed by the certain financial and emotional toll on me and my family.

H. The Receiver's Rejection of BDT's Settlement Proposal

108. The Receiver's pattern of conduct is also reflected in its rejection of a recent settlement proposal advanced by BDT, under which BDT would give the Receiver an enforceable commitment to pay into the receivership the first of any dividends recovered from Villamorey in the Panama litigation. I understand that BDT has submitted materials to the Court discussing the details of that proposal, so I do not address them here. However, I see no logical reason why the Receiver would reject a proposal that offers just as much value to the receivership as the Receiver could possibly recover from investigating and unwinding the "reviewable transactions," except without further wasted time or expense, and without any of the attendant legal hurdles. There is nobody more motivated than BDT to collect LISA's dividends, and the interest of efficiency clearly favors accepting BDT's proposal. The Receiver's out-of-hand rejection of the proposal is consistent with its overall pattern of conduct because it keeps the receivership active. In my view, the Court should require the Receiver to accept the offer.

IV. THE MOTION SHOULD BE DENIED ON ITS MERITS

A. The Receiver Requires No New Authorization to Seek Recognition in Panama or Barbados

109. Paragraphs 30 and 31 of the Appointment Order give the Receiver all the authority it needs to seek recognition in, among other places, Panama and Barbados. The Appointment Order speaks

for itself, and provides as follows:

30. 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, Panama Guatemala, Barbados, Bermuda, Venezuela or Honduras 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.

31. 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 with in proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

B. The Receiver's Interpretation of the Consent Order is Flawed

110. As I note above, the Receiver has asked to examine my personal iPads and mobile phone (the “Personal Devices”), based on the belief that they may contain documents belonging to Xela. As a preliminary matter, I note again that the receivership relates to Xela property, not my own personal property. As a consequence, any data on my Personal Devices that is not owned by Xela is not discoverable by the Receiver. As I have explained, I believe I have good reason to be concerned about the Receiver's access to my Personal Devices, as they contain few if any documents belonging to Xela, but do contain personal documents and information that, while perfectly proper and above-board, might be used by creative lawyers in Panama and/or Guatemala to interfere with BDT's ability to collect LISA's dividends.

111. Still, in the spirit of cooperation, my lawyers negotiated an Order (the “Consent Order”) with the Receiver's counsel, which sets out the procedure for review of my Personal Devices and production of Xela documents, if any, to the Receiver. A copy of the Consent Order, which was

signed on October 27, 2020, is attached as **Exhibit 22**. Among other things, the Consent Order required me, at Paragraph 1, to produce my Personal Devices to the Receiver's IT consultant for forensic imaging within seven business days of the Consent Order.

112. On October 25, 2020, before the Consent Order was issued, my wife received word that her mother, who was 97 years old at the time and residing in Guatemala City, had been diagnosed with colon cancer, and that the decision had been made to perform emergency surgery to remove a tumor. Given my mother-in-law's advanced age and the seriousness of the diagnosis, my wife and I considered it necessary to be present. Accordingly, we made travel arrangements and left Toronto for Guatemala City the following day, on October 26. Prior to leaving, and before the Consent Order was signed, my lawyers informed the Receiver's counsel of the circumstances, including our imminent departure, and we promised to keep the Receiver updated about the circumstances, which we did several times. Copies of those updates are attached collectively as **Exhibit 23**.

113. Once in Guatemala, we learned that the surgery would be delayed briefly for medical reasons, but eventually the surgeon performed the procedure and removed the tumor. Unfortunately, my mother-in-law experienced complications and was forced to undergo a follow-up procedure. Thereafter, she contracted a septic infection, and eventually passed away. After her funeral, we remained briefly in Guatemala City to settle some of her personal and financial affairs, after which we arranged as quickly as possible to travel home. We arrived back home in Toronto late on December 17, 2020.

114. I began to count the seven business days set out in the Consent Order as of my return date from Guatemala on December 17, 2020, which – taking into account weekends and holidays – put

the 7-day deadline at January 4, 2021. I took this position because the trip was unforeseen and unavoidable, and because the Consent Order, in my view, contemplated a reasonable period of time for me to retain and consult with my own computer expert before delivering my Personal Devices to the Receiver's agent. Accordingly, my lawyers identified a suitable expert to discuss the issues with me and accompany me to the offices of Duff & Phelps in Toronto, where he would help me monitor the imaging process.

115. Thereafter, we undertook to coordinate logistics, which included email communications with Mr. Joel Bowers, who we were told by the Receiver's counsel was the individual designated by Duff & Phelps to image my Personal Devices. My expert and the Receiver's expert communicated directly (copying me) and, based on their calendars, agreed that the meeting would take place on January 5, 2021. As I was reviewing those email communications, I noticed that Mr. Bowers was using an email address with an @kroll.com domain. As I have explained, this caused me grave concern because Kroll had been retained by the Nephews to surveil my family and me, including my children. I also remembered how Ricardo had arranged the theft of encrypted documents from Xela's computer servers in 2010, and that Margarita had attached them as an exhibit to the Oppression Action. Additionally, I recalled that the Nephews had subsequently used those same documents as a basis to bring the Exclusion Actions in Guatemala. Moreover, I took into account the pattern of conduct I had observed from the Receiver since its appointment, which only amplified my concern.

116. Fortunately, I learned that it would be possible to conduct the imaging using a lockable hard drive that could be secured with a passcode. I also noted that Paragraph 6 of the Consent Order barred Duff & Phelps from making any additional copies of the imaged Personal Devices or from accessing the data until after I had an opportunity to review and object to production. I

concluded that using a lockable hard drive during the imaging would be the only viable way to deliver my Personal Devices to the Receiver's agent in accordance with the Consent Order (even though Kroll was not the entity authorized by the Consent Order to perform the imaging), while continuing to protecting the safety of the data until the Court could evaluate the change in circumstances. My lawyers informed the Receiver's counsel of my decision, and on January 5, 2021, my consultant and I presented ourselves to the Duff & Phelps offices, where a different Kroll employee, Johan Dorado, performed the imaging onto a locked hard drive (over the objection of the Receiver's counsel). We left the locked hard drive in Kroll's possession.³ Shortly thereafter, I signed the affidavit required by Paragraph 2 of the Consent Order.

117. Before leaving the Duff & Phelps offices, we permitted Kroll to conduct limited forensic analysis of the imaged drive, the results of which produced a list of all files that had been deleted from my Personal Devices. That report revealed that the deletion record was consistent with ordinary use of similar electronic devices, and that no suspicious activity was evident to suggest that I had taken action to delete data in order to conceal information from the Receiver.

118. Although the Receiver has since expressed a desire to conduct more in-depth forensic analysis of my Personal Devices, Paragraph 7 of the Consent Order only contemplates such action "at the request of the Receiver." In my opinion, the Receiver has not articulated any reasonable basis for such a request. There is no indication from the forensics already conducted by Kroll to suggest any suspicious activity or other reason to perform further analysis at this stage.

³ The Consent Order required me to deliver all electronic devices that might contain Xela data. However, I forgot to bring with me on January 5, 2021 an older iPad that had been destroyed years earlier. My consultant and I returned to the Duff & Phelps offices a week later (my consultant was unavailable sooner) and permitted Kroll to attempt to image that device, which it was unable to do.

119. The Receiver has also suggested that Paragraph 8 of the Consent Order requires that I permit all of the data to be uploaded to the Relativity document review platform at this juncture. However, Paragraph 8 also contemplates such action only “at the request of the Receiver.” Under the circumstances, I do not believe the Receiver has articulated a valid basis for its request that I be required to upload the data to a Relativity platform maintained by Kroll (or the Receiver’s substitute consultant) at this stage.

120. First, there is no reason to grant potential access to anybody until I have had opportunity to review and object to production, as contemplated by Paragraph 10 of the Consent Order. The only limitation on my ability to conduct review at this stage is that I do not have a duplicate of the locked hard drive, which is required for me to identify documents by reference to the indexing on the hard drive in the possession of the Receiver’s agent. I have asked for a duplicate, but the Receiver has refused. Therefore, I have been unable to begin the review process.

121. Second, most if not all of the data on my Personal Devices is my own; it does not belong to Xela. Such data is not covered by the receivership, and some consideration should be given to my personal privacy.

122. Third, the data on my Personal Devices is confidential and sensitive, and might be subject to manipulation by creative lawyers in Panama and/or Guatemala. The Receiver’s pattern of conduct suggests coordination with the Nephews, and the Receiver’s billing records are replete with communications between the Receiver’s counsel and Margarita’s lawyers. Margarita has already shown that she cannot be trusted with documents that might potentially be used against LISA’s interest in the dividends. Thus, there is some risk, minimal or not, that my personal data could find its way into the hands of the Nephews, even if the Consent Order expressly prohibits

the Receiver's use of the data for any purpose other than the receivership.

123. Finally, the Receiver is not prejudiced by proceeding with the review of my personal electronic devices in the manner I am suggesting. Kroll has already performed forensic analysis of the devices sufficient to demonstrate that no irregular file deletion has occurred, and there is no exigency because the devices have been imaged and are currently in possession of the Receiver's agent. Thus, even if the Consent Order could be interpreted to call for the remedy demanded by the Receiver, there is ample reason under the circumstances to proceed with caution.

124. I believe that the Receiver's Motion regarding my Personal Devices should be denied. It is my view that the Receiver should be required to accept BDT's settlement proposal, such that the Receiver would cease incurring additional costs, which would include discovery into my Personal Devices. Alternatively, even if BDT's settlement proposal is not mandated, I believe that the Receiver's course of conduct is ample reason to vary the Consent Order such that no further discovery is conducted at this time. However, barring either of those outcomes, the Receiver's Motion should be denied with respect to my Personal Devices for the reasons stated above. I should be permitted to conduct my review using a duplicate of the locked hard drive and to communicate my objections to the Receiver based on the matching indexing of those two hard drives, and thereafter to perform the remaining requirements of the Consent Order.

C. The Receiver's Demand for My Emails Exceeds the Scope of the Receivership

125. As noted above, the Receiver has demanded all of my emails from ATS, whether or not they involve an @xela.com domain, and whether or not they exist on active ATS servers or inactive ones. The receivership, however, does not apply to my personal property, but rather to the property of Xela. The Receiver's demand exceeds the scope of the receivership.

126. If any of my emails are required to be produced (and I do not believe they should be, for the reasons stated in the prior section of this affidavit), I believe I should first be permitted to review all of the emails on the ATS servers and present any and all relevant objections to the Receiver and, if necessary, to this Court. Any other result would exceed the authority granted to the Receiver under the applicable Ontario laws and the Appointment Order.

D. The Receiver's Fourth Report Is Inaccurate and Incomplete

127. The Receiver's fourth report is troubling in its inaccuracy. The misstatements of fact are so thorough and pervasive, it is impossible to list them all here. Virtually every statement approaches the facts from a contentious perspective, making conclusory statements without appropriate knowledge or evidence, all of which cut against me and my family. Many of the misstatements are corrected throughout this affidavit.

128. However, it is particularly important for me to challenge the Receiver's dogged claim that LISA, Gabinvest, my sons and I have failed to cooperate with the Receiver. While it may be true that I have tried to defend my rights – as have LISA, Gabinvest and my sons – such a posture does not render us non-cooperative. The Appointment Order gives the Receiver broad latitude, and it requires those subject to the Appointment Order to “cooperate” with the Receiver, but it does not grant unto the Receiver the right to infringe mine or anybody else's legal rights. Those rights are particularly relevant for Gabinvest and LISA, which are Panamanian companies and are required to comply with the law of Panama, as are their executives. The Receiver is quick to hold others to the purported requirements of the law, but his application of the law refuses to recognize territorial borders or to respect foreign jurisdictions.

129. The tone of the Receiver's fourth report is quite smug, yet the Receiver is itself responsible

for some of the major issues it cites. Most notably, the Receiver's failure to seek recognition in Panama caused the fiasco that resulted in the criminal complaint against Mr. Almengor. If, as the Receiver contends, the criminal complaint is frivolous, the Receiver should at least explain the source of Mr. Almengor's authority on January 16, 2020 to exercise Xela's shareholder rights over Gabinvest, when Mr. Almengor had no power of attorney from the Receiver, and the Receiver had not even applied for recognition in Panama. The Receiver's claim that it now requires a recognition order from this Court because LISA and Gabinvest refused to cooperate is illogical. The truth is that the Receiver presumed to exercise authority over LISA and Gabinvest when it had none, yet it neglected to exercise the authority it already had to seek foreign recognition under Paragraphs 30 and 31 of the Appointment Order. Meanwhile, the Receiver has tried to have it both ways by pretending that I have control over LISA and Gabinvest, while lacking any legal right to act for Xela.

130. The Receiver also fails to answer for his questionable approach to the LISA Loan. The Receiver should at least acknowledge that the loan represented the best opportunity for an early resolution of these proceedings, yet the Receiver inexplicably fought against it tooth and nail.

131. In my opinion, the Court should not rely on the Receiver's fourth report in considering the relief sought.

E. The Receiver's Fees and Expenses Are Unreasonable

132. The Receiver's request for authorization of its fees and expenses should be denied as unreasonable. First, none of the Receiver's activities have been directed at recovery of the LISA dividends, the only potential source of monies that could possibly satisfy the Castillo Judgement. Second, the Receiver's attempt to alter the Gabinvest and LISA boards of directors was

unproductive and a waste of resources, as Mr. Almenger's filings were appropriately reversed by the Panama authorities. Third, the Receiver's activities furthered a pattern that ran contrary to the purpose of the receivership, as detailed above. Fourth, all billing descriptions in the Lenczner Slight invoices are redacted, making it impossible to evaluate those invoices. Fifth, as discussed above, the Receiver interfered with the LISA Loan, the proceeds of which would have fully satisfied the Castillo Judgment and all enforcement costs and other expenses of the receivership in January 2020. For all of those reasons, I believe that the Receiver's request for approval of its fees should be denied.

SWORN by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits
(or as may be)



JUAN GUILLERMO GUTIERREZ

N. JOAN KASOZI (LSO# 70332Q)

This is Exhibit "F" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

IN ACCOUNT WITH.

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Ontario, Canada M5J 2T9
 T 416.863.1600 F 416.863.1615
 airdberlis.com

KSV Advisory Inc.
 2308-150 King Street West
 Box 42
 Toronto, ON
 M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 645141

PLEASE WRITE ACCOUNT NUMBERS
 ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

September 17, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended September 11, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
PD	10/07/19	\$275.00	0.50	\$137.50	Meeting to discuss project on creating chart summarizing entities involved in Xela receivership for K. Plunkett
PD	14/07/19	\$275.00	0.70	\$192.50	Drafting chart of entities involved in Xela receivership for K. Plunkett
PD	15/07/19	\$275.00	2.00	\$550.00	Drafted entities chart for K. Plunkett, revised chart with list of directors and officers
KAE	16/01/19	\$495.00	1.20	\$594.00	Review materials for potential CJA filing and discuss with K. Plunkett
SLG	11/01/19	\$825.00	0.20	\$165.00	Discussion with K. Esaw regarding facts and statements
SLG	15/01/19	\$825.00	0.20	\$165.00	Emails with R. Kofman re attendance
SLG	16/01/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re. stay of proceedings
SLG	22/01/19	\$825.00	0.20	\$165.00	Address 9.30 appointment attendance

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	11/02/19	\$825.00	0.20	\$165.00	Emails re schedule for hearing and examinations
SLG	27/02/19	\$825.00	0.30	\$247.50	Telephone call with R. Kofman re status
SLG	04/07/19	\$825.00	0.50	\$412.50	Emails and discussion with K. Plunkett on proceeding and form of order
SLG	05/07/19	\$825.00	0.40	\$330.00	Review letter to debtor re control of litigation and review emails
SLG	10/07/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re meeting and set up of process
SLG	11/07/19	\$825.00	1.30	\$1,072.50	Discussion with K. Plunkett re details and position; review
SLG	15/07/19	\$825.00	0.80	\$660.00	Discussion with K. Plunkett re meeting and outcome; draft and review list of questions
SLG	16/07/19	\$825.00	3.00	\$2,475.00	Prepare for and attend meeting at Torsys with J. Gutierrez, A. Slavens and KSV re history and next steps
SLG	26/07/19	\$825.00	0.20	\$165.00	Emails with A. Slavens
SLG	07/08/19	\$825.00	0.30	\$247.50	Emails re disclosure
SLG	08/08/19	\$825.00	0.30	\$247.50	Review emails on Confi Agreement and disclosure
SLG	14/08/19	\$825.00	0.60	\$495.00	Meeting with student and K. Plunkett re status, next steps, strategy and further meeting; review emails with A. Slavens and S. Case
SLG	15/08/19	\$825.00	0.20	\$165.00	Review emails with R. Kofman and A. Slavens
SLG	18/08/19	\$825.00	0.80	\$660.00	Review document and answers to inquiries; telephone call with B. Kofman
SLG	19/08/19	\$825.00	0.80	\$660.00	Telephone call with R. Kofman, N Goldstein and K. Plunkett on approach

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	21/08/19	\$825.00	0.30	\$247.50	Emails re answers to questions and prepare follow up list
SLG	22/08/19	\$825.00	1.80	\$1,485.00	Emails with A. Slavens; review of letter to A. Slavens and Confi instructions
SLG	23/08/19	\$825.00	0.80	\$660.00	Review and revise Confi Agreement; telephone call with K. Plunkett
SLG	28/08/19	\$825.00	0.80	\$660.00	Telephone call with R. Kofman and K. Plunkett; review emails; consider approach re settlement and protocol
SLG	29/08/19	\$825.00	1.00	\$825.00	Review emails on status and letter to Stikemans (K. Kay) and response
SLG	30/08/19	\$825.00	0.10	\$82.50	Coordinate call with Stikeman
SLG	03/09/19	\$825.00	0.40	\$330.00	Review Protocol
SLG	04/09/19	\$825.00	1.10	\$907.50	Review and revise protocol on information, exchange and settlement, discussion with K. Plunkett
SLG	05/09/19	\$825.00	0.20	\$165.00	Telephone call with A. Slavens; discussions with K. Plunkett re status
SLG	09/09/19	\$825.00	0.30	\$247.50	Discussion with KSV re [REDACTED] with Stikemans and [REDACTED]
SLG	10/09/19	\$825.00	0.80	\$660.00	Conference call with K. Kay, A. Kreadon and KSV reps re requests for information; discussion with K. Plunkett
SLG	11/09/19	\$825.00	0.30	\$247.50	Conference call with Bennett Jones on status
SLJ	05/07/19	\$340.00	1.00	\$340.00	Discussion w/ K. Plunkett re next steps; Draft letter re receivership order
SRM	05/07/19	\$370.00	0.20	\$74.00	Conduct prelim; Order, review and report on corporate profile for Xela Enterprises Ltd.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SRM	08/07/19	\$370.00	0.20	\$74.00	Order, review and report on BC and ON PPSA searches against Xela Enterprises Ltd.
SRM	09/07/19	\$370.00	0.10	\$37.00	Review certified PPSA search on Xela Enterprises Ltd. and report on same
KBP	10/01/19	\$475.00	1.00	\$475.00	Review and consider draft Notice of Motion; email exchange with client regarding [REDACTED].
KBP	14/01/19	\$475.00	0.90	\$427.50	Review and consider draft order; email exchange with N. Goldstein regarding same; attend call with N. Goldstein regarding same.
KBP	15/01/19	\$475.00	1.10	\$522.50	Review and consider motion record of applicant; email exchange with N. Goldstein regarding materials and timing.
KBP	16/01/19	\$475.00	0.90	\$427.50	Review and consider draft order; email exchange with S. Zwiag regarding same.
KBP	17/01/19	\$475.00	1.10	\$522.50	Review and provide comments on draft court materials; email exchanges with Bennett Jones team regarding same.
KBP	18/01/19	\$475.00	0.60	\$285.00	Review and respond to emails from Bennett Jones; email exchange with client regarding order
KBP	22/01/19	\$475.00	1.20	\$570.00	Prepare and attend scheduling motion for receiver application; email to client regarding results.
KBP	11/02/19	\$475.00	0.30	\$142.50	Review and consider email from client regarding status and update regarding responding materials.
KBP	03/04/19	\$475.00	0.20	\$95.00	Review and consider update email from N. Goldstein.
KBP	27/05/19	\$475.00	0.20	\$95.00	Review and consider emails from client regarding updates, email exchange with N. Goldstein.

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	02/07/19	\$475.00	1.10	\$522.50	Review and consider CCAA application materials, email exchange with client.
KBP	04/07/19	\$475.00	1.60	\$760.00	Review and consider draft appointment order; provide comments to N. Goldstein; review and consider correspondence from applicant, review court materials; attend call with N. Goldstein to discuss updates and next steps.
KBP	05/07/19	\$475.00	1.10	\$522.50	Review and respond to various emails from N. Goldstein; review and provide comments on draft letter to client team; review and consider emails from working group and A. Slavens.
KBP	07/07/19	\$475.00	0.70	\$332.50	Revise and circulate updated letter to J. Gutierrez; email exchange with client team regarding same; revise and update letter.
KBP	08/07/19	\$475.00	1.00	\$475.00	Review and respond to various emails from client team regarding correspondence to debtor, draft and finalize letter and send out same.
KBP	09/07/19	\$475.00	1.10	\$522.50	Prepare and review materials for meeting with Applicant team at Bennett Jones; attend call with N. Goldstein.
KBP	10/07/19	\$475.00	2.10	\$997.50	Prepare and attend meeting with M. Castillo et al at Bennett Jones; review and respond to emails from N. Goldstein; review and consider Panama counsel; instruct P. Dalglish regarding chart.
KBP	11/07/19	\$475.00	0.30	\$142.50	Email exchange with client team regarding [REDACTED]
KBP	12/07/19	\$475.00	0.30	\$142.50	Attend call with N. Goldstein to discuss updates and pre-meeting issues.
KBP	14/07/19	\$475.00	2.00	\$950.00	Review and consider email from B. Kofman; review and consider materials in preparation for meeting

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					with client team.
KBP	15/07/19	\$475.00	2.50	\$1,187.50	Attend meeting with client team to discuss strategy and pre-meeting with J. Gutierrez; draft question list for meeting; email exchange with client team regarding same; review draft org chart summary.
KBP	16/07/19	\$475.00	4.00	\$1,900.00	Prepare and attend meeting with J. Gutierrez and Torys; attend follow up call with N. Goldstein.
KBP	18/07/19	\$475.00	1.10	\$522.50	Review and provide comments on draft letter request to Torys; email exchange with client regarding same.
KBP	19/07/19	\$475.00	0.70	\$332.50	Review and finalize letter to Torys, attend call with N. Goldstein to discuss next steps.
KBP	26/07/19	\$475.00	0.60	\$285.00	Review and consider emails between client and Torys; email to A. Slavens regarding proposal for global settlement.
KBP	30/07/19	\$475.00	0.20	\$95.00	Review and consider email exchange between N. Goldstein and A. Slavens regarding request for information.
KBP	01/08/19	\$475.00	0.60	\$285.00	Review and consider email exchange between client and A. Slavens; email to client regarding same; review and consider emails with confidentiality agreement.
KBP	05/08/19	\$475.00	1.00	\$475.00	Review and consider emails from A. Slavens and draft CA; review appointment order and draft response to client team regarding same.
KBP	06/08/19	\$475.00	0.40	\$190.00	Review and consider email exchange with A. Slavens regarding disclosure of information from J. Gutierrez; email exchange with B. Kofman regarding same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	07/08/19	\$475.00	0.90	\$427.50	Email exchange with Torys team regarding request for disclosure; attend calls with A. Slavens; review and provide comments on NDA to client team.
KBP	08/08/19	\$475.00	1.30	\$617.50	Attend call with A. Slavens, revise and provide mark-up of confidentiality acknowledgment to working group; circulate final draft to Torys.
KBP	09/08/19	\$475.00	1.50	\$712.50	Revise and circulate confidentiality acknowledgment, review and consider initial response from Torys regarding disclosure; email exchanges with S. Case
KBP	12/08/19	\$475.00	1.10	\$522.50	Email exchange with S. Case regarding disclosure; review and consider disclosure documents and response
KBP	13/08/19	\$475.00	0.80	\$380.00	Email exchange with Torys team regarding settlement proposal; review and consider disclosure and emails from client team regarding same.
KBP	14/08/19	\$475.00	0.90	\$427.50	Attend meeting with team to discuss responses to questions and [REDACTED], email exchange with B. Kolman regarding same.
KBP	19/08/19	\$475.00	1.50	\$712.50	Prepare and attend call with client team regarding updates and review of disclosure; draft letter to Torys regarding settlement and follow-up questions; review and consider email exchanges between client and Torys.
KBP	20/08/19	\$475.00	1.10	\$522.50	Review and update list of follow-up questions to client team; email exchange with A. Slavens; provide comments on draft questions and circulate same to S. Graff.

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	22/08/19	\$475.00	1.10	\$522.50	Review and revise follow up questions; circulate same to client team, review and respond to emails from A. Slavens; email exchange with client team;
KBP	23/08/19	\$475.00	1.10	\$522.50	Review and consider email from S Case and further disclosure; email to Torys regarding follow-up questions; revise and finalize questions to Juan Gutierrez; email exchanges with B Kofman.
KBP	26/08/19	\$475.00	1.00	\$475.00	Email exchanges with A. Slavens, review and consider letter from Torys; various email exchanges with client team; attend without prejudice call with Torys [REDACTED]
KBP	28/08/19	\$475.00	1.30	\$617.50	Attend call with client team to discuss updates and [REDACTED], attend call with A. Slavens; draft and circulate responses to Torys; review and consider draft letter; review protective order.
KBP	29/08/19	\$475.00	1.70	\$807.50	Draft letter to K. Kay at Stikemans; draft email to A. Slavens; review and consider emails from A. Slavens; meet with student to discuss [REDACTED] review and consider protective order.
KBP	30/08/19	\$475.00	1.00	\$475.00	Review and respond to various emails from client team regarding letter to Stikemans; circulate letter to Stikemans; review and respond to emails from A. Slavens regarding [REDACTED]
KBP	01/09/19	\$475.00	0.80	\$380.00	Review and consider [REDACTED];
KBP	03/09/19	\$475.00	2.00	\$950.00	Review and provide comments on mark-up from Bennett; revise and circulate updated NDA to client and Bennett; review and provide comments on [REDACTED] circulate same to S. Graff.

AHO & BEAUS LLP
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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	04/09/19	\$475.00	1.10	\$522.50	Revise and update [REDACTED], circulate same to Tony's, email exchange with Bennett regarding NDA.
KBP	06/09/19	\$475.00	0.60	\$285.00	Review and respond to Bennett Jones regarding NDA and disclosure documents; attend call with N Goldstein regarding same
KBP	09/09/19	\$475.00	0.60	\$285.00	Attend call with client to discuss telephone conference with Stikemans team; email exchanges with client regarding [REDACTED] and NDA with Margarita Castillo
KBP	10/09/19	\$475.00	0.60	\$285.00	Attend call with Stikemans to discuss request for information, review and respond to emails from Bennett Jones.
KBP	11/09/19	\$475.00	1.00	\$475.00	Attend call with Bennett Jones team to discuss updates; attend call with A. Slavens to discuss [REDACTED] and proposed 9:30 chambers appointment, email to client team regarding same.
TOTAL:			77.60	\$42,636.50	

Name	Hours	Rate	Value
Peter Dalglish (PD)	3.20	\$275.00	\$880.00
Kathryn A. Esaw (KAE)	1.20	\$495.00	\$594.00
Steven L. Graff (SLG)	18.80	\$825.00	\$15,510.00
Shakaira L. John (SLJ)	1.00	\$340.00	\$340.00
Shannon R. Morris (SRM)	0.50	\$370.00	\$185.00
Kyle B. Plunkett (KBP)	52.90	\$475.00	\$25,127.50

OUR FEE \$42,636.50
 HST at 13% \$5,542.75

AIRD & BERLIS LLP
PAGE 10 OF ACCOUNT NO. 845141

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Due Diligence-Gov Fee	\$11.00
Search Under P.P.S.A.	\$24.50

Total Agency Costs	\$35.50
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Subject to HST

Photocopies	\$383.50
Photocopies - Local	\$315.50
Imaging/Scanning	\$71.25
Binding and Tabs	\$36.00
Taxi	\$10.40
Corporate Search	\$20.00
Service Provider Fee	\$15.50

Total Disbursements	\$652.15
HST at 13%	\$110.78

AMOUNT NOW DUE

\$49,177.68

THIS IS OUR ACCOUNT HEREIN

Aird & Berlis LLP

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 1.5% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST/HST Registration # 12184 6509 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit Number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

37265880 1

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink, appearing to be "John", is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Ontario, Canada M5J 2T9
 T 416.863.1500 F 416.863.1515
 airdberlis.com

KSV Advisory Inc.
 2308-150 King Street West
 Box 42
 Toronto, ON
 M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 649526

PLEASE WRITE ACCOUNT NUMBERS
 ON THE BACK OF ALL CHEQUES

Fax No. 416.117.1485/501

October 25, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended October 24, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	16/09/19	\$475.00	0.70	\$332.50	Attend call with client team to discuss proposed motion for declaratory relief; review and consider emails from client; attend call with Bennett Jones
SCB	17/09/19	\$765.00	0.90	\$688.50	Telephone call with S. St. John at Clarke Gittens Farmer to arrange telephone call re Xela litigation; Discuss with K. Plunkett; Prepare and send information for conflict search
SLG	17/09/19	\$825.00	0.20	\$165.00	Letter re motion and court date
KBP	17/09/19	\$475.00	1.60	\$760.00	Review and respond to emails from B. Kofman; attend call with Bennett Jones; review and consider responses from Torgs and their client; discuss same with S. Graff.
SCB	18/09/19	\$765.00	0.50	\$382.50	Conference call with K. Plunkett, S. Graff and K. Boyce (Clarke Gittens Farmer) re Xela litigation
SLG	18/09/19	\$825.00	0.60	\$495.00	Conference call with Barbados counsel re possible engagement of counsel and re

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	18/09/19	\$475.00	1.70	\$807.50	Review and respond to various emails from client team regarding proposed motion for declaratory relief and scope of motion; attend call with Barbados counsel to discuss [REDACTED]; review and compile information regarding BDT spin out; review responses from Torys.
SLG	18/09/19	\$825.00	0.20	\$165.00	Emails re status of Xela receivership and info
KBP	19/09/19	\$475.00	1.20	\$570.00	Attend call with Barbados counsel; Email exchanges with client team regarding same; Review and arrange to book court time for motion re declaratory relief
GG	20/09/19	\$295.00	1.00	\$295.00	Received instruction from K Plunkett; assembled documents for Barbados counsel
SLG	20/09/19	\$825.00	0.50	\$412.50	Discussion with K. Plunkett with respect to email re motion
KBP	20/09/19	\$475.00	1.10	\$522.50	Attend calls with client to discuss next steps, Email to service list regarding upcoming motion; Email exchanges with A. Slavens regarding meeting and disclosure; Review and respond to emails from Barbados counsel
SLG	25/09/19	\$825.00	1.70	\$1,402.50	Attend meeting at Bennett Jones with KSV re [REDACTED] email with K. Kay and with Barbados counsel; review docs in prep for same
SLG	26/09/19	\$825.00	1.00	\$825.00	Attend call with Torys lawyers, KSV and A&B re scheduling and process
SLG	26/09/19	\$825.00	0.50	\$412.50	Emails re [REDACTED] and communications with Barbados counsel
KBP	26/09/19	\$475.00	1.40	\$665.00	Attend call with Torys team; review and consider draft letter; review and respond to various emails from Torys team regarding motion; attend call with Barbados counsel regarding [REDACTED]

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	27/09/19	\$825.00	0.20	\$165.00	Review emails re Schedule and 9.30 appointment
KBP	27/09/19	\$475.00	0.70	\$332.50	Attend calls with client regarding 9:30 chambers appointment; various email exchanges with client team
SLG	30/09/19	\$825.00	0.20	\$165.00	Discussion with K. Plunkett re update and 9:30 am attendance
KBP	30/09/19	\$475.00	0.40	\$190.00	Attend call with S. Graff to discuss letters to stakeholders and chambers appointment; Instruct G. Gopinath regarding letter; Attend call with N. Goldstein
GG	01/10/19	\$295.00	0.90	\$265.50	Call with K. Plunkett re: letter to Calvin Shields; drafted letter to Calvin Shields
KBP	01/10/19	\$475.00	1.60	\$760.00	Review and respond to emails from client team regarding chambers appointment; prepare for chambers appointment; review and provide comments on final draft letter to C. Shields.
SCB	02/10/19	\$765.00	1.10	\$641.50	Telephone call with K. Hutchinson (EY) re Cayman local counsel. Obtain further information and contact R. Bell at Walkers and discuss with him
GG	02/10/19	\$295.00	3.70	\$1,091.50	Received instructions from K. Plunkett; attended meeting at Torys for note-taking purposes; assembled list of deliverables from Xela/Torys; drafted litigation update summary based on meeting
GG	02/10/19	\$295.00	1.00	\$295.00	Conducted caselaw research for motion record; reviewed precedent documents; began preparing motion record materials
SLG	02/10/19	\$825.00	0.60	\$495.00	Update on Scheduling appointment and meeting on litigation update; review emails re update on litigation
KBP	02/10/19	\$475.00	3.10	\$1,472.50	Attend chambers appointment before Justice McEwan, attend meeting at Torys to discuss litigation updates; review and consider emails from working group regarding materials.
SLG	03/10/19	\$825.00	0.20	\$165.00	Emails with K. Kay

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	03/10/19	\$475.00	1.00	\$475.00	Prepare list of follow-up items from Torys, circulate email to Torys team.
GG	04/10/19	\$295.00	1.00	\$295.00	Drafted materials for motion record
SLG	04/10/19	\$825.00	0.30	\$247.50	Review update on meeting and status
KBP	04/10/19	\$475.00	2.20	\$1,045.00	Attend call with Barbados counsel; review and respond to emails from client team; draft form of order; circulate same to N. Goldstein; meeting with student to discuss materials.
GG	06/10/19	\$295.00	1.10	\$324.50	Drafted materials for motion record
GG	07/10/19	\$295.00	1.50	\$442.50	Drafted materials for motion record returnable Oct 29th for K Plunkett
KBP	07/10/19	\$475.00	2.00	\$950.00	Prepare and attend call with Hatstone team to discuss mandate; review and consider emails from client team; attend call with N. Goldstein regarding court materials; draft and circulate form of Order.
GG	08/10/19	\$295.00	1.50	\$442.50	Drafted materials for motion record returnable Oct 29th for K Plunkett
KBP	08/10/19	\$475.00	1.50	\$712.50	Review and provide comments on draft affidavit of service; review and provide comments on initial draft of written submissions to Court; email exchanges with client team
KBP	09/10/19	\$475.00	2.00	\$950.00	Review and draft written submissions to Court for motion returnable October 29th; email to Torys; review and consider court materials.
KBP	09/10/19	\$475.00	2.60	\$1,235.00	Draft written submissions; draft court order; review and respond to emails from Barbados counsel; review and consider emails from client team regarding court materials.
KBP	10/10/19	\$475.00	2.70	\$1,282.50	Review and update Notice of Motion; email exchange with Torys team regarding additional disclosure; attend calls with client team to discuss court materials and report

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	11/10/19	\$475.00	3.10	\$1,472.50	Draft court materials for motion returnable October 29, 2019, various email exchanges with client team regarding draft Order and draft Motion Record.
GG	14/10/19	\$295.00	0.90	\$265.50	Conducted caselaw research for motion record returnable Oct 29
KBP	14/10/19	\$475.00	2.80	\$1,330.00	Review comments on order from client; revise and circulate updated copy; review and provide initial comments on draft report; email exchanged with client team regarding draft materials
GG	15/10/19	\$295.00	0.50	\$147.50	Drafted motion record materials
SLG	16/10/19	\$825.00	1.30	\$1,072.50	Review report and review order and submission; telephone call with K. Plunkett
SLG	15/10/19	\$825.00	1.20	\$990.00	Further review of and comments on Report; further telephone call with K. Plunkett
KBP	15/10/19	\$475.00	2.40	\$1,140.00	Review and provide comments on draft report; revise and circulate updated order; review and update notice of motion to capture comments from client; attend calls with client; review comments on written submissions from S. Graff.
GG	16/10/19	\$295.00	1.00	\$295.00	Review Reviewed motion record materials
KBP	16/10/19	\$475.00	3.20	\$1,520.00	Draft and finalize court materials for motion returnable October 29, 2019, Attend various calls with client team to discuss same; revise and provide comments on report.
GG	17/10/19	\$295.00	4.60	\$1,357.00	Prepared motion record materials
SLG	17/10/19	\$825.00	0.20	\$165.00	Review emails re materials
JTN	17/10/19	\$395.00	0.30	\$118.50	Meeting with G. Gopinath to address service-related questions re motion record; Discussion and email exchanges with K. Plunkett re same
KBP	17/10/19	\$475.00	3.10	\$1,472.50	Revise and finalize materials for service; attend various calls with N. Goldstein to discuss finalizing materials; email exchanges with Barbados counsel regarding same.

AIRD & BERLIS LLP
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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SCB	18/10/19	\$765.00	0.20	\$153.00	Assist K. Plunkett with notarial certificates
GG	18/10/19	\$295.00	1.20	\$354.00	Compiled physical documents for service to Barbados entities
KBP	18/10/19	\$475.00	2.10	\$997.50	Review and consider additional information from Torgs; circulate draft written submissions to client team; review and consider comments on same from client; review and respond to emails from Torgs regarding requests for confidential appendices
KBP	21/10/19	\$475.00	1.90	\$902.50	Revise and incorporate comments from client into written submissions; circulate same to S. Graff; email exchange with Barbados counsel regarding service of motion record.
KBP	22/10/19	\$475.00	1.10	\$522.50	Review and revise written submissions to include additional comments from client team; updated and circulate draft; email exchange with Barbados counsel.
TOTAL:			79.00	\$37,817.00	

Name	Hours	Rate	Value
Kyle B. Plunkett (KBP)	47.20	\$475.00	\$22,420.00
Sam C. Billard (SCB)	2.70	\$765.00	\$2,065.50
Steven L. Graff (SLG)	8.90	\$825.00	\$7,342.50
Gaurav Gopinath (GG)	19.90	\$295.00	\$5,870.50
Jeremy T. Nemers (JTN)	0.30	\$395.00	\$118.50

OUR FEE	\$37,817.00
HST at 13%	\$4,916.21

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application	\$320.00
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AIRD & BERLIS LLP
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Subject to HST

Photocopies - Local	\$209.75
Imaging/Scanning	\$5.25
Binding and Tabs	\$33.00
Deliveries/Parsa	\$191.68
Photocopies	\$7.00

Total Disbursements	\$446.68
HST at 13%	\$58.07

AMOUNT NOW DUE

\$43,557.98

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

Steven L. Grant
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6538 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

37660031.1

KSV Kofman Inc.
In its capacity as Receiver

October 23, 2019 Account 649526

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$825.00	8.90	\$7,342.50
Kyle B. Plunkett	2011	\$475.00	47.20	\$22,240.00
Sam Billard	1985	\$765.00	2.70	\$2,065.50
Jeremy Nemers	2014	\$395.00	0.30	\$118.50
Articling Student				
Gaurav Gopinath		\$295.00	19.90	\$5,870.50

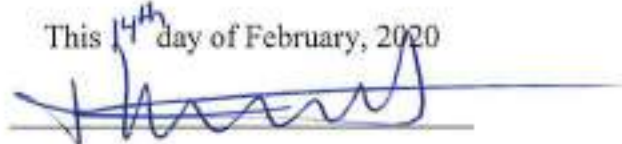
Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be a cursive or semi-cursive script. The line extends to the right of the signature.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Ontario, Canada M5J 2T9
 T 416.863.1500 F 416.863.1515
 airdberlis.com

KSV Advisory Inc.
 2308-150 King Street West
 Box 42
 Toronto, ON
 M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 653461

PLEASE WRITE ACCOUNT NUMBERS
 ON THE BACK OF ALL CHEQUES

File No.: 41611/1485B1

November 30, 2019

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 30, 2019

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	21/10/19	\$825.00	0.50	\$412.50	Review and consider revised report
PLW	21/10/19	\$190.00	0.60	\$114.00	Filed Motion Record and Appendices for October 29, 2019
GG	22/10/19	\$295.00	1.00	\$295.00	Received instructions from K. Plunkett; researched cases on inherent jurisdiction of Superior Court of Justice, Commercial List in the context of s. 101 receiverships
SLG	23/10/19	\$825.00	0.30	\$247.50	Review written submissions and amendments
KBP	23/10/19	\$475.00	1.10	\$522.50	Revise and finalize Written Submissions for court filing; email exchange with Torys; email exchange with Barbados counsel.
SAD	24/10/19	\$295.00	0.60	\$177.00	File written submissions at the commercial list for K. Plunkett
KBP	24/10/19	\$475.00	1.10	\$522.50	Finalize and file written submissions to court; attend calls with client to discuss motion returnable October 29, 2019; review and consider emails from Torys.

ARND & BERLIS LLP
PAGE 2 OF ACCOUNT NO. 653461

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
GG	25/10/19	\$295.00	0.50	\$147.50	Filed affidavit of service for Barbados entities at Superior Court of Justice, Commercial List
KBP	25/10/19	\$475.00	2.60	\$1,235.00	Review and consider written submissions from Torys; review and consider written submissions from Bennett Jones; attend call with Stikeman's team; attend call with N. Goldstein.
KBP	28/10/19	\$475.00	2.50	\$1,187.50	Attend call with client to discuss motion returnable October 29, 2019 and case conference, prepare for same.
SLG	29/10/19	\$825.00	0.30	\$247.50	Discussion with K. Plunkett re approach to attendance
KBP	29/10/19	\$475.00	4.00	\$1,900.00	Prepare and attend motion and case conference; draft word version of endorsement terms; email to J. McEwen; meeting with G. Gopinath regarding follow up letters.
SLG	30/10/19	\$825.00	0.50	\$412.50	Discussion with K. Plunkett re outcome of attendance and review endorsement and order
KBP	30/10/19	\$475.00	2.20	\$1,045.00	Review and provide comments on draft letters to respondents re order to disclose; review and consider emails from client team; attend calls with Torys; attend call with N. Goldstein to discuss next steps.
SLG	31/10/19	\$825.00	1.30	\$1,072.50	Review emails from Torys re status and info
SLG	31/10/19	\$825.00	0.20	\$165.00	Review emails from Torys re status and info
KBP	31/10/19	\$475.00	3.00	\$1,425.00	Attend conference call with Torys, Mr. Gutierrez and A. Durkovic regarding updates on litigation; email to Hatstone; email exchange with client team regarding next steps; revise and update letters to BDT, Arven and Trust regarding disclosure order.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	01/11/19	\$825.00	0.40	\$330.00	Participate in conference call with Guatemalan counsel re orders and director info
KBP	01/11/19	\$475.00	1.00	\$475.00	Attend call with Halatone to discuss next steps and engagement; review and respond to emails from client team regarding draft letter to board of directors;
KBP	03/11/19	\$475.00	1.10	\$522.50	Draft letter to board of directors of Lisa; email exchange with client regarding same;
SLG	04/11/19	\$825.00	0.20	\$165.00	Review emails re court file
KBP	04/11/19	\$475.00	0.90	\$427.50	Attend calls with client team to discuss draft letters to various subs and Lisa; review and revise draft letters.
KBP	06/11/19	\$475.00	1.00	\$475.00	Prepare initial draft letters to BDT and Artcam; attend call with N. Goldstein, review and respond to emails from client.
SLG	07/11/19	\$825.00	0.20	\$165.00	Emails with Panama counsel
KBP	07/11/19	\$475.00	1.20	\$570.00	Review and respond to emails from client regarding draft letters to BDT and Artcam; email to Barbados counsel to drafts; attend various calls; review and consider letter from Lisa's counsel regarding response.
KBP	08/11/19	\$475.00	1.00	\$475.00	Review and respond to emails from client team; review and consider letters from BDT and Artcam Trust regarding disclosure; review and consider draft letters from Barbados.
KBP	12/11/19	\$475.00	0.30	\$142.50	Review and consider emails from client and Panamanian counsel.
KBP	13/11/19	\$475.00	0.40	\$190.00	Review and consider translated orders; review and consider emails from N. Goldstein.
KBP	14/11/19	\$475.00	0.40	\$190.00	Review and consider email exchanges with A. Almengor regarding updates on Panama

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					proceedings; email exchange with B. Kofman regarding letter to BDT
KBP	18/11/19	\$475.00	0.30	\$142.50	Review and consider email from B. Kofman, review and consider emails from Panama counsel.
KBP	20/11/19	\$475.00	1.00	\$475.00	Review and respond to emails from C. O'Shea; review and consider letters from BDT and Arccam; emails exchange with client team.
KBP	21/11/19	\$475.00	1.60	\$760.00	Review and respond to emails from client team regarding [REDACTED]; [REDACTED]; email exchange with client team; email exchange with Hatstone; review translated orders; email exchange with client team regarding same.
KBP	22/11/19	\$475.00	0.40	\$190.00	Email exchanges with client team regarding [REDACTED]; [REDACTED]
KBP	25/11/19	\$475.00	0.60	\$285.00	Review and respond to emails from client team regarding Panama and Florida proceedings.
KBP	26/11/19	\$475.00	3.00	\$1,425.00	Prepare and attend meeting with client and Bennett Jones to discuss updates; various email exchanges with client to discuss next steps; email exchange with Clarke Gittens; email exchange with Hatstone.
SEB	27/11/19	\$595.00	5.60	\$3,332.00	Emails from and to and discussions with K. Plunkett; phone call with Panama counsel; emails from and to and discussion with G. Gopinath; review and summarize Florida court docket
GG	27/11/19	\$295.00	7.00	\$2,065.00	Reviewed status of Panamanian and US litigation; attended call with Panamanian counsel
KBP	27/11/19	\$475.00	4.10	\$1,947.50	Review and respond to various emails from client regarding follow tasks from meeting; attend call with Hatstone team; review and summarize Panama proceedings;

ARD & BERUS LLP
PAGE 5 OF ACCOUNT NO. 853481

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					review and summarize US proceedings; meeting with S. Babe and G. Gopinath to discuss instructions and preparation [REDACTED] [REDACTED] attend call with N. Goldstein; prepare summary email for client.
SEB	28/11/19	\$595.00	0.50	\$297.50	Email from B. Kofman; emails from K. Plunkett; email from G. Gopinath
KBP	28/11/19	\$475.00	2.30	\$1,092.50	Draft letter to Artcam entities; email exchange with client team regarding same; review and consider summary from Halstone on Panama litigation.
SEB	29/11/19	\$595.00	2.10	\$1,249.50	Emails from B. Kofman; emails form and discussion with K. Plunkett; email from A. Almengor; emails from Barbados counsel; phone call with Panama counsel; email from G. Gopinath
AEM	29/11/19	\$525.00	0.50	\$262.50	Discussion with K. Plunkett re corporate authorizations for transfer of private company; Review of Bahamas company law re same; Email to K. Plunkett re same
KBP	29/11/19	\$475.00	2.00	\$950.00	Attend call with Halstone team and client to discuss proposed next steps and Panama updates; review and consider emails from Clarke Gittens regarding Barbados corporate law and recognition order; review and revise letter to Artcam to include comments from N. Goldstein.
SEB	30/11/19	\$595.00	0.10	\$59.50	Email from Panama counsel
TOTAL:			62.50	\$30,084.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	3.90	\$825.00	\$3,217.50
Patrick L. Williams (PLW)	0.60	\$190.00	\$114.00
Gaurav Gopinath (GG)	9.50	\$295.00	\$2,802.50
Kyle B. Plunkett (KBP)	39.10	\$475.00	\$18,572.50

AIRD & BERLIS LLP
 PAGE 6 OF ACCOUNT NO. 653461

Name	Hours	Rate	Value
Stephanie A. D'Amico (SAD)	0.60	\$295.00	\$177.00
Sam E. Babe (SEB)	8.30	\$595.00	\$4,938.50
Andrew E. Magnus (AEM)	0.50	\$525.00	\$262.50

OUR FEE	\$30,084.50
HST at 13%	\$3,910.99

DISBURSEMENTS

Subject to HST

ACL - Litigation	\$100.00
Photocopies - Local	\$47.00
Binding and Tabs	\$22.50
Deliveries/Passe	\$174.76

Total Disbursements	\$344.26
HST at 13%	\$44.75

AMOUNT NOW DUE

\$34,384.50

THIS IS OUR ACCOUNT HEREIN
 Aird & Berlis LLP



Steven L. Graff
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TD0MCATT10R. Please include the account number as reference.

38105838.1

KSV Kofman Inc.
In its capacity as Receiver

November 30, 2019 Account 653461

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$825.00	3.90	\$3,217.50
Kyle B. Plunkett	2011	\$475.00	39.10	\$18,572.50
Sam Babe	2004	\$595.00	8.30	\$4,938.50
Andrew Magnus	2009	\$525.00	0.50	\$262.50
Articling Student				
Gaurav Gopinth		\$295.00	9.50	\$2,802.50
Stephanie D'Amico		\$295.00	0.60	\$177.00
Court Clerk				
Patrick Williams		\$190.00	0.60	\$114.00

Attached is Exhibit "C"

Referred to in the

AFFIDAVIT OF STEVE GRAFF

Sworn before me

This 14th day of February, 2020

A handwritten signature in blue ink, appearing to be "J. Hunt", is written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Ontario, Canada M5J 2T9
 T 416.863.1800 F 416.863.1515
 airdberlis.com

KSV Advisory Inc.
 2308-150 King Street West
 Box 42
 Toronto, ON
 M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 659588

PLEASE WRITE ACCOUNT NUMBERS
 ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

January 30, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended January 28, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	02/12/19	\$595.00	2.00	\$1,190.00	Emails from and phone call with Barbados counsel; emails from and to and discussion with K. Plunkett; email from G. Gopinath; review and revise [REDACTED]
GG	02/12/19	\$295.00	3.50	\$1,032.50	Drafted Global Litigation Memo
KBP	02/12/19	\$475.00	2.00	\$950.00	Attend call with Barbados counsel regarding next steps and recognition order; review and consider emails from S. Ince; attend calls with client; review and provide comments on draft memorandum.
SEB	03/12/19	\$595.00	1.60	\$952.00	Emails from and to K. Plunkett; review memo; email from Barbados counsel; emails from G. Gopinath; email from Panama counsel; emails from and to N. Goldstein; email from B. Kofman
GG	03/12/19	\$295.00	0.40	\$118.00	Revised Global Litigation Memo
KBP	03/12/19	\$475.00	1.00	\$475.00	Provide comments on draft litigation memorandum; review and respond to emails from client; review and respond to emails from S. Ince.

ARO & BENNIS LLP
PAGE 2 OF ACCOUNT NO. 669589

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	04/12/19	\$595.00	0.30	\$178.50	Emails from K. Plunkett; email from Barbados counsel; email from G. Gopinath
GG	04/12/19	\$295.00	1.60	\$472.00	Reviewed new US litigation court files and Bermuda file for Global Litigation Memo
KBP	04/12/19	\$475.00	1.10	\$522.50	Email exchange with S. Ince regarding Barbados proceedings; email exchange with client regarding updates on litigation and discussions with Torys
SEB	05/12/19	\$595.00	0.20	\$119.00	Email - Email from B. Kofman; email from Panama counsel
GG	05/12/19	\$295.00	2.40	\$708.00	Conducted research re: Global Litigation Memo, obtained additional information from Panamanian counsel; drafted email to client with assistance of K. Plunkett and S. Babe
KBP	05/12/19	\$475.00	0.60	\$285.00	Review and respond to emails from B. Kofman on memorandum and emails from Hatstone; discuss same with G. Gopinath.
SEB	06/12/19	\$595.00	2.10	\$1,249.50	Emails from and to K. Plunkett; email from B. Kofman; emails from and to G. Gopinath; emails from Panama counsel; emails from Barbados counsel
KBP	06/12/19	\$475.00	1.10	\$522.50	Review and respond to email from client regarding follow up questions on memorandum; attend call with N. Goldstein; email exchanges with working group regarding same.
SEB	10/12/19	\$595.00	0.10	\$59.50	Email from Barbados counsel
KBP	11/12/19	\$475.00	1.00	\$475.00	Review and provide comments on draft Barbados retainer letter; review and respond to emails from N. Goldstein.
KBP	12/12/19	\$475.00	0.20	\$95.00	Review and respond to emails from client regarding Barbados retainer and instructions to firm.

AIRD & BERLIS LLP
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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	13/12/19	\$595.00	0.10	\$59.50	Email from Barbados counsel
KBP	13/12/19	\$475.00	0.80	\$380.00	Email exchange with client regarding updates, review and consider emails from Barbados counsel regarding retainer.
SEB	16/12/19	\$595.00	0.60	\$357.00	Telephone call with Barbados counsel; Discussion with K. Plunkett
KBP	16/12/19	\$475.00	0.60	\$285.00	Attend call with K. Boyce to discuss next steps [REDACTED].
KBP	17/12/19	\$475.00	1.10	\$522.50	Review and consider emails from Torsys; review and consider letters from A. Durkovic; email exchange with client;
KBP	18/12/19	\$475.00	1.30	\$617.50	Review and consider emails from S. Ince; review and consider various emails from Torsys; attend call to discuss letters from J. Guillermo group; email exchange with working group regarding response.
SEB	19/12/19	\$595.00	0.20	\$119.00	Email from K. Plunkett; Email from A. Almengor
KBP	19/12/19	\$475.00	1.00	\$475.00	Email exchange with Halatone regarding updates; review and discuss offers from J. Gutierrez with N. Goldstein.
KBP	27/12/19	\$475.00	1.00	\$475.00	Review and consider various emails from Xela's counsel regarding proposed repayment of judgment and status of receivership; email exchange with client regarding same.
SEB	30/12/19	\$595.00	0.20	\$119.00	Emails from K. Plunkett; Email from B. Kofman; Emails from G. Gopinath
SLG	30/12/19	\$625.00	0.60	\$495.00	Review emails re Notice of Change of Counsel and proposed motion re discharge of receiver and payout
KBP	30/12/19	\$475.00	1.50	\$712.50	Email exchanges with Cambridge LLP regarding motion; email exchanges with client team regarding same; review and respond

ARD & BERLIS LLP
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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					to emails from Bennett Jones, review and consider correspondence from A. Durkovic.
SEB	31/12/19	\$595.00	0.80	\$476.00	Emails from K. Plunkett; Emails from B. Kofman; Email from Bennett Jones; Emails from Cambridge LLP
KBP	31/12/19	\$475.00	2.00	\$950.00	Various email exchanges with opposing counsel regarding motion of Xela; review and respond to various emails from Bennett Jones team; review and consider notice of motion; email exchange with client team.
SEB	02/01/20	\$625.00	0.80	\$562.50	Review Florida court docket and update tracking memo; emails from A. Almengor; email from Stewart McKelvey; email from Cambridge LLP; emails from G. Gopinath
SLG	02/01/20	\$850.00	0.20	\$170.00	Review notices served and available dates for attending hearing
KBP	02/01/20	\$525.00	1.60	\$840.00	Review and consider emails from Xela's counsel; various email exchanges with client; draft response to Xela's counsel; review and consider notice of motion; email exchange with working group.
SEB	03/01/20	\$625.00	0.20	\$125.00	Email from A. Almengor; email from G. Gopinath
KBP	03/01/20	\$525.00	0.70	\$367.50	Review and consider various emails from Xela's counsel regarding scheduling motion; review and respond to email from client side.
SEB	06/01/20	\$625.00	0.10	\$62.50	Email from Stewart McKelvey
KBP	06/01/20	\$625.00	1.50	\$787.50	Review and consider notice of motion and motion record of Cambridge LLP; email exchanges with counsel; attend call with client to discuss same; email exchange with S. Zweig.
SEB	07/01/20	\$625.00	0.30	\$187.50	Email from Cambridge LLP; emails from and to K. Plunkett

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	07/01/20	\$850.00	0.30	\$255.00	Discussion with K. Plunkett re motion and discharge of receiver
KBP	07/01/20	\$625.00	1.10	\$577.50	Attend various calls with client team to discuss upcoming scheduling motion; review and consider materials and discuss same with client; review and consider letter from Torys.
SEB	08/01/20	\$625.00	3.30	\$2,062.50	Emails from and to and discussion with K. Plunkett; draft letter to Cambridge LLP; emails from and to B. Kofman; email from N. Goldstein; emails from Cambridge LLP
KBP	08/01/20	\$525.00	2.10	\$1,102.50	Review and prepare for call with Bennett Jones team; review and consider materials in preparation for scheduling motion.
SEB	09/01/20	\$625.00	0.30	\$187.50	Emails from K. Plunkett; email from B. Kofman
SLG	08/01/20	\$850.00	0.20	\$170.00	Emails with reps of debtor counsel in receivership
SLG	08/01/20	\$850.00	0.20	\$170.00	Review emails and letter with Cambridge law
KBP	09/01/20	\$525.00	3.00	\$1,575.00	Prepare and attend chambers appointment; attend chambers appointment meeting; review and respond to emails from Cambridge LLP; email to Hatstone.
SEB	10/01/20	\$625.00	1.00	\$625.00	Emails from K. Plunkett; emails from A. Almengor; email from B. Kofman; emails from Cambridge LLP
SRM	10/01/20	\$385.00	0.30	\$115.50	Order, review and report on profile and certificates of status
KBP	10/01/20	\$525.00	2.00	\$1,050.00	Various email exchanges with Cambridge LLP regarding proposed Lisa loan; various emails with Hatstone team regarding changing board of Gabinvest and Lisa SA; review and respond to various emails from client team regarding same.

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	11/01/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
KBP	11/01/20	\$525.00	1.00	\$525.00	Review and respond to emails from client team regarding Gabinvest and Lisa; email to Hatstone regarding same.
SEB	13/01/20	\$625.00	1.00	\$625.00	Emails from A. Almengor; emails from B. Kofman; emails from and to K. Plunkett; email from G. Gopinath; email from Cambridge LLP
GG	13/01/20	\$295.00	1.10	\$324.50	Conducted inventory of materials on file to ascertain shareholder information for Gabinvest, S.A. and Lisa, S.A.
SLG	13/01/20	\$850.00	0.20	\$170.00	Review emails and letters
KBP	13/01/20	\$525.00	1.10	\$577.50	Review and consider letter from Cambridge LLP; discuss same with client team; email exchange s with Hatstone; review and consider emails from client team;
SEB	14/01/20	\$625.00	2.00	\$1,250.00	Draft letter to Cambridge LLP; discussion with and emails from K. Plunkett; emails to and from B. Kofman
KBP	14/01/20	\$525.00	1.20	\$630.00	Review draft letter response to Cambridge; review and consider emails from Hatstone; email exchanges regarding changing board of subs;
SEB	15/01/20	\$625.00	1.90	\$1,187.50	Emails from and to A. Almengor; emails and discussion with A. Plunkett; emails from B. Kofman
KBP	15/01/20	\$525.00	1.20	\$630.00	Various email exchanges with Hatstone regarding [REDACTED] email exchanges with [REDACTED] working group regarding position of J. Gutierrez; review emails from D. Durkovic.
SEB	16/01/20	\$625.00	1.10	\$687.50	Emails from B. Kofman; emails from and to K. Plunkett; emails from A. Almengor; emails from N. Goldstein; emails from A. Durkovic

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
GG	16/01/20	\$295.00	0.50	\$147.50	Summarized status of ongoing Panamanian proceedings for K. Plunkett
SLG	16/01/20	\$850.00	0.30	\$255.00	Review emails on A. Durkovic
KBP	16/01/20	\$525.00	2.00	\$1,050.00	Review and respond to various emails from client team regarding response to Cambridge and D. Durkovic; draft letter response; review and respond to emails from Hatstone team; attend call with B. Kofman and S. Zweig.
SEB	17/01/20	\$625.00	2.60	\$1,625.00	Draft letter to Amsterdam and Partners; phone calls and emails from and to K. Plunkett; emails from P. O'Shea; emails from and to B. Kofman; email from A. Almengor; emails from J. Woychedhyn; email from A. Durkovic; email from Bennett Jones
KBP	17/01/20	\$525.00	2.00	\$1,050.00	Finalize letter response the A. Durkovic and circulate same; email exchanges with Hatstone regarding [REDACTED] email exchanges with working group regarding same.
SEB	20/01/20	\$625.00	0.20	\$125.00	Email from K. Plunkett; email from A. Almengor
ASB	20/01/20	\$430.00	0.20	\$86.00	Discussion with K. Plunkett regarding resolutions to change directors of subsidiaries
KBP	20/01/20	\$525.00	0.70	\$367.50	Review and consider emails from Hatstone; email exchange with client team regarding updates on board changes.
KBP	21/01/20	\$525.00	0.60	\$315.00	Review and respond to emails from client regarding board resolutions; attend call with N. Goldstein to discuss Barbados and other matters relating to reviewable transactions.
KBP	22/01/20	\$525.00	1.00	\$525.00	Review and respond to emails from client team regarding [REDACTED] email exchange with [REDACTED]

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LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					Halstone regarding same; attend call with N. Goldstein.
SEB	23/01/20	\$625.00	0.20	\$125.00	Email from and discussion with K. Plunkett
KBP	23/01/20	\$525.00	1.20	\$630.00	Review and consider emails from Halstone; attend call with N. Goldstein to discuss [REDACTED] [REDACTED]; attend call with client team to discuss [REDACTED] [REDACTED]
KBP	24/01/20	\$525.00	0.70	\$367.50	Attend call with client team; review and consider various email exchanges between client and Halstone team.
KBP	28/01/20	\$525.00	0.40	\$210.00	Review and consider emails from Halstone team; review and respond to emails from client team regarding updates on Panama proceedings.
TOTAL:			76.80	\$39,988.00	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	23.40	\$614.49	\$14,379.00
Gaurav Gopinath (GG)	9.50	\$295.00	\$2,802.50
Kyle B. Plunkett (KBP)	41.40	\$505.31	\$20,920.00
Steven L. Graff (SLG)	2.00	\$842.50	\$1,685.00
Shannon R. Morris (SRM)	0.30	\$385.00	\$115.50
Aaron S. Bains (ASB)	0.20	\$430.00	\$86.00

OUR FEE	\$39,988.00
HST at 13%	\$5,198.44

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Due Diligence-Gov Fee	\$8.00
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AIRD & BERUS LLP
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Subject to HST

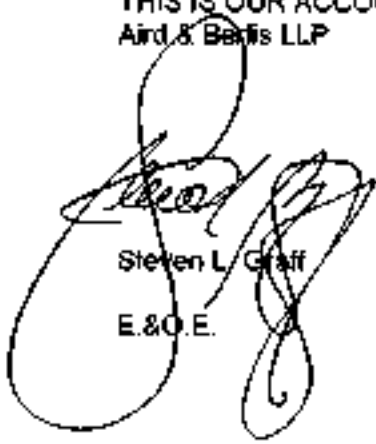
Travelling Expenses	\$9.30
Long Distance Charges	\$25.35
Photocopies - Local	\$13.25
Binding and Tabs	\$4.75
Certificate of Status	\$38.00
Due Diligence	\$12.00

Total Disbursements	\$102.65
HST at 13%	\$13.34

AMOUNT NOW DUE

\$45,310.43

THIS IS OUR ACCOUNT HEREIN
 Aird & Berus LLP



Steven L. Graff
 E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 8339 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5X 1A2. Account number 5221521, Transit number 10202, Swift Code TDQMCA33 TOR. Please include the account number as reference

38729814.1

KSV Kofman Inc.
In its capacity as Receiver

January 30, 2020 Account 659588

Lawyer	Call to Bar	2019/2020 average/hr	Total Time	Value
Steven L. Graff	1991	\$842.50	2.00	\$1,685.00
Kyle B. Plunkett	2011	\$505.31	41.40	\$20,920.00
Sam Babe	2004	\$614.49	23.40	\$14,379.00
Aaron Bains	2015	\$430.00	0.20	\$86.00
Articling Student				
Gaurav Gopinth		\$295.00	9.50	\$2,802.50
Stephanie D'Amico		\$295.00	0.60	\$177.00
Banking Clerk				
Shannon Morris		\$385.00	0.30	\$115.50

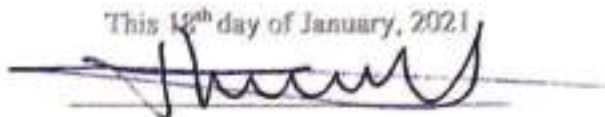
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF SAM BARE

Sworn before me

This 12th day of January, 2021

A handwritten signature in dark ink, appearing to be "H. M. ...", written over a horizontal line.

Commissioner for taking Affidavits, etc

IN ACCOUNT WITH:

AIRD BERLIS

371

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 666104

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

March 31, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended March 29, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	30/01/20	\$850.00	0.10	\$85.00	Discussion with K. Plunkett; review emails
KBP	30/01/20	\$525.00	1.10	\$577.50	Attend call with client team; review and consider emails from Hatstone regarding [REDACTED] review current status memo.
SEB	31/01/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
SLG	31/01/20	\$850.00	0.50	\$425.00	Conference call with KSV and Panama counsel re [REDACTED]
KBP	31/01/20	\$525.00	1.00	\$525.00	Attend pre-call with N. Goldstein to discuss [REDACTED]; attend call with Hatstone to discuss next steps.
KBP	03/02/20	\$525.00	1.00	\$525.00	Review and consider email from Hatstone team with updates and documents from Panama; email exchange with working group regarding same.
SEB	04/02/20	\$625.00	0.60	\$375.00	Emails from and to K. Plunkett; emails from G. Gaupinath

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SLG	04/02/20	\$850.00	1.00	\$850.00	Conference call with KSV reps, K. Plunkett and Panama counsel; discussion re [REDACTED] [REDACTED] [REDACTED] [REDACTED]
KBP	04/02/20	\$525.00	0.70	\$367.50	Prepare and attend call with Hatstone team to discuss [REDACTED] [REDACTED]; email exchange with client regarding same.
KBP	05/02/20	\$525.00	1.90	\$997.50	Email exchange with Bennett Jones team regarding [REDACTED] [REDACTED]; review and respond to various emails from working group regarding [REDACTED] [REDACTED]; email exchange with Hatstone.
SEB	06/02/20	\$625.00	0.20	\$125.00	Emails from K. Plunkett
SLG	06/02/20	\$850.00	0.20	\$170.00	Review emails on status and developments
KBP	06/02/20	\$525.00	1.40	\$735.00	Review and consider emails from working group regarding [REDACTED] [REDACTED].
PLW	06/02/20	\$200.00	0.50	\$100.00	Certified Order of July 5, 2019
SEB	07/02/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
KBP	07/02/20	\$525.00	1.00	\$525.00	Review and consider various emails from working group regarding [REDACTED] [REDACTED] [REDACTED].
SEB	08/02/20	\$625.00	0.10	\$62.50	Emails from K. PLunkett
SEB	09/02/20	\$625.00	0.70	\$437.50	Emails from K. Plunkett; review and comment on second report
KBP	09/02/20	\$525.00	2.50	\$1,312.50	Review and provide comments on draft second report of receiver; email exchange with client team regarding same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	10/02/20	\$625.00	1.00	\$625.00	Emails from K. Plunkett; email from B. Kofman; email from A. Almengor; emails from C. O'Shea
SLG	10/02/20	\$850.00	0.60	\$510.00	Review report and discussion with K. Plunkett about it
KBP	10/02/20	\$525.00	2.00	\$1,050.00	Review and consider revisions to second report; review and consider emails from client team [REDACTED]; email exchange with S. Babe and Hatstone regarding same; revise and circulate updated draft.
SEB	11/02/20	\$625.00	3.30	\$2,062.50	Draft letter to AFRA; review file; revise second report; emails from and to B. Kofman; emails from and to K. Plunkett; emails from C. O'Shea
SLG	11/02/20	\$850.00	0.50	\$425.00	Review exchange of emails re [REDACTED]
KBP	11/02/20	\$525.00	1.80	\$945.00	Review and respond to various emails from working group regarding [REDACTED]; email exchange with client team regarding [REDACTED].
SEB	12/02/20	\$625.00	2.40	\$1,500.00	Emails from and to K. Plunkett; emails from and to B. Kofman; revise second report; revise letter AFRA; email to AFRA; email from N. Goldstein
SLG	12/02/20	\$850.00	0.20	\$170.00	Emails with R. Kofman and C. O'Shea
KBP	12/02/20	\$525.00	2.00	\$1,050.00	Review and consider various emails from Hatstone; email exchange with S. Babe regarding [REDACTED]; review and provide comments on revised report; attend call with N. Goldsteing to discuss same.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	13/02/20	\$625.00	5.10	\$3,187.50	Emails from and to B. Kofman; emails and phone call from and discussion with K. Plunkett; emails from C. O'Shea; emails from AFRA; email from and to N. Goldstein; draft power of attorney; review second report
GG	13/02/20	\$295.00	4.40	\$1,298.00	Reviewed documents on file; assembled appendices for Second Report of the Receiver; reviewed Florida court files for global litigation memo
SLG	13/02/20	\$850.00	0.30	\$255.00	Review emails; discussion with K. Plunkett
KBP	13/02/20	\$525.00	3.00	\$1,575.00	Review and provide multiple comments on second report; various email exchanges with client team and Hatstone; review and respond to emails from client team; draft motion materials;
SEB	14/02/20	\$625.00	1.90	\$1,187.50	Emails from B. Kofman; emails from C. O'Shea; emails from and to and discussion with K. Plunkett
KBP	14/02/20	\$525.00	2.90	\$1,522.50	Review and provide additional comments on draft second report; email exchanges with client team; draft order; draft and finalize fee affidavit; draft motion record.
SLG	15/02/20	\$850.00	0.50	\$425.00	Review emails and update and proposal and meeting
SEB	16/02/20	\$625.00	0.30	\$187.50	Emails from C. O'Shea; emails from B. Kofman
KBP	16/02/20	\$525.00	0.40	\$210.00	Review and consider emails from Hatstone regarding [REDACTED].
SEB	17/02/20	\$625.00	0.40	\$250.00	Emails from B. Kofman; emails from C. O'Shea; email from K. Plunkett
SEB	18/02/20	\$625.00	2.10	\$1,312.50	Emails from and to and discussion with K. Plunkett; review second report; email from B. Kofman; email from C. O'Shea; emails from and to

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					N. Goldstein; update service list; emails to and from service list re second report
SLG	18/02/20	\$850.00	0.10	\$85.00	Discussion with K. Plunkett re order
KBP	18/02/20	\$525.00	1.60	\$840.00	Review and finalize report; meeting with S. Babe to discuss finalizing report and service of same; email exchange with client regarding same; review and consider emails from Hatstone on updates.
SEB	19/02/20	\$625.00	0.50	\$312.50	Telephone call with Hatstone; discussion with K. Plunkett
KBP	19/02/20	\$525.00	1.00	\$525.00	Attend strategy call with Hatstone team regarding [REDACTED]; review and respond to emails from B. Kofman.
PLW	19/02/20	\$200.00	0.60	\$120.00	Filed Receivers Report for February 21, 2020
SEB	20/02/20	\$625.00	1.70	\$1,062.50	Emails from and to and discussion with K. Plunkett; revise draft order; email to KSV; review file; emails from and to B. Kofman; draft affidavit of service
KBP	20/02/20	\$525.00	0.80	\$420.00	Review and prepare for scheduling appointment.
SEB	21/02/20	\$625.00	2.30	\$1,437.50	Emails from and to and discussion with K. Plunkett; emails from N. Goldstein; emails from and to B. Kofman; emails from G. Gopinath; emails from C. O'Shea
KBP	21/02/20	\$525.00	2.00	\$1,050.00	Prepare and attend scheduling appointment; service endorsement; review and consider emails from Hatstone regarding meeting in Bogota Columbia.
SEB	22/02/20	\$625.00	0.20	\$125.00	Email from C. O'Shea; email from B. Kofman
SEB	23/02/20	\$625.00	0.30	\$187.50	Emails from C. O'Shea; emails from B. Kofman

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	24/02/20	\$625.00	2.40	\$1,500.00	Email from C. O'Shea; emails from and to and discussion with K. Plunkett; emails from and to B. Kofman; review power of attorney; meeting with N. Goldstein; attend to authentication and legalization of power of attorney
KBP	24/02/20	\$525.00	0.40	\$210.00	Review and consider emails from Hatstone and client regarding [REDACTED]; email exchange with client.
SEB	25/02/20	\$625.00	0.60	\$375.00	Emails from and to C. O'Shea; emails from and to Ottawa agent; emails from and to B. Kofman; emails to and from K. Plunkett
SEB	26/02/20	\$625.00	0.40	\$250.00	Email from C. O'Shea; email from B. Kofman; email from N. Goldstein; email from G. Gopinath; discussion with K. Plunkett
KBP	26/02/20	\$525.00	0.30	\$157.50	Review and consider email exchange between Hatstone and Gutierrez's counsel; email exchange with client.
SEB	27/02/20	\$625.00	0.60	\$375.00	Emails to and from Hatstone; letter from Idocs; emails from B. Kofman; email from N. Goldstein; email from K. Plunkett
KBP	27/02/20	\$525.00	0.20	\$105.00	Email exchange with client regarding [REDACTED].
SEB	28/02/20	\$625.00	4.30	\$2,687.50	Draft second report motion materials; discussion with and emails from and to K. Plunkett
SEB	29/02/20	\$625.00	2.50	\$1,562.50	Draft Second Report notice of motion
SEB	01/03/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
KBP	01/03/20	\$525.00	1.00	\$525.00	Review and consider draft notice of motion; email exchange with S. Babe and client team.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	02/03/20	\$625.00	0.40	\$250.00	Discussion with and emails from K. Plunkett; email from N. Goldstein
KBP	02/03/20	\$525.00	1.10	\$577.50	Review and consider comments on draft Notice of Motion; email exchange with S. Babe regarding same; email exchange with client team; review and consider updates from Hatstone.
SEB	03/03/20	\$625.00	3.00	\$1,875.00	Emails from and to K. Plunkett; revise order; emails from and to G. Gopinath; phone call with KSV
GG	03/03/20	\$295.00	0.90	\$265.50	Reviewed and assisted with assembly of motion record for K Plunkett and S Babe
KBP	03/03/20	\$525.00	2.00	\$1,050.00	Review and consider comments on notice of motion; review and provide comments on draft order; attend call with client team; review and consider emails from Hatstone.
SEB	04/03/20	\$625.00	0.90	\$562.50	Emails from and to and discussion with K. Plunkett; emails from G. Gopinath; email to service list; email from B. Kofman
GG	04/03/20	\$295.00	1.10	\$324.50	Received instruction from K Plunkett re: upcoming motion; conducted caselaw research for factum
GG	04/03/20	\$295.00	1.00	\$295.00	Researched contempt cases; extracted legal test for contempt under instruction from K Plunkett
KBP	04/03/20	\$525.00	1.00	\$525.00	Review and finalize motion record for service;
PLW	04/03/20	\$200.00	0.60	\$120.00	Filed Motion Record for March 24, 2020
SEB	05/03/20	\$625.00	0.30	\$187.50	Emails from and to K. Plunkett; emails from and to G. Gopinath
KBP	05/03/20	\$525.00	1.00	\$525.00	Review and consider various emails from client team and Hatstone regarding [REDACTED]; attend call to discuss [REDACTED].

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
GG	06/03/20	\$295.00	2.20	\$649.00	Conducted caselaw research for factum under instructions from K Plunkett
KBP	06/03/20	\$525.00	1.00	\$525.00	Review and consider jurisprudence on contempt relief; meeting with G. Gopinath regarding research and factum; attend call with N. Goldstein to discuss supplemental report.
SEB	09/03/20	\$625.00	0.70	\$437.50	Meeting with K .Plunkett; email rom G. Gopinath
GG	09/03/20	\$295.00	0.60	\$177.00	Attended strategy meeting with K Plunkett and S Babe
SLG	09/03/20	\$850.00	0.20	\$170.00	Discussion with K. Plunkett re meeting
KBP	09/03/20	\$525.00	1.00	\$525.00	Attend team meeting with working group to discuss factum and motion returnable March 24th; email to client regarding supplemental report.
SEB	10/03/20	\$625.00	0.10	\$62.50	Discussion with K. Plunkett and G. Gopinath
GG	10/03/20	\$295.00	2.30	\$678.50	Research and discussions with K Plunkett and S Babe re [REDACTED] [REDACTED] [REDACTED] [REDACTED]
KBP	10/03/20	\$525.00	1.00	\$525.00	Review and consider draft factum; discuss case law with S. Babe and G. Gopinath.
SEB	11/03/20	\$625.00	0.70	\$437.50	Email from and discussion with K. Plunkett; email from A. Almengor; emails from B. Kofman
KBP	11/03/20	\$525.00	1.50	\$787.50	Draft and provide comments on supplemental report; email exchange with N. Goldstein.
KBP	12/03/20	\$525.00	0.60	\$315.00	Emails exchange with N. Goldstein regarding comments on draft supplemental report.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	13/03/20	\$625.00	0.50	\$312.50	Review and comment on supplemental report; emails to and from K. Plunkett
SLG	13/03/20	\$850.00	1.20	\$1,020.00	Review records and report (2nd) and consider next steps
KBP	13/03/20	\$525.00	1.00	\$525.00	Review and consider updated draft supplemental report; attend meeting with team discuss factum; email exchange with client.
SEB	14/03/20	\$625.00	0.90	\$562.50	Review and comment on Supplemental Report; Email to K. Plunkett
SEB	15/03/20	\$625.00	0.50	\$312.50	Emails from K. Plunkett; Emails from N. Goldstein; Emails from B. Kofman
KBP	15/03/20	\$525.00	1.00	\$525.00	Review and provide comments on draft supplemental report; email exchanges with N. Goldstein; email exchange with client.
SEB	16/03/20	\$625.00	3.20	\$2,000.00	Emails from and to K. Plunkett; Emails from N. Goldstein; Email from B. Kofman; Draft supplemental motion materials
KBP	16/03/20	\$525.00	1.00	\$525.00	Review and provide comments on draft supplemental report, as updated; draft orders; email exchange with client regarding same.
SEB	17/03/20	\$625.00	4.40	\$2,750.00	Revise motion materials; Emails from B. Kofman; Phone call with Bennett Jones; Emails and phone call from and to K. Plunkett
GG	17/03/20	\$295.00	0.90	\$265.50	Reviewed materials on file to ascertain information relating to personal service of motion materials under instruction from K Plunkett
KBP	17/03/20	\$525.00	2.00	\$1,050.00	Various email exchanges with client to finalize supplementary motion record; attend call with Bennett Jones team; attend call with J. Karisi; finalize and serve supplementary motion record.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	18/03/20	\$625.00	3.10	\$1,937.50	Emails from G. Gopinath; Emails from and to K. Plunkett; Draft factum; Draft letter to McEwen J.; Emails from B. Kofman; Email from S. Zweig
GG	18/03/20	\$295.00	2.10	\$619.50	Reviewed US court docs to identify relevant information relating to complaints filed in Panama proceedings
KBP	18/03/20	\$525.00	1.00	\$525.00	Review and provide comments on draft letter to Justice McEwen; email exchange with client team regarding [REDACTED]; email exchange with BJ team.
PLW	18/03/20	\$200.00	0.60	\$120.00	Filed Supplementary Record for March 24, 2020
SEB	19/03/20	\$625.00	5.30	\$3,312.50	Draft factum; Emails from G. Gopinath; Emails and phone calls from and to K. Plunkett; Emails from B. Kofman; Emails from N. Goldstein
GG	19/03/20	\$295.00	3.10	\$914.50	Conducted caselaw research for factum
KBP	19/03/20	\$525.00	2.30	\$1,207.50	Review and provide comments on draft factum; email exchanges with client; review and compile final factum and brief of authorities; serve same on service list.
SEB	20/03/20	\$625.00	1.10	\$687.50	Telephone call and emails from and to K. Plunkett; Email from B. Greenspan; Emails from Cambridge LLP; Emails from B. Kofman; Emails from S. Graff
GG	20/03/20	\$295.00	2.00	\$590.00	Reviewed Greenspan letter re: contempt motion; conducted caselaw research
SLG	20/03/20	\$850.00	0.70	\$595.00	Telephone call with K. Plunkett; review emails; review E. Greenspan and Cambridge letter
KBP	20/03/20	\$525.00	1.10	\$577.50	Review and consider letter from B. Greenspan; review and consider letter from Cambridge; email

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					exchanges with working group regarding same; email instructions to G. Gopinath.
SEB	21/03/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
GG	21/03/20	\$295.00	1.80	\$531.00	Conducted research [REDACTED] [REDACTED] [REDACTED]
SLG	21/03/20	\$850.00	0.30	\$255.00	Telephone call wiwth K. Plunkett re [REDACTED]
SEB	22/03/20	\$625.00	2.70	\$1,687.50	Emails from and to K. Plunkett; Phone call with KSV; Phone call with K. Plunkett and S. Graff; Emails form G. Gopinath; Email from Cambridge LLP
GG	22/03/20	\$295.00	1.60	\$472.00	Reviewed responding affidavits; reviewed material relating to Florida proceedings to verify accuracy of responding affidavits
KBP	22/03/20	\$525.00	2.50	\$1,312.50	Attend call with working group to discuss case conference; review and consider responding motion record from Xela.
SEB	23/03/20	\$625.00	6.70	\$4,187.50	Emails and phone calls from and to K. Plunkett; Court conference call; Emails from and to B. Kofman; Email to Service List; Email to McEwen J.; Emails from and to C. O'Shea; Email from J. Woycheshyn; Email from Stikeman; Emails to and from S. Graff; Email from A. Almengor; Revise Order and Endorsement; Phone call with KSV
GG	23/03/20	\$295.00	3.40	\$1,003.00	Received instruction from K Plunkett; reviewed [REDACTED] [REDACTED]; conducted caselaw research; drafted memo on strategy relating to [REDACTED]
SLG	23/03/20	\$850.00	3.10	\$2,635.00	Prepare for and attend case conference; review brief and supplementary brief; discussion with K. Plunkett; attend conference;

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
					review letter from McCloud Greenspan; follow up calls and conference; review responding record
KBP	23/03/20	\$525.00	4.50	\$2,362.50	Prepare and attend case conference; review and provide comments on draft endorsement; review and provide comments on second supplemental report; attend various calls with working group;
SEB	24/03/20	\$625.00	3.50	\$2,187.50	Emails from K. Plunkett; Emails from McEwen J.; Emails from C. MacLeod; Court Teleconference; Phone call with KSV; Email from J. Woycheshyn
SLG	24/03/20	\$850.00	1.80	\$1,530.00	Prepare for and attend Case Conference and contempt motion with McKeown, J.; emails re [REDACTED]; review endorsements and draft order; telephone call with K. Plunkett; call with KSV to discuss strategy
KBP	24/03/20	\$525.00	3.50	\$1,837.50	Prepare and attend case conference; revise and circulate updated endorsement; email exchange with C. MacLeod regarding [REDACTED]; review and respond to emails from Justice McEwen.
SEB	25/03/20	\$625.00	1.60	\$1,000.00	Emails and phone call from and to K. Plunkett; Emails from B. Kofman; Emails from C. MacLeod
SEB	25/03/20	\$625.00	0.20	\$125.00	Emails from K. Plunkett
SLG	25/03/20	\$850.00	0.40	\$340.00	Final review of endorsement, amendments and emails from counsel; discussion with K. Plunkett
KBP	25/03/20	\$525.00	1.20	\$630.00	Review and revise draft endorsement to include comments from all parties; circulate same to Justice McEwen; email exchange with client team; attend call with C. MacLeod; email exchange with BJ and Steward McKelvey.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	26/03/20	\$525.00	1.40	\$735.00	Finalize and service endorsement and order; email exchanges with client; draft letter to Stikemans; email exchange with client regarding same.
SLG	27/03/20	\$850.00	0.20	\$170.00	Discussion with K. Plunkett re [REDACTED]
KBP	27/03/20	\$525.00	1.00	\$525.00	Finalize and send letter to Stikemans; attend call with Stikemans.
SEB	28/03/20	\$625.00	1.80	\$1,125.00	Emails and phone call from and to K. Plunkett; Draft letter to Lisa, S.A. directors
KBP	28/03/20	\$525.00	0.70	\$367.50	Review and consider emails from client regarding [REDACTED]; attend call with N. Goldstein.
KBP	29/03/20	\$525.00	0.80	\$420.00	Review and consider emails from N. Goldstein regarding [REDACTED]; attend call with S. Babe to discuss next steps; review and consider emails from applicant's counsel.
TOTAL:			182.70	\$100,325.50	

Name	Hours	Rate	Value
Steven L. Graff (SLG)	11.90	\$850.00	\$10,115.00
Kyle B. Plunkett (KBP)	65.20	\$525.00	\$34,230.00
Sam E. Babe (SEB)	75.90	\$625.00	\$47,437.50
Patrick L. Williams (PLW)	2.30	\$200.00	\$460.00
Gaurav Gopinath (GG)	27.40	\$295.00	\$8,083.00

OUR FEE	\$100,325.50
HST at 13%	\$13,042.32

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Notice of Motion/Application	\$320.00
Miscellaneous HST Exempt Re: F# 148591 - Agency Account Consular fee/Document shipping Cheque No. 66107 For Ref JB-2741A issued to International Documents Canada	\$80.03

Total Agency Costs	\$400.03
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Subject to HST

Photocopies	\$127.56
Binding and Tabs	\$67.25
Deliveries/Parss	\$176.32
Agency Fee	\$300.00
Photocopies - Local	\$58.25
Searches	\$75.86
Imaging/Scanning	\$39.00

Total Disbursements	\$844.24
HST at 13%	\$109.75

AMOUNT NOW DUE

\$114,721.84

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP

Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

385

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Account No.: 670853

PLEASE WRITE ACCOUNT NUMBERS
ON THE BACK OF ALL CHEQUES

File No.: 41611/148591

May 21, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended May 12, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	30/03/20	\$625.00	1.70	\$1,062.50	Emails from and to K. Plunkett; Email to KSV; emails from N. Goldstein; emails from B. Kofman
KBP	30/03/20	\$525.00	1.50	\$787.50	Review and provide comments on draft letter to board of Lisa; email exchange with working group about [REDACTED].
SEB	31/03/20	\$625.00	3.60	\$2,250.00	Emails and phone calls from and to K. Plunkett; draft Kofman affidavit; emails to and from B. Kofman; emails from N. Goldstein; email from B. Greenspan's office; review Gutierrez responding materials; email from C. O'Shea
SLG	31/03/20	\$850.00	0.40	\$340.00	Review emails and material from J. Gutierrez
KBP	31/03/20	\$525.00	2.80	\$1,470.00	Prepare and finalize affidavit of documents and serve same; review and consider responding affidavit of J. Gutierrez; review and consider emails from client side; attend call with B. Kofman; review and provide comments on draft letter to Lisa.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	01/04/20	\$625.00	3.30	\$2,062.50	Draft letter to Arturo's Technical Services; Emails and phone call from and to K. Plunkett; Conference calls with KSV; Email to N. Goldstein; Emails from and to B. Kofman; Email and phone call from and to S. Graff; Email from J. Woycheshyn
KBP	01/04/20	\$525.00	3.10	\$1,627.50	Review and summarize key points on affidavit in responding materials; emails to Hatstone team; attend call with Stewart McKelvey and Bennett Jones; attend call with B. Kofman; review and discuss letter to J. Gutierrez; review and consider emails from J. Woychechyn;
SEB	02/04/20	\$625.00	3.90	\$2,437.50	Review Gutierrez responding materials; Draft letter to J. Gutierrez; Emails from N. Goldstein; Emails from and to K. Plunkett; Emails to and from B. Kofman; Email from C. O'Shea; Email from K. Boyce; Email from Stikemans
KBP	02/04/20	\$525.00	2.70	\$1,417.50	Review and provide comments on letter to Arturo Services; email exchange with client regarding [REDACTED]; review and consider emails from client team; attend call with Bennett Jones and Stewart McKelvey; review and respond to emails from Hatstone and Clarke Gittens.
SEB	03/04/20	\$625.00	3.20	\$2,000.00	Emails and phone call from and to K. Plunkett; Conference calls with Stikemans; Phone call with Hatstone; Emails from N. Goldstein; Emails from and to C. O'Shea; Email from A. Almengor; Email from B. Greenspan
JEM	03/04/20	\$240.00	0.10	\$24.00	Order, review and report on profile
KBP	03/04/20	\$525.00	2.00	\$1,050.00	Prepare and attend call with Hatstone team; review and consider emails from Hatstone regarding responding materials; review and respond to emails from Clarke Gittens regarding Barbados proceedings; review and consider letter from B. Greenspan.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	04/04/20	\$625.00	0.20	\$125.00	Emails from and to K. Plunkett
KBP	04/04/20	\$525.00	1.00	\$525.00	Attend call with client to discuss letter from B. Greenspan and next steps; review and consider responding affidavit; attend call with S. Babe.
SEB	05/04/20	\$625.00	0.60	\$375.00	Emails and phone call from K. Plunkett; Emails from B. Greenspan; Email from Cambridge LLP
SEB	06/04/20	\$625.00	4.10	\$2,562.50	Emails and phone call from and to K. Plunkett; Emails from C. O'Shea; Emails from B. Kofman; Review and comment on draft letter from Hatstone; Draft Third Report; Review file
SLG	06/04/20	\$850.00	0.50	\$425.00	Review emails and position on contempt motion
KBP	06/04/20	\$525.00	2.10	\$1,102.50	Review and provide comments on draft letters to board of Lisa; review and consider letter from Hatstone in response to response affidavit; email exchange with KSV team; email exchange with opposing counsel; attend various calls with client team to discuss reply.
SEB	07/04/20	\$625.00	9.80	\$6,125.00	Emails and phone calls from and to K. Plunkett; Emails from C. O'Shea; Emails from B. Kofman; Review and comment on draft letter from Hatstone; Draft Third Report; Review file; Conference call with counsel to J. Gutierrez; Phone call with KSV; Phone call with Barbados counsel; Emails from N. Goldstein; Emails to Hatstone; Email from B. Greenspan; Email from J. Kasozi
SLG	07/04/20	\$850.00	0.30	\$255.00	Conference call with B Greenspoon and B. McLeod and KSV
SLG	07/04/20	\$850.00	0.60	\$510.00	Telephone call with B. Kofman and review emails and exchange of letters with Greenspoon and McLeod.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	07/04/20	\$525.00	3.10	\$1,627.50	Prepare and attend call with opposing counsel; attend calls with working group; review and provide comments on draft letters from Hatstone; review and respond to various emails from opposing counsel; attend call with S. Babe and S. Graff; review and consider response to endorsement from Cambridge LLP.
SEB	08/04/20	\$625.00	2.90	\$1,812.50	Emails from S. Graff; Emails and phone calls from and to K. Plunkett; Phone call with KSV; Emails from C. O'Shea; Email from J. Woycheshyn; Emails from B. Kofman; Emails from Cambridge LLP; Emails from A. Almengor
SLG	08/04/20	\$850.00	0.50	\$425.00	Conference call with K. Plunkett and R. Kofman; review emails and correspondence
KBP	08/04/20	\$525.00	1.90	\$997.50	Review and respond to various emails from working group regarding [REDACTED]; attend call with client to discuss adjournment; attend call with C. MacLeod regarding [REDACTED]; review and consider updated drafts of letters to Panama entities and Hatstone.
SEB	09/04/20	\$625.00	0.60	\$375.00	Attend scheduling hearing teleconference; Email from K. Plunkett; Email from B. Kofman; Email from N. Goldstein
KBP	09/04/20	\$525.00	1.10	\$577.50	Prepare and attend case conference; attend follow up call with C. MacLeod; attend follow up call with J. Woychechyn; review and respond to emails from client team.
SEB	10/04/20	\$625.00	0.20	\$125.00	Emails from K. Plunkett
KBP	10/04/20	\$525.00	0.30	\$157.50	Review and respond to emails from client team regarding next steps and action items.
SEB	11/04/20	\$625.00	0.80	\$500.00	Emails from and to K. Plunkett; Email from B. Kofman; Email from C. O'Shea; Review and comment on steps memo

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	11/04/20	\$525.00	1.00	\$525.00	Draft action items summary for the Applicant and circulate to client team; email exchange with S. Babe regarding same.
SEB	12/04/20	\$625.00	0.30	\$187.50	Emails from K. Plunkett
KBP	12/04/20	\$525.00	1.00	\$525.00	Revise and finalize action items list; send email to applicant counsel.
SEB	16/04/20	\$625.00	0.80	\$500.00	Emails from and to K. Plunkett; Emails from N. Goldstein; Emails from B. Kofman; Email from C. O'Shea
KBP	16/04/20	\$525.00	1.00	\$525.00	Review and consider letter from T. Gutierrez; email response re same; email exchanges with client regarding [REDACTED] S.
SLG	19/04/20	\$850.00	0.40	\$340.00	Telephone call with K. Plunkett re [REDACTED].
KBP	19/04/20	\$525.00	1.00	\$525.00	Attend call with clients to discuss updates and next steps; discuss same with S. Babe.
SEB	20/04/20	\$625.00	3.30	\$2,062.50	Emails from K. Plunkett; Email from B. Kofman; Draft letter to B. Greenspan; Review file and court filings
KBP	20/04/20	\$525.00	0.40	\$210.00	Email exchanges with client team regarding [REDACTED]; email exchange with client team regarding [REDACTED].
SEB	21/04/20	\$625.00	2.50	\$1,562.50	Emails and phone call from and to K. Plunkett; Emails from and to B. Kofman; Review file
KBP	21/04/20	\$525.00	2.00	\$1,050.00	Prepare and attend call with Lenczner team to discuss [REDACTED]; review and finalize letter to B. Greenspan; email exchanges with client regarding [REDACTED].
SEB	22/04/20	\$625.00	0.60	\$375.00	Emails from and to K. Plunkett; Emails from and to B. Kofman; Email from C. O'Shea

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	22/04/20	\$525.00	0.40	\$210.00	Review and respond to emails from C. MacLeod; review and consider email and letter to Lisa from J. Gutierrez; email exchange with client team.
SEB	23/04/20	\$625.00	1.90	\$1,187.50	Email from A. Almengor; Emails from and to K. Plunkett; Emails from G. Gopinath; Emails from B. Kofman; Emails from C. O'Shea; Review file and court filings
KBP	23/04/20	\$525.00	0.90	\$472.50	Attend call with G. Gopinath to discuss [REDACTED].
SEB	24/04/20	\$625.00	0.50	\$312.50	Emails to and from K. Plunkett; Emails from B. Kofman; Emails from C. O'Shea
KBP	24/04/20	\$525.00	1.00	\$525.00	Review and provide comments on draft Gabinvest resolutions and Lisa resolutions; email exchanges with B. Kofman; review and upload documents to shared file.
SEB	25/04/20	\$625.00	0.20	\$125.00	Emails from C. O'Shea; Emails from B. Kofman
SEB	27/04/20	\$625.00	0.30	\$187.50	Conference call with Hatstone
KBP	27/04/20	\$525.00	0.70	\$367.50	Prepare and attend call with Hatstone re [REDACTED]; email exchanges with B. Kofman regarding same.
SEB	28/04/20	\$625.00	0.50	\$312.50	Emails from B. Kofman; Emails from C. O'Shea
KBP	28/04/20	\$525.00	0.60	\$315.00	Email exchange with Hatstone regarding [REDACTED]; email exchange with client regarding same.
SEB	29/04/20	\$625.00	0.40	\$250.00	Email from K. Plunkett; Emails from B. Kofman; Emails from C. O'Shea
KBP	29/04/20	\$525.00	0.20	\$105.00	Review and respond to emails from B. Kofman regarding [REDACTED];

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	30/04/20	\$625.00	0.60	\$375.00	Emails from K. Plunkett; Emails from B. Greenspan; Email from B. Kofman; Email from C. O'Shea; Email from A. Almengor
KBP	30/04/20	\$525.00	0.30	\$157.50	Review and consider email from B. Greenspan; email exchange with B. Kofman regarding same.
KBP	01/05/20	\$525.00	0.30	\$157.50	Review and respond to email from B. Kofman regarding follow up to correspondence with B. Greenspan; email exchange with P. Griffin.
SEB	04/05/20	\$625.00	0.20	\$125.00	Emails from K. Plunkett; Email from C. O'Shea
KBP	04/05/20	\$525.00	0.70	\$367.50	Review and consider letter from Cambridge LLP; review and consider emails from client side.
SEB	05/05/20	\$625.00	0.60	\$375.00	Emails and phone call from and to K. Plunkett; Email from C. O'Shea; Emails from B. Kofman
KBP	05/05/20	\$525.00	1.00	\$525.00	Prepare and attend call with working group to discuss [REDACTED]; email exchanges with client.
SEB	06/05/20	\$625.00	0.80	\$500.00	Emails to K. Plunkett; Email from C. O'Shea; Emails from B. Kofman; Emails and phone call from and to G. Gopinath
KBP	06/05/20	\$525.00	0.50	\$262.50	Review and consider email from P. Griffin; email exchange with client team regarding [REDACTED]; attend call with B. Kofman.
SEB	07/05/20	\$625.00	1.50	\$937.50	Review Lenczner master list; Phone call with K. Plunkett and to G. Gopinath; Email to P. Griffin; Email from G. Gopinath; Email from B. Kofman
KBP	07/05/20	\$525.00	0.40	\$210.00	Review and consider emails from P. Griffin; review and respond to emails from client team; review and provide comments on master chart from M. Jilesen.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	08/05/20	\$625.00	3.90	\$2,437.50	Review and comment on Lenczner master list; Phone call with K. Plunkett and to G. Gopinath; Email from P. Griffin; Emails from G. Gopinath; Emails from and to K. Plunkett; Email from B. Kofman; Email from C. O'Shea; Email from M. Jilesen; Emails to and from N. Goldstein
GG	08/05/20	\$295.00	4.20	\$1,239.00	Received instructions form K Plunkett and S Babe; Reviewed correspondence folder and documents on record; Updated Master Tracking Spreadsheet; Updated Global Litigation Memo; uploaded files to shared folder for Lenczner team.
KBP	08/05/20	\$525.00	1.20	\$630.00	Attend call with C. O'Shea to discuss [REDACTED]; review and respond to emails from N. Goldstein; review and supplement master chart.
SEB	09/05/20	\$625.00	0.70	\$437.50	Telephone call from K. Plunkett; Emails from B. Kofman; Emails from C. O'Shea
KBP	09/05/20	\$525.00	1.10	\$577.50	Review and consider emails from C. O'Shea regarding [REDACTED]; review and consider email from Hatstone [REDACTED]; email exchanges with client team regarding same; attend call with B. Kofman.
SEB	10/05/20	\$625.00	0.70	\$437.50	Telephone call with K. Plunkett and G. Gopinath; Emails from B. Kofman; Emails from K. Plunkett; Email from G. Gopinath
KBP	11/05/20	\$525.00	1.00	\$525.00	Prepare and provide comments on Master Chart; attend call with working group including M. Jelisin.
KBP	12/05/20	\$525.00	0.60	\$315.00	Prepare and attend call with Stikemans team; email exchange with client regarding [REDACTED].
TOTAL:			101.10	\$58,480.50	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	55.20	\$625.00	\$34,500.00
Kyle B. Plunkett (KBP)	38.90	\$525.00	\$20,422.50
Steven L. Graff (SLG)	2.70	\$850.00	\$2,295.00
Jenaya E. McLean (JEM)	0.10	\$240.00	\$24.00
Gaurav Gopinath (GG)	4.20	\$295.00	\$1,239.00

OUR FEE	\$58,480.50
HST at 13%	\$7,602.47

DISBURSEMENTS

Subject to HST

Photocopies - Local	\$169.25
Binding and Tabs	\$12.75
Deliveries/Parss	\$222.59

Total Disbursements	\$404.59
HST at 13%	\$52.60

AMOUNT NOW DUE

\$66,540.16

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

394

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 675328

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/148591
Client No.: 41611
Matter No.: 148591

June 30, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended June 25, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	11/05/20	\$625.00	1.10	\$687.50	Emails from and to K. Plunkett; Email to G. Gopinath; Email from B. Kofman; Emails from N. Goldstein; Telephone call with Lencznerns
SEB	13/05/20	\$625.00	0.10	\$62.50	Email from C. O'Shea
KBP	15/05/20	\$525.00	0.60	\$315.00	Attend call with Lenczner team to discuss updates and next steps; review and consider emails from client.
SEB	19/05/20	\$625.00	0.10	\$62.50	Email from K. Kay
KBP	19/05/20	\$525.00	1.10	\$577.50	Attend all hands call with working group and Hatstone; email to M. Jelisin regarding notice of motion; email exchange with client about [REDACTED].
KBP	19/05/20	\$525.00	1.00	\$525.00	Attend call with client team to discuss [REDACTED]; [REDACTED]; [REDACTED].

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	20/05/20	\$625.00	0.60	\$375.00	Emails and telephone calls from and to K. Plunkett; Email from B. Kofman; Email from K. Kay
SEB	22/05/20	\$625.00	0.10	\$62.50	Emails from and to K. Plunkett
SEB	25/05/20	\$625.00	1.20	\$750.00	Emails to and from K. Plunkett; Review and comment on Lenczner Notice of Motion; Email from B. Kofman
KBP	25/05/20	\$525.00	1.00	\$525.00	Review and provide comments on draft notice of motion to Lenczner team; discuss same with S. Babe.
SEB	08/06/20	\$625.00	0.30	\$187.50	Emails from K. Kay; Emails from B. Kofman; Email from C. O'Shea
KBP	10/06/20	\$525.00	0.20	\$105.00	Review and respond to emails from Stikeman team regarding meeting.
SEB	17/06/20	\$625.00	1.00	\$625.00	Zoom conference call with Stikeman Elliott
KBP	17/06/20	\$525.00	1.00	\$525.00	Prepare and attend call with Stikemans and Cousins counsel and client.
KBP	25/06/20	\$525.00	0.20	\$105.00	Review and respond to emails from B. Kofman regarding follow up with Stikemans; email to K. Kay.
TOTAL:			9.60	\$5,490.00	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	4.50	\$625.00	\$2,812.50
Kyle B. Plunkett (KBP)	5.10	\$525.00	\$2,677.50

OUR FEE \$5,490.00
HST at 13% \$713.70

DISBURSEMENTS

Subject to HST

Searches	\$151.24
HST at 13%	\$19.66

AMOUNT NOW DUE

\$6,374.60

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

40627702.1

IN ACCOUNT WITH:

AIRD BERLIS

397

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 678579

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/148591
Client No.: 41611
Matter No.: 148591

August 20, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended July 30, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	22/01/20	\$625.00	1.30	\$812.50	Emails from and to N. Goldstein; emails from K. Plunkett; review and comment on report; draft letter to International Documents Canada
SEB	25/06/20	\$625.00	0.10	\$62.50	Email from K. Plunkett
KBP	06/07/20	\$525.00	0.30	\$157.50	Review and respond to emails from N. Goldstein regarding [REDACTED].
SEB	07/07/20	\$625.00	0.90	\$562.50	Emails from and to K. Plunkett; Emails from P. Griffin; Emails from B. Kofman; Emails to and from International Documents Canada; Email from A. Almengor
KBP	07/07/20	\$525.00	1.00	\$525.00	Review and respond to emails from B. Kofman regarding report [REDACTED]; review and consider emails from P. Griffin.
SEB	08/07/20	\$625.00	0.90	\$562.50	Email to Commercial List Office; Emails to and from B. Kofman; Emails from and to K. Plunkett; Emails to and from filing clerk; Emails from R. Kashyap; Emails to and from N. Goldstein

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
KBP	08/07/20	\$525.00	0.20	\$105.00	Review and consider emails from client and P. Griffin, re [REDACTED].
SEB	09/07/20	\$625.00	0.30	\$187.50	Emails from and to filing clerk re [REDACTED]
SEB	10/07/20	\$625.00	1.30	\$812.50	Emails to and from Commercial List Office; Emails to and from Estates Court Office; Emails to and from K. Plunkett; Emails to and from N. Goldstein; Emails to and from filing clerk
KBP	10/07/20	\$525.00	0.40	\$210.00	Review and consider emails from client regarding [REDACTED]; review and consider emails from Hatstone.
SEB	13/07/20	\$625.00	0.40	\$250.00	Telephone call and emails from and to clerk re [REDACTED]; emails from and to K. Plunkett
SEB	14/07/20	\$625.00	1.90	\$1,187.50	Emails from and to K. Plunkett; review Florida court docket; emails to and from Agent re legalization; draft letter to court office re [REDACTED]
PLW	14/07/20	\$200.00	0.60	\$120.00	Obtained Certified Copy of Affidavit
SEB	15/07/20	\$625.00	0.30	\$187.50	Email to KSV; emails from and to clerk; emails to and from K. Plunkett
SEB	17/07/20	\$625.00	1.10	\$687.50	Emails and phone call from and to clerk re court certification; emails from and to B. Kofman
KBP	17/07/20	\$525.00	0.30	\$157.50	Review and respond to emails from client team regarding [REDACTED].
SEB	19/07/20	\$625.00	0.10	\$62.50	Email from B. Kofman; email from K. Plunkett
SEB	20/07/20	\$625.00	1.00	\$625.00	Email from Court office re certification; email to agent; email to clerk

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	21/07/20	\$625.00	0.10	\$62.50	Email to clerk re updated corporate profile
JEM	21/07/20	\$240.00	0.10	\$24.00	Order, review and report on profile
KBP	22/07/20	\$525.00	1.50	\$787.50	Review and provide comments on draft third report; email exchange with N. Goldstein.
SEB	23/07/20	\$625.00	2.10	\$1,312.50	Emails from and to N. Goldstein; emails from and to K. Plunkett; review file
KBP	23/07/20	\$525.00	1.00	\$525.00	Review and respond to emails from N. Goldstein regarding [REDACTED]; email exchange with S. Babe.
SEB	24/07/20	\$625.00	0.30	\$187.50	Emails from Lenczner re notice of motion
KBP	24/07/20	\$525.00	0.40	\$210.00	Review and consider motion record; emails with client regarding same.
SEB	27/07/20	\$625.00	0.70	\$437.50	Emails from M. Jilesen; Emails from Commercial List Office; Emails from J. Kasozi; Emails from B. Greenspan
KBP	27/07/20	\$525.00	0.30	\$157.50	Review and consider emails from client regarding dates for motion.
SEB	28/07/20	\$625.00	0.30	\$187.50	Emails from and to B. Kofman; Email from K. Plunkett
SEB	29/07/20	\$625.00	0.40	\$250.00	Emails from and to legalization agent
TOTAL:			19.60	\$11,416.50	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	13.50	\$625.00	\$8,437.50
Kyle B. Plunkett (KBP)	5.40	\$525.00	\$2,835.00
Patrick L. Williams (PLW)	0.60	\$200.00	\$120.00
Jenaya E. McLean (JEM)	0.10	\$240.00	\$24.00

OUR FEE	\$11,416.50
HST at 13%	\$1,484.15

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Court Fees	\$1,431.00
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Subject to HST

Corporate Search	\$18.00
Photocopies	\$0.25
Imaging/Scanning	\$122.25
Photocopies - Local	\$2.50
Deliveries/Parss	\$26.69
 Total Disbursements	 \$169.69
HST at 13%	\$22.06

AMOUNT NOW DUE

\$14,523.40

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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IN ACCOUNT WITH:

AIRD BERLIS

401

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 681657

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/148591
Client No.: 41611
Matter No.: 148591

September 9, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended August 28, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	05/08/20	\$625.00	0.30	\$187.50	Email from M. Jilesen; email from J. Kasozi; email from J. Woycheshyn
KBP	05/08/20	\$525.00	0.20	\$105.00	Review and consider emails from M. Jilesen; email exchange with N. Goldstein.
SEB	06/08/20	\$625.00	0.20	\$125.00	Emails from and to B. Kofman; email to legalization agent
SEB	07/08/20	\$625.00	0.40	\$250.00	Email from M. Jilesen; email from K. Plunkett; email from B. Kofman; email from D. Knoke
KBP	07/08/20	\$525.00	0.30	\$157.50	Review and respond to emails from Lezsner team regarding [REDACTED].
SEB	18/08/20	\$625.00	0.20	\$125.00	Emails from D. Knoke; email from N. Jilesen
SEB	19/08/20	\$625.00	0.40	\$250.00	Email to C. O'Shea; email from D. Knoke; email from J. Kasozi; email from M. Jilesen

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	20/08/20	\$625.00	0.20	\$125.00	Email from K. Plunkett; email from D. Knoke
SEB	21/08/20	\$625.00	0.80	\$500.00	Emails from and to K. Plunkett; emails from Cambridge LLP; review responding affidavit
KBP	21/08/20	\$525.00	1.00	\$525.00	Review and consider responding record from Cambridge.
SEB	22/08/20	\$625.00	0.40	\$250.00	Emails from and to K. Plunkett
KBP	22/08/20	\$525.00	0.50	\$262.50	Review and compile document request from D. Knoke; email exchange with N. Goldstein.
SEB	24/08/20	\$625.00	0.50	\$312.50	Email from D. Knoke; phone call with KSV and Lencznars
KBP	24/08/20	\$525.00	1.00	\$525.00	Prepare and attend call with working group regarding [REDACTED]; email exchanges with client regarding [REDACTED].
SEB	25/08/20	\$625.00	2.20	\$1,375.00	Review and comment on factum and order; emails from and to Lencznars; email from N. Goldstein; emails from B. Kofman
KBP	25/08/20	\$525.00	1.10	\$577.50	Review and consider draft Order and draft factum; comments to S. Babe; review and consider emails from working group.
SEB	26/08/20	\$625.00	0.20	\$125.00	Email from B. Kofman; email from D. Knoke
KBP	26/08/20	\$525.00	0.60	\$315.00	Review and consider materials from motion returnable August 27th.
SEB	27/08/20	\$625.00	0.20	\$125.00	Emails from Lencznars; emails to and from K. Plunkett
KBP	27/08/20	\$525.00	0.70	\$367.50	Review and prepare for motion returnable August 28th; attend call with client.

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	28/08/20	\$625.00	2.10	\$1,312.50	[Attend motion video conference hearing; emails and phone calls from and to K. Plunkett; email form D. Knoke; email from B. Kofman
KBP	28/08/20	\$525.00	1.00	\$525.00	Email exchange with client team regarding [REDACTED] [REDACTED]; email exchange with S. Babe regarding same.
TOTAL:			14.50	\$8,422.50	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	8.10	\$625.00	\$5,062.50
Kyle B. Plunkett (KBP)	6.40	\$525.00	\$3,360.00

OUR FEE	\$8,422.50
HST at 13%	\$1,094.93

DISBURSEMENTS

COST INCURRED ON YOUR BEHALF AS AN AGENT

Miscellaneous HST Exempt Re: F# 148591 - Agency Fee Consular Fee Cheque No. 66958 For Ref JG-3489R issued to INTERNATIONAL DOCUMENTS CANADA	\$1,114.95
Miscellaneous HST Exempt Re: F# 148591 - Agency Fee Document Shipping Cheque No. 66958 For Ref JG-3489R issued to INTERNATIONAL DOCUMENTS CANADA	\$149.38

Total Agency Costs	\$1,264.33
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Subject to HST

Agency Fee	\$250.00	
Deliveries/Parss	\$176.14	
Total Disbursements		\$426.14
HST at 13%		\$55.40

AMOUNT NOW DUE

\$11,263.30

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

NOTE: This account may be paid by wire transfer in Canadian funds to our account at The Toronto-Dominion Bank, TD Centre, 55 King Street West, Toronto, Ontario, M5K 1A2. Account number 5221521, Transit number 10202, Swift Code TDOMCATTTOR. Please include the account number as reference.

IN ACCOUNT WITH:

AIRD BERLIS

405

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 686471

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/148591
Client No.: 41611
Matter No.: 148591

October 28, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended October 13, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	03/09/20	\$625.00	0.30	\$187.50	Emails from and to K. Plunkett; email fro D. Knoke
KBP	03/09/20	\$525.00	0.30	\$157.50	Email exchange with D. Knoke regarding [REDACTED].
SEB	04/09/20	\$625.00	0.20	\$125.00	Emails from and to K. Plunkett
KBP	04/09/20	\$525.00	0.20	\$105.00	Email exchange with D. Knoke regarding [REDACTED].
SEB	15/09/20	\$625.00	0.10	\$62.50	Email from D. Knoke
SEB	17/09/20	\$625.00	0.20	\$125.00	Emails from D. Knoke; email from J. Kasozi; email from C. MacLeod
SEB	30/09/20	\$625.00	0.90	\$562.50	Attend case conference; review materials; phone call and emails to and from K. Plunkett; emails to and from M. Jilesen
SLG	13/10/20	\$850.00	0.20	\$170.00	Emails with K. Plunkett re status and telephone call with K. Plunkett
TOTAL:			2.40	\$1,495.00	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	1.70	\$625.00	\$1,062.50
Kyle B. Plunkett (KBP)	0.50	\$525.00	\$262.50
Steven L. Graff (SLG)	0.20	\$850.00	\$170.00

OUR FEE	\$1,495.00
HST at 13%	\$194.35

AMOUNT NOW DUE

\$1,689.35

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff
E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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42162910.1

IN ACCOUNT WITH:

AIRD BERLIS

407

Brookfield Place, 181 Bay Street, Suite 1800
Toronto, Ontario, Canada M5J 2T9
T 416.863.1500 F 416.863.1515
airdberlis.com

KSV Advisory Inc.
2308-150 King Street West
Box 42
Toronto, ON
M5H 1J9

Attention: Mr. Noah Goldstein

Invoice No.: 690120

PLEASE WRITE INVOICE NUMBERS
ON THE BACK OF ALL CHEQUES
File No.: 41611/148591
Client No.: 41611
Matter No.: 148591

November 30, 2020

Re: Receivership of Xela Enterprises Ltd.

FOR PROFESSIONAL SERVICES RENDERED on your behalf throughout the period ended November 19, 2020

LAWYER	DATE	RATE/ HOUR	TIME	VALUE	DESCRIPTION
SEB	26/10/20	\$625.00	0.30	\$187.50	Email from M. Jilesen; email from Mcewen J.; emails from and to K. Plunkett
SEB	27/10/20	\$625.00	0.10	\$62.50	Email from M. Jilesen
SEB	19/11/20	\$625.00	1.00	\$625.00	Emails from and to D. Knoke; emails from and to B. Korman; review file
TOTAL:			1.40	\$875.00	

Name	Hours	Rate	Value
Sam E. Babe (SEB)	1.40	\$625.00	\$875.00

OUR FEE	\$875.00
HST at 13%	\$113.75
AMOUNT NOW DUE	\$988.75

THIS IS OUR ACCOUNT HEREIN
Aird & Berlis LLP



Steven L. Graff

E.&O.E.

PAYMENT OF THIS ACCOUNT IS DUE ON RECEIPT

IN ACCORDANCE WITH THE SOLICITORS ACT, ONTARIO, INTEREST WILL BE CHARGED AT THE RATE OF 2.0% PER ANNUM ON UNPAID AMOUNTS CALCULATED FROM A DATE THAT IS ONE MONTH AFTER THIS ACCOUNT IS DELIVERED.

GST / HST Registration # 12184 6539 RT0001

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42658681.1

Aird & Berlis LLP Fees in respect of services to KSV Kofman Inc., in its capacity as Receiver

January 29, 2020 to November 19, 2020

Lawyer	Call to Bar	2019 average/hr	Total Time	Value
Steven L. Graff	1991	\$850.00	14.80	\$12,580.00
Kyle B. Plunkett	2011	\$525.00	121.50	\$63,787.50
Sam Babe	2004	\$625.00	160.3	\$100,187.50
Articling Student				
Gaurav Gopinath		\$295.00	31.6	\$9,322.00
Court Clerk				
Patrick Williams		\$200.00	2.9	\$580.00
Banking Clerk				
Jenaya McLean		\$240.00	0.2	\$48.00

This is Exhibit "2" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

INSTRUMENTOS
NOTARIALES

NOTA

21575/0020-000
21575/0020-000
21575/0020-000



ICA DE PANAMÁ
INCA DE PANAMÁ

EL CIRCUITO DE PANAMÁ

Lic. & c. Barciela Chambers

NOTARIO PÚBLICO OCTAVO

Edificio Plaza Ocho
Calle 8
Ave. Saavedra
C.P. 0801

Tel: (507) 264-0571
(507) 264-0675
Celular: (507) 4070-7672
E-mail: chb@notariadecircuitopanama.com

COPIA

ESCRITURA N° 791 DE 16 DE enero DE 20

POR LA CUAL

SE PROTOCOLIZA ACTA DE UNA REUNIÓN DE ACCIONISTAS DE LA
SOCIEDAD GABINVEST, S.A.

Escritura N° 791 de 16 de enero de 20





NOTARIA OCTAVA DEL CIRCUITO DE PANAMÁ

ESCRITURA PÚBLICA NÚMERO SETECIENTOS NOVENTA Y UNO--

(791)

POR LA CUAL SE PROTOCOLIZA ACTA DE UNA REUNIÓN DE ACCIONISTAS DE LA SOCIEDAD
GABINVEST, S.A.-----

----- * Panamá, 16 de enero de 2020 * -----

En la Ciudad de Panamá, Capital de la República y Cabecera del Circuito
Notarial del mismo nombre, a los dieciséis (16) días del mes de enero del
año dos mil veinte (2020), ante mí, Licenciado ERICK ANTONIO BACIELA CHAMBERS,
Notario Público del Circuito de Panamá, portador de la cédula ocho-
veisiete-tres mil novecientos noventa y cuatro (8-13-994), compareció
personalmente ALVARO ALMEIDA, menor, Panameño, mayor de edad, casado,
abogado en ejercicio, con cédula de identidad personal ocho-veisiete-
cinco mil quinientos cincuenta (8-13-1050), vecino de esta Ciudad,
abogado de la firma Porras HATSTONE ABOGADOS, sociedad civil de abogados,
constituida conforme a las leyes de la República de Panamá, e inscrita a
falta de inscribir en esta Sección (49125), documento dos mil-
quien noventa y tres mil novecientos treinta y tres (2505933), a quien conozco,
y se acordó para su protocolización en esta Escritura Pública ACTA DE UNA
REUNIÓN DE LOS ACCIONISTAS DE GABINVEST, S.A., inscrita al folio número
seis-veinte mil cuatrocientos once (14011), debidamente autorizada para
ello, tal como consta en la misma acta, la cual en texto protocolizado
queda según la protocolización solicitada y se expedirán las copias que sean
necesarias-----

Ante mí y la compareciente que copia de este instrumento público debe
registrarse todo como lo fue en presencia de los testigos instrumentales
SELIDETH EMELINA DE LEÓN CARRASCO, con cédula de identidad personal número
seis - cincuenta y nueve - ciento cuarenta y siete (6-59-147) y VICTORIA
AMOS TAPIA, con cédula de identidad personal número seis-cincuenta y nueve-
ciento cuarenta y siete (6-59-147) ambos mayores de edad, Panameños y vecinos
de la Ciudad de Panamá, personas a quienes conozco y habiles para los cargos.



La presente se otorga, se imparten en su totalidad y la firman todos para
 constancia, ante el, el Notario que suscribe, en la ciudad de Panamá, a las
 veintinueve (29) de mayo del año dos mil veintiseis (2026).

ESCRITURA PÚBLICA NÚMERO SETECIENTOS NOVENTA Y UNO

(791)

(Féa.) ALVARO ALMENGOR-----SELIDETH EMELINA DE LEÓN CARRASCO-----
 VICTORIA RAMOS TAPIA-----ERICK ANTONIO BANCIELA CHAMBERS, Notario
 Público del Circuito de Panamá.

TRADUCCIÓN

ACTA DE UNA REUNIÓN DE LOS ACCIONISTAS DE

GABINVEST, S.A.

(la "Sociedad")

Una reunión de los accionistas de la Sociedad, una sociedad debidamente
 organizada y existente bajo las leyes de la República de Panamá, registrada
 bajo el Folio No. 11751 de la sección mercantil del Registro Público
 de Panamá, celebrada en el CABA Transamerica Center, Avenida Balboa y Calle
 Agustín de la Guardia, Edificio 11, Suite 1101, Ciudad de Panamá, República de
 Panamá, el día veintinueve (29) de mayo de dos mil veintiseis (2026) a las ocho de la
 mañana, hora local, de la "Reunión".

PRESENTE, estuvieron presentes en la reunión:

LA TOTALIDAD DE LOS ACCIONISTAS: En persona o por medio de una representación
 autorizada, quien debidamente representa la totalidad de las acciones
 emitidas, suscritas, en circulación, de la Sociedad (el "Accionista").

PRESIDENTE AD HOC DE LA REUNIÓN: ALVARO ALMENGOR, quien actuó como el
 Presidente ad hoc, para los propósitos de esta Reunión.

SECRETARIO AD HOC DE LA REUNIÓN: MANUEL CARRASQUILLA quien actuó como el
 secretario ad hoc, para los propósitos de esta Reunión y llevó los libros de
 la Reunión.

1. AVISO Y QUORUM



La convocatoria de esta reunión es sujeta a la fecha, hora, lugar y punto de la misma, las cuales se fijan por todas las partes con respecto a ella, habiendo sido sujeta, el presente documento, a la reunión.

2. PROPOSITO DE LA REUNION

El Presidente declara que el propósito de la reunión es de el Accionista autorizar a la Junta Administrativa autorizada y aprobada.

Los señores como Directores y Designados de la Sociedad, a **JOSE EDUARDO SAN JUAN** como Director y Presidente, **DAVID HARRY** como Director y Secretario y **HARALD JOHANNESSEN HALL** como Director y Tesorero, con efecto al cierre de esta reunión.

Los señores como Directores y Designados como señores, **ALVARO ALMENGOR** como Director y Presidente, **MANUEL CARRASQUILLA** como Director y Secretario y **LIDIA RAMOS** como Directora y Tesorera, con efecto al cierre de esta reunión.

Los señores como por este medio se autoriza, a la firma de los señores **HATSTONE ABOGADOS**, una firma de los señores establecidos en la República de Panamá, registrada bajo el número 44423 en la Cámara Mercantil del Registro Público de Panamá, una oficina en Calle Financiera, Centro, Avenida Balboa y Calle Aguilón de la ciudad, piso 11, Oficina 1101, Ciudad de Panamá, República de Panamá para que presente estas minutas de los accionistas ante un Notario Público, para que sea registrado en el Registro Público de Panamá, de ser requerido.

3. RESOLUCIONES

Después de haber y haberse considerado, se resolvió:

1.1. Resolvió como por este medio se remueven, como Directores y Designados de la Sociedad, a **JOSE EDUARDO SAN JUAN** como Director y Presidente, **DAVID HARRY** como Director y Secretario y **HARALD JOHANNESSEN HALL** como Director y Tesorero, con efecto al cierre de esta reunión.

1.2. Resolvió como por este medio se nombran, a **ALVARO ALMENGOR** como nuevo Director y Presidente, **MANUEL CARRASQUILLA** como nuevo Director y Secretario y **LIDIA RAMOS** como nueva Directora y Tesorera.

1.3. Como resultado de las resoluciones y designaciones anteriores, los nuevos

presidentes y representantes de la Sociedad son los siguientes:

ALVARO ALMENGOR - Director - Presidente

MANUEL CARRASQUILLA - Director - Representante

ALIXA RANGS - Directora - Representante

Tiene sus oficinas en DCSA Alvarado Center, Avenida Balboa y Calle Aquilino De La Guardia, Piso 11, Oficina 1101, Ciudad de Panamá, República de Panamá.

Con esta acta, como por instrucción de autoridad, a la firma de los **HATSTONE ABOGADOS**, para los propósitos antes mencionados de los Accionistas ante un Notario Público, calificado y registrado en el Registro Público de Panamá, de la siguiente manera:

4. CIERRE DE LA REUNION

El Notario que preside de la reunión fue clausurada, a las once y treinta y tres minutos (11:33 a.m.) del día dieciséis (16) de enero de dos mil veinty dos (2022).

(FDO.) ALVARO ALMENGOR - PRESIDENTE AD HOC DE LA REUNION

(FDO.) MANUEL CARRASQUILLA - SECRETARIO AD HOC DE LA REUNION

El suscrito, Notario AD HOC de la Reunion, por esta acta certifica que el presente es una copia fiel de su original, la cual repite en el libro de actas de la reunión, y que la totalidad de los accionistas que estuvo presente o representado en la reunión represento debidamente la totalidad de los accionistas, votos, poderes y en disculacion, de la Sociedad, y EN FE DE LO CUAL esta acta fue firmada, este día, el dieciséis (16) de enero de dos mil veinty dos (2022), en Ciudad de Panamá, República de Panamá.

(FDO.) MANUEL CARRASQUILLA - SECRETARIO AD HOC DE LA REUNION

A la presencia de **HATSTONE ABOGADOS**, una Firma Forense con oficinas en DCSA Alvarado Center, Avenida Balboa y Calle Aquilino De La Guardia, Piso 11, Oficina 1101, Ciudad de Panamá, República de Panamá.

(FDO.) ALVARO ALMENGOR - Por y en nombre de Hatstone Abogados



REPÚBLICA DE PANAMÁ



REPÚBLICA DE PANAMÁ
MINISTERIO DE JUSTICIA
SECRETARÍA DE ASESORIA LEGAL

NOTARIA OCTAVA DEL CIRCUITO DE PANAMÁ

Comparendo con el original esta copia que expido, sello y firmo en la Ciudad de Panamá a los diecinueve (19) días del mes de agosto de dos mil veinte.

[Signature]
Ena García Chirino
Notario Público Octavo



This is Exhibit "3" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

ONTARIO

**Superior Court of Justice
Cour supérieure de justice**

**Plaintiff's Claim
Demande du demandeur**

Form / Formule 7A Ont. Reg. No. / Rég. de l'Ont. : 258/98

Seal / Sceau

Toronto Courthouse

Small Claims Court / Cour des petites créances de

Claim No. / N° de la demande

**47 Sheppard Ave. E.
Toronto, ON M2N 5N1**

Address / Adresse

416.326.3554

Phone number / Numéro de téléphone

Plaintiff No. 1 / Demandeur n° 1

☐ Additional plaintiff(s) listed on attached Form 1A.
Le ou les demandeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

☐ Under 18 years of age.
Moins de 18 ans.

Last name, or name of company / Nom de famille ou nom de la compagnie Castillo		
First name / Premier prénom Roberto	Second name / Deuxième prénom Ricardo	Also known as / Également connu(e) sous le nom de
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 135 Gordon Road		
City/Town / Cité/ville Toronto	Province ON	Phone no. / N° de téléphone 416.444.8813
Postal code / Code postal M2P 1E6		Fax no. / N° de télécopieur
Representative / Représentant(e) Bennett Jones LLP, Jason Woycheshyn		LSUC # / N° du BHC 53318A
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 3400 One First Canadian Place, P.O. Box 130		
City/Town / Cité/ville Toronto	Province ON	Phone no. / N° de téléphone 416.777.4662
Postal code / Code postal M5X 1A4		Fax no. / N° de télécopieur 416.863.1716

Defendant No. 1 / Défendeur n° 1

☐ Additional defendant(s) listed on attached Form 1A.
Le ou les défendeurs additionnels sont mentionnés
sur la formule 1A ci-jointe.

☐ Under 18 years of age.
Moins de 18 ans.

Last name, or name of company / Nom de famille ou nom de la compagnie Aguilar		
First name / Premier prénom Willy	Second name / Deuxième prénom	Also known as / Également connu(e) sous le nom de Willy
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité) 30 Livingston Rd. Unit 19		
City/Town / Cité/ville Scarborough	Province ON	Phone no. / N° de téléphone
Postal code / Code postal M1E 1K6		Fax no. / N° de télécopieur
Representative / Représentant(e)		LSUC # / N° du BHC
Address (street number, apt., unit) / Adresse (numéro et rue, app., unité)		
City/Town / Cité/ville	Province	Phone no. / N° de téléphone
Postal code / Code postal		Fax no. / N° de télécopieur

REASONS FOR CLAIM AND DETAILS / MOTIFS DE LA DEMANDE ET PRÉCISIONS

Explain what happened, including where and when. Then explain how much money you are claiming or what goods you want returned.

Expliquez ce qui s'est passé, en précisant où et quand. Ensuite indiquez la somme d'argent que vous demandez ou les biens dont vous demandez la restitution, explication à l'appui.

If you are relying on any documents, you **MUST** attach copies to the claim. If evidence is lost or unavailable, you **MUST** explain why it is not attached.

*Si vous vous appuyez sur des documents, vous **DEVEZ** en annexer des copies à la demande. Si une preuve est perdue ou n'est pas disponible, vous **DEVEZ** expliquer pourquoi elle n'est pas annexée.*

What happened? Please see Schedule "A" attached

Where?

When?

Que s'est-il

passé?

Où?

Quand?

How much? \$ 25,000.00
 Combien? (Principal amount claimed / Somme demandée) \$

☒ ADDITIONAL PAGES ARE ATTACHED BECAUSE MORE ROOM WAS NEEDED.
 DES FEUILLES SUPPLÉMENTAIRES SONT ANNEXÉES EN RAISON DU MANQUE D'ESPACE.

The plaintiff also claims pre-judgment interest from May 1, 2009 under:
 Le demandeur demande aussi des intérêts (Date) conformément à :
 antérieurs au jugement de

(Check only one box /
 Cochez une seule case) ☒ the Courts of Justice Act
 la Loi sur les tribunaux judiciaires
☐ an agreement at the rate of _____ % per year
 un accord au taux de _____ % par an

and post-judgment interest, and court costs.
 et des intérêts postérieurs au jugement, ainsi que les dépens.

Prepared on: March [], 20 10
 Fait le :

(Signature of plaintiff or representative / Signature du demandeur/de la demanderesse ou du/de la représentant(e))

Issued on: _____, 20 _____
 Délivré le :

(Signature of clerk / Signature du greffier)

**CAUTION TO
 DEFENDANT:**

IF YOU DO NOT FILE A DEFENCE (Form 9A) with the court within twenty (20) calendar days after you have been served with this Plaintiff's Claim, judgment may be obtained without notice and enforced against you. Forms and self-help materials are available at the Small Claims Court and on the following website: www.ontariocourtforms.on.ca.

**AVERTISSEMENT
 AU DÉFENDEUR :**

SI VOUS NE DÉPOSEZ PAS DE DÉFENSE (formule 9A) auprès du tribunal au plus tard vingt (20) jours civils après avoir reçu signification de la présente demande du demandeur, un jugement peut être obtenu sans préavis et être exécuté contre vous. Vous pouvez obtenir les formules et la documentation à l'usage du client à la Cour des petites créances et sur le site Web suivant : www.ontariocourtforms.on.ca.

SCHEDULE "A"
PLAINTIFF'S CLAIM

1. The plaintiff, Roberto Ricardo Castillo ("Ricardo") claims against the defendant Willi Aguilar ("Willi");

- (a) damages for breach of contract, misrepresentation and unjust enrichment in the amount of \$25,000.00, inclusive of goods and services tax;
- (b) prejudgment and postjudgment interest under section 128 and 129 the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (c) the costs of this action; and
- (d) such further and other relief as this Honourable Court deems just.

The Parties

2. Ricardo is a businessman and entrepreneur who resides in the City of Toronto in the Province of Ontario.

3. Willi is an individual who resides in the City of Scarborough in the Province of Ontario.

The Relationship between the Parties

4. In late 2008, Ricardo entered into discussions with Willi regarding the purchase of S.C.M.N. Global Traders Limited ("Global Traders"), a Latin American food wholesaler located in Mississauga, Ontario.

5. Following these discussions, on February 2, 2009, a letter of intent regarding the purchase of Global Traders was signed by Ricardo, Willi and others.

6. As part of the proposed purchase, Ricardo paid \$8,718.15 in legal fees to Jonathan L. Richler of Richler and Tari Tax Lawyers.

The Contract

7. In April 2009, Willi approached Ricardo and indicated that Willi's employer wanted to purchase Global Traders. Willi asked Ricardo if he would agree not to proceed with the purchase of Global Traders.

8. Ricardo agreed not to proceed with the proposed purchase of Global Traders on the express condition that he be repaid for all expenses he incurred in pursuing the purchase of Global Traders. Willi agreed to this condition and personally assured Ricardo that he would be paid.

9. As Willi provided his personal assurance and agreed to the condition that Ricardo would be repaid for all of his expenses, Ricardo took no further steps towards the purchase of Global Traders.

10. Willi concealed from Ricardo the material fact that Willi stood to gain a significant ownership interest in Global Traders from his employer if Ricardo agreed not to go ahead with the purchase.

11. As a result, Willi's employer subsequently purchased Global Traders in July 2009 and, shortly afterwards, Willi obtained a substantial ownership interest in Global Traders.

Willi's Misrepresentations Allow Him to Steal a Corporate Opportunity from Ricardo

12. By failing to tell Ricardo of the personal interest Willi stood to gain from Ricardo's decision not to purchase Global Traders, Willi misrepresented his interest and motivation in having Ricardo not pursue the purchase of Global Traders.

13. Ricardo relied on Willi's misrepresentation to his detriment. It was reasonable for him to have done so. Willi's actions constitute a misappropriation of a corporate opportunity for his own benefit.

14. As a result of Willi's misrepresentation, Willi has been enriched and Ricardo has been deprived of the opportunity to purchase Global Traders. There is no juristic reason for Willi's enrichment to come at Ricardo's expense.

15. Ricardo values this misrepresentation and enrichment, along with the considerable time, efforts and resources expended by him in pursuing Global Traders, as comprising the balance of his claim.

Willi Refuses to Pay

16. Based on Willi's representations, Ricardo expected (and continues to expect) that Willi would personally reimburse him for all his expenses connected with the proposed purchase of Global Traders.

17. Between May and September 2009, Ricardo made reasonable and repeated attempts to discuss and resolve the outstanding payment obligation amicably with Willi.

18. By letter dated May 27, 2009, Ricardo demanded Willi repay him for the legal expenses and also sought to be paid for the considerable time, effort and resources expended by him in pursuing Global Traders.

19. Despite Ricardo's reasonable attempts and demands to collect monies owed, Willi has failed, refused or neglected to pay any portion of the outstanding money he personally assured to Ricardo. As such, Willi has wrongfully withheld a just debt owing to Ricardo.

Relevant Documents

20. Ricardo attaches the following documents to this claim for use at trial:

- (a) Invoice No. 90117 from Richler and Tari Tax Lawyers for Professional Services Rendered in relation to the Proposed Acquisition of Global Traders, dated January 31, 2009 (Tab "C")
- (b) Letter of Intent regarding the Purchase and Sale of 100% of the Outstanding Shares of Global Traders, dated February 2, 2009 (Tab "A")
- (c) Draft Share Purchase Agreement, dated February 25, 2009 (Tab "E")
- (d) Invoice No. 90411 from Richler and Tari Tax Lawyers for Professional Services Rendered in relation to the Proposed Acquisition of Global Traders, dated April 30, 2009 (Tab "D")
- (e) Letter from the Ricardo to Willi regarding the Outstanding Payments from the Proposed Acquisition of Global Traders, dated May 27, 2009 (Tab "B")

- (f) Email correspondence between Ricardo and Willi regarding the Outstanding Payments owed to Ricardo from the Proposed Acquisition of Global Traders, dated May 2, 2009 to September 15, 2009 (Tab "F")
- (g) Letter from Counsel for Ricardo to Willi regarding Outstanding Payments owed to Ricardo from the Proposed Acquisition of Global Traders, dated February 2, 2010 (Tab "G")

This is Exhibit "4" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)



May 4, 2020

SENT VIA EMAIL TO KPLUNKETT@AIRDBERLIS.COM

Christopher MacLeod,
647.346.6696 (Direct Line)
cmacleod@cambridgellp.com

Kyle B. Plunkett
Aird & Berlis LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Plunkett:

**Re: Receivership of Xela Enterprises Ltd. ("Xela")
Ontario Court File No. CV-11-9062-00CL**

In connection with the referenced receivership, and in the spirit of cooperation, we write to address what we understand are the outstanding issues. We appreciate the recent assurances concerning the Receiver's focus, and we trust that we can now advance smoothly toward looking after all of LISA's creditors and, ultimately, protecting the stakeholders.

Collection by Xela

Reports from Panama are promising concerning collection of at least part of LISA's unpaid dividends. To repeat, as you know, LISA has a final judgment in Panama requiring Villamorey to disgorge all unpaid Villamorey dividends of LISA (the "LISA Judgment"). Although the LISA Judgment does not quantify those unpaid dividends, LISA prevailed in 2019 in a Constitutional appeal that required the Court of first instance to make the calculation. Accordingly, LISA submitted the limited Villamorey financial information it had in 2019, which shows more than US\$23 million in unpaid Villamorey dividends, including interest, is due to LISA. No contradicting evidence was submitted by Villamorey.

Naturally, like everywhere else, Panama has been effected by the Coronavirus, and the courts were closed until recently. However, we are optimistic that the Court will issue its final payment order in an amount exceeding US\$23 million in relatively short order.

Separately, we understand that a new action for damages has been commenced in Panama's Court No. 6 against Villamorey, relating to the non-payment of LISA dividends. A copy of the Complaint is attached as Annex A. We hope that the Receiver is amenable to helping develop these claims and assisting in the enforcement of the anticipated LISA Judgement payment order referenced above.

BDT

This, of course, brings up the subject of BDT. As you know, BDT held a Panamanian judgment for US\$19,184,680 against LISA, stemming from an unpaid promissory note from LISA to BDT for litigation financing disbursements during the 2005-2008 timeframe. BDT also held a related judgment lien against all of LISA's assets. In its capacity as creditor, BDT had been willing to subordinate its claim to "the reasonable requirements of the receivership," which we understand signified BDT's willingness to allow the Castillo Judgment and reasonable receivership expenses to be paid out of sums received from enforcement of the LISA Judgment.

While Xela cannot speak for BDT, we understand that BDT has its own interest in satisfying the Castillo Judgment. We might suggest, therefore, as a first course of action, that the Receiver request BDT's future cooperation in connection with the LISA Judgment, as a more efficient, reliable and less costly alternative to challenging the validity of the transfer through some form of adversarial process.

Cooperation by Xela

In any event, we emphasize that Xela and Mr. Gutierrez intend to continue cooperating with the Receiver. In that regard, Mr. Gutierrez wrote to LISA on April 15, 2020, and again on April 22, 2020, formally requesting LISA's assistance with the Receiver's requests. LISA's response is attached as Annex B. Unfortunately, it may not fully address the Receiver's requests, and we are prepared to discuss next steps.¹

¹ As an aside, Annex B contains some disturbing information causing us to question the appropriateness of the Receiver's choice of counsel in Panama. Among other things, we understand that false documents were submitted to the Public Registry in Panama City in an effort to alter the corporate structure of LISA and/or Gabinvest. More recently, one of LISA's lawyers swore out an affidavit claiming that Mr. Almengor – formerly with the Mossack Fonseca law firm that featured so prominently in the Panama Papers – offered him an illicit payment to disregard the instructions of LISA's management and instead assist the Receiver's efforts to take control of LISA. Attached as Annex C is a copy of that affidavit. We are confident that the Receiver had no prior knowledge, but it now seems wholly inappropriate for the Hatstone firm to have any role in either LISA or Gabinvest. Indeed, we understand that a criminal complaint has been filed against Mr. Almengor in Panama as a consequence of these developments.

Separately, we refer to your letter dated April 3, 2020, directed to Arturo's Technical Services Ltd. ("ATS"), requesting production of any property or documents of Xela in ATS' possession. We also refer to your letter dated April 21, 2020, to Mr. Greenspan, asking for the whereabouts of the Gabinvest share register and share certificates. As these requests may be related, we address them together.

In Canada, Xela has one full storage unit of documents at a rental facility in Barrie. Separately, there are documents housed at ATS's offices in Toronto, and ATS also controls four decommissioned servers belonging to Xela at a datacenter in North York. The documents in all three of those locations are peppered with attorney/client communications and other confidential and protectable information, which must be reviewed under some satisfactory protocol before they can be delivered to the Receiver. Mr. Gutierrez does not presently know the location of the Gabinvest shares and certificates, but he believes that they are likely amongst the records in Barrie.

You have also asked for documents evidencing BDT's litigation funding to LISA. That same request was made in the garnishment case by Villamorey, in support of its assertion that BDT's judgment against LISA in Panama was fraudulent. Xela will ask LISA's counsel in the garnishment case to provide the Receiver with a full set of the documents produced in the garnishment case, subject to a suitable non-disclosure agreement. Incidentally, we note that the Court in the garnishment case concluded that, although the financial records were incomplete, Villamorey had not shown that BDT had defrauded the Court by presenting the BDT Judgment.

G&T Bank Loan to Margarita Castillo

We emphasize the importance of resolving whether Ms. Castillo in fact received LISA dividends in the form of a loan from G&T Bank in Guatemala in 2010, with which she funded the oppression action that led to the Castillo Judgment and, ultimately, to this receivership. In this regard, we would ask that the Receiver request from Ms. Castillo a copy of the loan documents, along with copies of all payment records and communications with G&T Bank. This may require Judge McEwen's involvement, and we would request the Receiver's support in that regard. We also request the Receiver's assistance to bring the issue to adjudication in Canada as soon as possible.

Housekeeping

Lastly, as matter of housekeeping, we would request that the Receiver provide Xela with two categories of information. First, we respectfully request that the Receiver produce to us a complete record of his funding sources for this receivership, showing at least the payor names, dates and amounts of payment. Second, we ask that the Receiver identify any and all communications between KSV (including its partners, associates and other personnel) and

any person acting on behalf of Villamorey and/or the Avicola Group and/or any of their affiliates regarding this receivership, and provide copies of any such communications as are in writing.

Once again, we appreciate and hope to advance the new spirit of cooperation, and we look forward to discussing these issues in the near future.

Yours very truly,

CAMBRIDGE LLP

Per:



CHRISTOPHER MACLEOD

CRM/tr

Signed Electronically on behalf of Mr. Macleod

Encl: Annex A - Complaint

cc: Via Email

Mr. Adam Slavens

Mr. Bobby Kofman

Mr. Noah Goldstein

Mr. Brian Greenspan

This is Exhibit "5" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)



SENT VIA EMAIL TO MJILESEN@LITIGATE.COM AND DKNOKE@LITIGATE.COM

November 16, 2020

Chris MacLeod
cmacleod@cambridgellp.com

Derek Knoke
Monique Jilesen
Peter Griffin
Lenczner Slaght
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Dear Counsel:

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

This letter follows our formal request on May 4, 2020, a copy of which is attached for reference. As indicated, we asked for limited but specific information from the Receiver more than seven months ago, but as of today the Receiver has not provided a single document in response to our request. Indeed, he has not so much as acknowledged our correspondence on this issue, despite his continuing pursuit of information and other items from Juan Guillermo Gutierrez and others.

We therefore renew our request for the following information:

- a) a list of all monies transferred to the Receiver for the prosecution of the Receivership, including dates, amounts and sources;
- b) copies of all communications involving the Receiver and/or its counsel, on the one hand, and Margarita Castillo and/or her counsel, on the other hand; and
- c) copies of all communications involving the Receiver and/or its counsel, on the one hand, and any representative of the majority shareholders of Villamorey and the Avicola Group, on the other hand.

As the beneficial owner of 100% of the voting shares of Xela Enterprises Ltd. ("Xela"), Mr. Gutierrez is entitled to this information. Further, in light of various events that have occurred in Panama and Guatemala since the Receiver acquired full Receivership powers in January 2020, the requested information is increasingly relevant. Accordingly, we ask that the information be supplied forthwith.

Relatedly, we respond to your letter dated October 22, 2020, wherein you ask us to explain the contention that the Receiver attempted to take control of LISA's board of directors in Panama illegally. This assertion has already been explained in Mr. Gutierrez's affidavit dated March 31, 2020 (beginning at Paragraph 31), but we repeat the substance here.

The LISA bylaws provide that an increase in the maximum allowable number of directors requires an extraordinary shareholder meeting. The Hatstone law firm submitted statements to the Corporate Registry in Panama that a valid Gabinvest meeting had occurred, but the statements were false because any such purported meeting convened by the Receiver and/or his agent in Panama required first that the Receiver domesticate his appointment Order in Panama, which never occurred. Further, even if the Receiver had domesticated his appointment Order in Panama, the Hatstone firm acted without first obtaining a power of attorney from the Receiver, which is a strict requirement in Panama. In this regard, we would appreciate some verifiable proof of the date on which the Receiver delivered its purported power of attorney to Hatstone.

Unfortunately, the Receiver's conduct through his Panamanian agent interfered with a loan commitment given to LISA in December 2019, which would have fully satisfied the Margarita Castillo judgment and given Xela grounds to move for dissolution of the Receivership. Therefore, the Receiver's conduct had the effect of extending the receivership unnecessarily, such that all costs incurred in 2020 could have been avoided. Additionally, the information we have requested above will assist us in evaluating whether the Receiver's actions have been proper thus far.

Separately, as you know, we requested a longer deadline for Mr. Gutierrez to produce his personal devices for imaging in light of the discovery of a cancerous tumor in his 96-year-old mother-in-law ("Mrs. Johannessen), who lives in Guatemala. We informed you before the Court's Order dated October 27, 2020 was issued that Mrs. Johannessen had been scheduled for emergency surgery, that Mr. Gutierrez and his wife would be traveling to Guatemala to be with her, and that their itinerary called for their return in advance of the production deadline.

Regrettably, Mrs. Johannessen suffered complications from the original surgery, and has since been sedated two additional times for follow-up procedures. She is now battling infection, as well as collapsed lungs, and has been placed on a ventilator in the hospital intensive care unit. These facts are confirmed in correspondence from Mrs. Johannessen's doctor, a copy of which is attached. In anticipation of these possibilities, we included language in the production order that contemplated an extension of the production deadline, either by agreement or court order. We therefore request that you agree to such an extension until the day after Mr. Gutierrez returns from Guatemala, which would occur as soon as a flight is available following either Mrs.

Johannessen's release from the hospital or her funeral, if such were the unfortunate circumstance. We would agree, of course, to provide verifiable updates on reasonable intervals. Kindly give us your response, forthwith.

Thank you in advance for your attention to these issues.

Yours very truly,

CAMBRIDGE LLP

Per:

A handwritten signature in black ink, appearing to be 'CM' followed by a stylized flourish.

CHRIS MACLEOD

CRM/jk

Signed electronically on behalf of Chris MacLeod

Enclosure: Letter from Chris Macleod to Receiver's counsel dated May 4, 2020

This is Exhibit "6" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

November 24, 2020

Monique Jilesen
Direct line: 416-865-2926
Direct fax: 416-865-2851
Email: mjilesen@litigate.com

Via Email

Christopher MacLeod and Joan Kasozi
Cambridge LLP
333 Adelaide St. West, Suite 400
Toronto, ON M5V 1R5

Dear Counsel:

RE: Gabinvest and LISA
Our File No.: 52463
Court File No.: CV-11-9062-00CL

I write in response to your correspondence dated November 16, 2020.

Funding of the Receivership

As you know, the Receiver was appointed pursuant to the Order dated July 5, 2019 (the "Appointment Order"). Margarita Castillo was the Applicant on the Application.

As set out in the Receiver's Reports:

Funding for these proceedings has been provided by Margarita pursuant to Receiver Certificates. There is presently no source of liquidity in the Company to fund the costs of these proceedings.

It remains the case that funding for these proceedings is being provided by Margarita pursuant to the Receiver's Certificates.

Pursuant to Orders of the Court dated October 29, 2019 and March 24, 2020, the Receiver's fees and disbursements were approved from the commencement of the proceedings to December 31, 2019. In accordance with its obligations to the Court, the Receiver will continue to disclose its accounts and seek approval in accordance with the Appointment Order.

Receiver's Communications

The Receiver is an officer of the Court with the powers and obligations set out in the Appointment Order. The Receiver has had many communications with various parties, including your client in order to carry out its obligations. It is neither necessary nor appropriate for the Receiver to report to any individual stakeholder about its communications or investigations. The Receiver has and will report to the Court as appropriate.

LISA'S Board of Directors

The Receiver has always acted within its legal rights in its efforts to take control of LISA's board of directors in Panama. The Receiver has repeatedly outlined its efforts, which were legal and made in good faith, to exercise Xela's shareholder rights over its subsidiaries in Panama.

The evidence continues to build that Juan Guillermo has effective control over these subsidiaries. For example, on November 11, 2020, Harald Johannessen Hals (Board Member of LISA) sent an email to U.S. counsel to LISA, Cambridge, Juan Guillermo and the Receiver (enclosed). The correspondence suggests that Mr. Hals is working in concert with Juan Guillermo. Mr. Hals continues to take steps to inhibit the Receiver's ability to exercise Xela's rights over its subsidiaries. Given the apparent cooperation between Juan Guillermo and Mr. Hals, Mr. Guillermo should direct Mr. Hals to cooperate with the Receiver's efforts.

Alleged Loan Commitment to LISA

Your letter continues to allege that there was a loan commitment to LISA in December, 2019. This question was addressed at length in the Receiver's Second Report. As set out in that report, insufficient information was provided by Cambridge and LISA about the alleged loan. The Court required that the Receiver be provided with all of the details concerning this purported loan. None were provided.

The Receiver will no longer respond to these repeated, frivolous and unsubstantiated allegations relating to LISA's Board of Directors or the alleged loan to LISA.

Juan Guillermo's Required Cooperation with the Receiver

The Receiver continues to seek and require Juan Guillermo's genuine cooperation with the Receiver.

Juan Guillermo's cooperation would be of assistance with respect to all of the issues outlined above. His failure to cooperate and his continued allegations against the Receiver have hindered the advancement of the Receivership.

In accordance with his obligations to cooperate, Juan Guillermo should:

- i. provide the Receiver with assistance in appointing representatives to the Boards of directors of Gabinvest and LISA;
- ii. provide all the information within Juan Guillermo's knowledge, information and belief about the alleged loan commitment to LISA; and
- iii. provide all the information within Juan Guillermo's knowledge, information and belief about the Reviewable Transactions.

October 27, 2020 Production Order

We acknowledge receipt of the explanations that you have provided for Juan Guillermo's failure to comply with the October 27, 2020 Order. We look forward to an update as to when Juan Guillermo will comply with the Order. If the Order is complied with promptly, there may be no need to further address this issue. In the meantime, the Receiver does not consent to an open-ended extension of the deadline.

Yours truly,



Monique Jilesen

MJ

Enclosure

- c. Bobby Kofman
Noah Goldstein
Peter Griffin
Derek Knoke

This is Exhibit "7" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

CFN: 20170113650 BOOK: 30437 PAGE: 3353
 DATE: 02/28/2017 03:13:31 PM
 HARVEY RUBIN, CLERK OF SUPERIOR COURT, MIAMI, FL

AUTO Nº 958 Exp. 31538-12

17-04616 CA 1

JUZGADO DUODÉCIMO DE CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO JUDICIAL DE PANAMÁ. Panamá, treinta y uno (31) de mayo de dos mil doce (2012).

V I S T O S :

BDT INVESTMENTS, INC. mediante apoderada judicial, LICDA. ANA LAURA OVALLE HORNÁ, ha presentado demanda ejecutiva en contra de LISA, S.A. para que se le haga efectivo el pago de B/. 16,685,000.00, que es demandado adeudado en concepto de capital e intereses, más las costas y gastos que genere el proceso.

Como los documentos que acompañan la demanda, consultable a fojas 13-16, prestan mérito ejecutivo al tenor del artículo 1613 numeral 11 del Código Judicial, procede librar el mandamiento correspondiente.

En mérito de lo expuesto, el suscrito, JUEZ DUODÉCIMO DE CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO JUDICIAL DE PANAMÁ, administrando justicia en nombre de la República y por autoridad de la Ley, LIBRA MANDAMIENTO DE PAGO POR LA VÍA EJECUTIVA, a favor de BDT INVESTMENTS, INC. y en contra de LISA, S.A. hasta la concurrencia de DIECINUEVE MILLONES CIENTO OCHENTA Y CUATRO MIL SEISCIENTOS OCHENTA BALBOAS CON 00/100 (B/. 19,184,680.00), que comprende:

CAPITAL.....	B/. 16,685,000.00
COSTAS.....	B/. 2,499,680.00
GASTOS.....	B/. 30.00
TOTAL.....	B/. 19,184,680.00

Se le advierte al demandado que deberá comparecer al Tribunal dentro de dos (2) días siguientes a la notificación para denunciar bienes o para el pago que la falta de denuncia de bienes será sancionada como desacato y, que las manifestaciones falsas darán lugar a la responsabilidad penal correspondiente, para lo cual el juez, enviará copia de la actuación al respectivo agente del Ministerio Público.

Tengase a la LICDA. ANA LAURA OVALLE HORNÁ, como apoderada judicial, de la parte actora en los términos del poder conferido.

FUNDAMENTO DE DESACATO: Artículos 1613 y 1622 del Código Judicial.

NOTIFÍQUESE.

EL JUEZ,

LICDO. JUAN CARLOS TATIS.

CPN 2017010350 RECIBO DE RECIBO PAGE 3854

En la Ciudad de Panamá, a las 3:17 de la tarde
18 de JUNIO
2017
 LIC. ALBA LAURA OVALLE ^{fuera de} HOVA
FOJA 40

En la Ciudad de Panamá, a las 9:00 de la mañana
13 de septiembre
2017
 Señor Lidia Jara Lorenz Boulet Batista
 X T. Antigua
[Signature] Secretaria

CFR 20170113650 EOCR 10437 PAGE 3355

AUTO No. 1838

(Exp. 31638-12)

JUZGADO DUODÉCIMO DEL CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO
JUDICIAL DE PANAMÁ, Panamá, doce (12) de diciembre de dos mil dos mil

VISTOS:

En atención a lo solicitado por el demandante, se procede a resolver en la forma prevista en nuestro Código Judicial.

En consecuencia, el suscrito JUEZ DUODÉCIMO DEL CIRCUITO DE LO CIVIL DEL PRIMER CIRCUITO JUDICIAL DE PANAMÁ, DECRETA EMBARGO a favor de BOT INVESTMENTS INC. y en contra de LISA, S.A., hasta la concurrencia de DIECINUEVE MILLONES CIENTO OCHENTA Y CUATRO MIL SEISCIENTOS OCHENTA BALBOAS CON 00/100 (B/. 19,184,680.00) sobre lo siguiente:

1. Las acciones emitidas a favor de la sociedad LISA, S.A., inscrita a ficha 117512, folio 11750, imagen 0186, cuyo presidente y representante legal es el señor CALVIN KENNETH SHIELDS, varón estadounidense, casado mayor de edad, ingeniero, portador del pasaporte N° 158157083, con domicilio en N° 1176 Carolina Circle SW, Vero Beach, Florida, Estados Unidos de América en las siguientes sociedades:
 - a. ALIMENTOS PARA ANIMALES, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 572, folio 81, libro 3 de Sociedades Mercantiles, cuyo Gerente General y representante legal es el señor JULIO CESAR RIVERA PELAEZ, ambos con oficina en 42, calle 20-91 Zona 12, ciudad de Guatemala. De esta sociedad LISA, S.A., es la propietaria de 45,000 acciones, según consta en el Certificado de Acciones N° 1.
 - b. AVICOLA LAS MARAGARITAS, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 24735, folio 435, libro 103 de Sociedades Mercantiles, cuyo Gerente General y representante legal es el señor GUILLERMO ANTONIO RAMIREZ MORALES, ambos con oficinas en Calz. Aguilar Batres 50-52, Colonia Castaños, Zona 11, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 375 acciones, según consta en el Certificado de Acciones N° 3.
 - c. ADMINISTRADORA DE RESTAURANTES, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 27764, folio 242, libro 12 de Sociedades Mercantiles, cuyo Gerente General y Representante Legal es el señor CARLOS RENE GUZMAN, ambos con oficinas en 24 avenida, 34-05, zona 12.

CFN 20170113536 BOOK 30437 PAGE 305

señor MARCO ANTONIO SANCHEZ CASTANEDAS, ambos con oficinas en 46, calle 21-89, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 12 acciones según consta en el Certificado de Acciones, N° 3. e. IMPORTADORA DE ALIMENTOS DE GUATEMALA, S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 34065, folio 185, libro 121 de sociedades Mercantiles, cuyo Gerente General y Representante Legal lo es el señor CARLOS RENE GUZMAN, ambos con oficinas en 24 avenida, 34-05, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 12 acciones según consta en el Certificado N° 3.

f. INDUSTRIA FORRAJERA DE MAZATENANGO S.A., sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 13585, folio 460, libro 69 de Sociedades Mercantiles, cuyo Gerente General y Representante Legal lo es el señor SERGIO BOSCO PIO SEVILLA NOGUERA, ambos con domicilio en Calz. Aguilar Batres 50-52, Colonia Castañas, zona 11. De esta sociedad LISA, S.A., es propietaria de 125 acciones según consta en el Certificado N° 3.

g. INVERSIONES EMPRESARIALES, S.A. sociedad constituida de acuerdo a las leyes de Guatemala e inscrita a número 10772, folio 30, libro 69 de sociedades Mercantiles, cuyo Gerente General y Representante legal lo es el señor GUILLERMO ANTONIO RAMIREZ MORALES, ambos con domicilio en 42, calle 20-9*, zona 12, Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 125 acciones según consta en el Certificado N° 3.

h. MULLANOREY, S.A., sociedad constituida de acuerdo a las leyes de la República de Panamá, inscrita a ficha 9142 folio 367 Imagen 303 de la Sección de Micropelículas Mercantil del Registro Público, cuyo presidente y representante legal lo es el señor JUAN LLUIS BOSCH GUTIERREZ, ambos con oficinas ubicadas en el Edificio Empresarial Torre I, quinta avenida, 15-45, zona 10, de la Ciudad de Guatemala. De esta sociedad LISA, S.A., es propietaria de 3,333 acciones según consta en el Certificado N° 1.

2. Sobre las sumas de dinero que en concepto de dividendos declarados tenga derecho a recibir la sociedad LISA, S.A., incluyendo los que a la fecha se hayan generado y no han sido entregados y los que se sigan generando hasta la concurrencia de la adeudado, en su condición de accionista en las mencionadas sociedades.
3. Cualquier suma de dinero, derechos o créditos que resulten a favor de la sociedad.

ID# 20170113540 BLOCK 00001 PAGE 0052 of 5

4. Los dineros de propiedad LISA, S.A. que mantiene la sociedad VILLAMOREY, S.A., en depósito en sus cuentas de banco GTC BANK INC.
5. Las sumas de dinero propiedad de LISA, S.A., que mantiene la sociedad VILLAMOREY, S.A., y que son objeto de medida de secuestro de bienes, mediante Auto N° 1624-08 del 27 de octubre de 2008, dictado dentro de la demanda de reconversión del Proceso Ordinario de Mayor Cuantía con Acción de Secuestro que promueve LISA, S.A., contra VILLAMOREY, S.A., el cual se lleva a cabo ante los estrados del Juzgado Undécimo de Circuito Civil, del Primer Circuito Judicial de Panamá, registrado bajo el número de demanda 556-09 y acción de secuestro número 7081-08.
6. Las sumas de dinero que mantenga la sociedad LISA, S.A., en los bancos de la localidad.

Comuníquese lo resuelto a quien corresponda para los fines legales correspondientes.

Fundamento de Derecho Artículo 1843 del Código Judicial

NOTIFIQUESE.

EL JUEZ.

LICDO. JUAN CARLOS TATIS

LICDA. ANA M. GALLARDO H.
SECRETARIA

109

CEN 20170113602 BOOK 30427 PAGE 1370

CERTIFICO QUE PARA NOTIFICAR A LAS PARTES LA
RESOLUCION DE FOLIO 13 DE LA COMISION EDICTO N° 1682

EN LUGAR DEL KIO DE LA SECRETARIA NOY 13...

DE DIÉCEMBRE DEL AÑO 2012

A LAS 4:00 DE LA TARDE


El Secretario

CFN 20170113560 BOOK 35437 PAGE 3009



REPÚBLICA DE PANAMÁ

APOSTILLE

Convención De La Haya du 5 de octubre del 1961

17-04616 CA15

1. País: Panamá

El presente documento público:

2. Ha sido firmado por: Licenciada Ana Gallardo

3. Quien actúa en calidad de: Secretaria Judicial

4. Y está revestido de sello/timbre del Juzgado Duodécimo de Circuito de lo Civil del Poder

Judicial de Panamá.

5. En Panamá

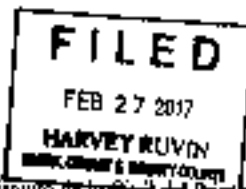
6. El día siete (7) de febrero de 2017

7. Por la Licenciada YANIXSA Y. YUEN, Secretaria General de la Corte Suprema de Justicia de la República de Panamá.

8. Bajo el número: 0074

9. Sello/Timbre

10. Firma

CFN 2617013693 BDOJN 30437 PAGE 3363

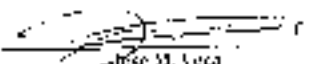


Certified Translations to the Court Register

CERTIFICATE OF ACCURACY

T7-04616 CA15

I, Jose M. Vega, a Federally Certified Court Interpreter, ID#777901, certified by the Court Interpreter Certification Board of The Supreme Court of the State of Florida, Certification No. 10-129 SPA, fully versed in the Spanish and English languages, under oath, HEREBY CERTIFY that the attached documents - Order dated May 24, 2012 and Writ of Attachment dated December 12, 2012, both against LISA, S.A., are true and accurate translations of the original documents to the best of my knowledge and ability.


Jose M. Vega
1-800-537-3047
LegalTranslations.us



State of Florida

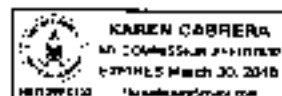
County of Miami-Dade

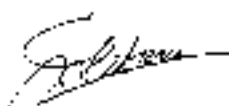
Personally appeared before me, José M. VegaWho having been duly sworn, stated before me this 26 day of January, 2017.

Personally Known

☒ Produced IdentificationType and # of ID: 2-2, 2A

(Seal)




(Signature of Notary)

Karen Cabrera
(Printed name of Notary)
Notary Public, State of Florida



1-800-537-3047

M.F. Paper Street, Suite 401, Miami, FL 33131 info@legaltranslations.us www.legaltranslations.us

 MEMBER
NAJIT

GFN 20170113590 BOOK 30437 PAGE 3351

File No 958 Case 3:1638-12
 12TH CIVIL COURT OF PANAMA'S FIRST JUDICIAL CIRCUIT
 Panama, May 31, 2012

(Illegible signature)
 Republic of Panama
 12 Civil Court (Reg 1)
 (Illegible text)
 Judicial Circuit

WHEREAS:

BOT INVESTMENTS, Inc., through its legal representative, ATTORNEY ANA LAURA OVALLÉ HORNA, has filed for execution on a judgment or enforceable right against LISA S.A. for payment of B/.16,685.000 that the defendant owes on capital and interests, plus collection costs and expenses.

Given the supporting documents of the claim, available on pages 13-16, are enforceable pursuant to Article 1613 Section 11 of the Judicial Code, issuance of the order in aid of execution is admissible.

By virtue of the aforesaid, the undersigned, JUDGE OF THE 12TH CIVIL COURT OF PANAMA'S FIRST JUDICIAL CIRCUIT administering justice on behalf of the Republic and by the authority vested in me by law, IN AID OF EXECUTION HEREBY ORDER LISA, S.A. to pay BOT INVESTMENTS, INC. up to the full satisfaction of B/. 19,184,680.00, which includes:

Capital	B/. 16,685,000.00
Costs	B/. 2,499,680.00
Expenses	B/. 30.00
Total	B/. 19,184,680.00

The debtor is advised to appear before the Court within two days after notice to pay or report assets. It is further advised that a failure to provide this asset disclosure will be considered as contempt of court and that any false statements will result in penal liability for which the Judge will send copy of the facts to the appropriate government prosecutors.

ATTORNEY ANA LAURA OVALLÉ HORNA is the legal representative of the claimant pursuant to the letter of representation.

LEGAL BASIS: Articles 1613 and 1622 of the Judicial Code

LET IT BE NOTIFIED
 THE JUDGE (Illegible signature)
 HON. JUAN CARLOS TATIS

(Illegible signature)
 ATTORNEY ANA GALLARDO
 CLERK



CFn 20170113680 BOOK 30437 PAGE 1362

(Rubber-stamped seal)
In the city of (illegible), 3:17 PM
(illegible) June 18, 2012
Atty Ana Luisa Oralle Horta
was notified
(illegible) Page 00
Clerk

(Rubber stamped seal)
In the City of Panama, at 9:00 AM
Of September 13, 2012
Tania Lorena Boulet Batista Esq.
[illegible signature]
was notified.
[illegible signature]
Clerk



CFN 20170113750 BOOK 20421 PAGE 2851

File No. LB35

[Case 3168B-12]

12TH CIVIL COURT OF PANAMA'S FIRST JUDICIAL CIRCUIT
Panama, December 12, 2012[Notarized and
Recorded in [File]
to [Court/City]
[Date and
Judge's Office]

WHEREAS

Given the claimant's request, it is thus resolved in accordance with our Judicial Code,

Hence, the undersigned JUDGE OF THE 12TH CIVIL COURT OF PANAMA'S FIRST JUDICIAL CIRCUIT,
ISSUES THIS WRIT OF ATTACHMENT against USA, S.A., in favor of RDT INVESTMENTS, Inc. up to the full
satisfaction of B/. 19,184,680, on the following:

1. Shares issued to USA, S.A., registered under file 127512, full 11750, image 0186, whose
president and legal representative is Mr. CALVIN KENNETH SMITH, male, American, married,
of legal age, engineer, bearer of passport No. 58157083, domiciled at No. 1176, Carolina Circle
SW, Vero Beach, Florida, US of these companies:
 - a) ALIMENTOS PARA ANIMALES, S.A., company incorporated under the laws of Guatemala
and registered under number 572, page 81, book 3 of Commercial Companies, whose
General Manager and legal representative is Mr. JUAN CESAR RIVERA PELAEZ, both with
office at 42, W/ 20-91, Zone 12, Guatemala City, USA, S.A. owns 85,000 shares in this
company pursuant to Share Certificate No. 1
 - b) AVICOLA LAS MARAGRITAS, S.A., company incorporated under the laws of Guatemala
and registered under number 74735, page 435, book 103 of Commercial Companies,
whose General Manager and legal representative is Mr. GUILLERMO ANTONIO RAMIREZ
MORALES, both with offices at Calle Aguilar Batres 50-52, Colonia Castaños, Zone 11,
Guatemala City, USA, S.A. owns 375 shares in the company pursuant to Share Certificate
No. 3.
 - c) ADMINISTRADORA DE RESTAURANTES, S.A. company incorporated under the laws of
Guatemala and registered under number 27794, page 242, book 112 of Commercial



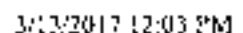
CFN: 20170113690 BOOK: 30437 PAGE 1164

- Companies, whose General Manager and legal representative is Mr. CARLOS RENE GUZMAN, both with offices at 24 Ave., 34-05, zone 12, Guatemala City, USA, S.A. owns 12 shares in this company pursuant to Share Certificate No.3.
- d) COMPAÑIA ALIMENTICIA DE CENTROAMERICA, S.A., company incorporated under the laws of Guatemala and registered under number 34068, page 198, book 121 of Commercial Companies, whose General Manager and legal representative is Mr. MARCO ANTONIO SANCHEZ CASTANEDA, both with offices at 46, C/ 21 89, zone 12, Guatemala City, USA, S.A. owns 12 shares in this company pursuant to Share Certificate No.3.
- e) IMPORTADORA DE ALIMENTOS DE GUATEMALA, S.A., company incorporated under the laws of Guatemala and registered under number 34065, page 195, book 121 of Commercial Companies, whose General Manager and legal representative is Mr. CARLOS RENE GUZMAN, both with offices at 24 Ave., 34-05, zone 12, Guatemala City, USA, S.A. owns 12 shares in this company pursuant to Share Certificate No.3.
- f) INDUSTRIA CHOCOLATERA DE MAZATENANGO, S.A., company incorporated under the laws of Guatemala and registered under number 33585, page 480, book 68 of Commercial Companies, whose General Manager and legal representative is Mr. SERGIO BOSCO PIO SEVILLA NUÑEZ, both domiciled at Calle Aguilar Batres 50-52, Colonia Castaños, zone 11, USA, S.A. owns 125 shares in this company pursuant to Share Certificate No.3.
- g) INVERSIONES EMPRESARIALES, S.A., company incorporated under the laws of Guatemala and registered under number 30772, page 30, book 59 of Commercial Companies, whose General Manager and legal representative is Mr. GUILLERMO ANTONIO RAMIREZ MORALES, both domiciled at 42, C/ 20 91, zone 12, Guatemala City, USA, S.A. owns 125 shares in this company pursuant to Share Certificate No.5.



2. Any declared dividends LISA, S.A. has the right to receive as shareholder of said companies, including those generated so far and not yet paid to it and those generated until the point of total satisfaction of the debt.
3. Any injuries, rights or credits in favor of LISA, S.A. within the Civil Court Case and Liens imposed on the case filed by LISA, S.A. against VILAMOREY, S.A. being heard at the 11th Civil Court of the First Judicial Circuit of Panama, registered under claim 556-99 and writ of attachment number 7083-08.
4. The monies belonging to LISA, S.A. held by VILAMOREY, S.A., deposited in its accounts at BFC Banking.
5. The monies belonging to LISA, S.A. held by VILAMOREY, S.A., subject to writ of attachment No. 1628-08 of October 23, 2008. Issued in the counterclaim of the Civil Court Case and Liens imposed on the case filed by LISA, S.A. against VILAMOREY, S.A. being heard at the 11th Civil Court of the First Judicial Circuit of Panama, registered under claim 556-99 and writ of attachment number 7083-08.
6. The money LISA, S.A. keeps in local banks

||negtler djgubnab||



Clerk 2017/01/12 PM 12:03:00 (Page) 1/188

HON. JUAN CARLOS TATIS

[Illegible signature]
ATTORNEY ANA M. GALLARDO H
CLERK

[Rubber-stamped seal]

IT IS HEREBY CERTIFIED THAT THE PRECEDING RESOLUTION
WAS NOTIFIED TO ALL PARTIES BY MEANS OF PUBLICATION
OF PROCLAMATION NO. 1687 AT A PUBLIC PLACE IN THE
CLERK'S OFFICE, TODAY DECEMBER 12, 2017 AT 4:00 PM

[Illegible signature]

Clerk



This is Exhibit "8" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

PROMISSORY NOTE


Borrower: Gadais Limited, a corporation incorporated under the laws of Cyprus
Lender: Xela Enterprises Limited, a corporation incorporated under the laws of the Province of Ontario, Canada
Maturity Date: April 2, 2013
Principal Amount CAD \$400,000.00

1. FOR VALUE RECEIVED, the Borrower promises to pay to the Lender at Suite 1200, 2225 Sheppard Avenue East, Toronto, Ontario or at such other address as may be provided in writing by the Lender to the Borrower, the principal sum of four hundred thousand Canadian dollars (\$400,000.00 CAD), without interest payable on the unpaid principal except after the Maturity Date after which interest will accrue on any unpaid amounts at the prime rate of interest charged by the Canadian Imperial Bank of Commerce plus 3% per annum.
2. This Promissory Note will be repaid in full on the Maturity Date.
3. The Borrower may prepay amounts then owing under this Promissory Note to the Lender, without further bonus or penalty.
4. This Promissory Note will be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable in such province. This Promissory Note may not be assigned by the Borrower or the Lender without the prior written consent of the other party.
5. All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Lender in enforcing this Promissory Note as a result of any default by the Borrower, will be added to the principal then outstanding and will be paid immediately by the Borrower to the Lender.
6. This Promissory Note will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Borrower and the Lender. The Borrower waives presentment for payment, notice of non-payment, protest and notice of protest.

IN WITNESS WHEREOF the undersigned has duly affixed its signature under seal on this 2nd day of April, 2008.

GADAIS LIMITED

by


 Ricardo Castillo
 President

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the "Agreement")
made and entered into this 2nd day of April, 2008 (the "Execution Date"),

BETWEEN:

XELA ENTERPRISES LIMITED,
a corporation incorporated under the laws of
the Province of Ontario,

(hereinafter referred to as the "Seller"),

- and -

GADAIS LIMITED,
a corporation formed under the laws of
Cyprus,

(hereinafter referred to as the "Purchaser"),

WHEREAS

A. The Seller is the owner of 86.6% of the issued and outstanding shares (all such issued and outstanding shares being collectively referred to as the "Shares") of Digalia LLC, located at 80 Leningradsky Prospekt, Corpus 5, Moscow, 125190, Russia (the "Corporation"), which carries on the business of a real estate management company in the country of Russia and is incorporated under the laws of Russia.

B. The Seller desires to sell 86.6% of the Shares to the Purchaser, and the Purchaser desires to buy 86.6% of the Shares.

IN CONSIDERATION of the provisions contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. Definitions

The following definitions apply in the Agreement:

"Closing" means the completion of the purchase and sale of 86.6% of the Shares as described in this Agreement by the payment by the Purchaser to the Seller of the

purchase price, and the transfer of title to 86.6% of the Shares from the Seller to the Purchaser.

"Parties" means both the Seller and the Purchaser and "Party" means any one of them.

2. Sale

Subject to the terms and conditions of this Agreement, and in reliance on the representations, warranties and conditions set out in this Agreement, the Seller agrees to sell 86.6% of the Shares to the Purchaser, and the Purchaser agrees to purchase 86.6% of the Shares from the Seller.

3. Purchase Price

The price to be paid by the Purchaser to the Seller for 86.6% of the Shares (which will provide the Purchaser with a 86.6% participation share in the Charter Capital of the Corporation) will be \$400,000.00 CAD (the "Purchase Price").

The Parties agree to co-operate in the filing of all necessary elections under the Income Tax Act (Canada) and under any other applicable taxation legislation, in order to give the required or desired effect to the allocation of the Purchase Price.

4. Payment

The Purchase Price for the Shares will be paid by the Purchaser to the Seller by the execution and delivery by the Purchaser of a promissory note (the "Promissory Note") in the amount of the Purchase Price, made by the Purchaser in favour of the Seller. The Promissory Note will be in the form attached as Schedule A.

The Purchaser is responsible for paying all applicable taxes, including federal sales tax, provincial sales tax, duties, and any other taxes or charges payable to give effect to the transfer of 86.6% of the Shares by the Seller to the Purchaser.

5. Closing

The closing of the purchase and sale of the Shares (the "Closing") will take place on April 2, 2008 (the "Closing Date") at the offices of Davies Ward Phillips & Vineberg LLP, 44th Floor, 1st Canadian Place, Toronto, Ontario or at such other time and place as the Parties may mutually agree.

At Closing and upon the Purchaser paying the Purchase Price in full to the Seller by the execution of and delivery to the Purchaser of the Promissory Note, the Seller will:

- (a) provide the Purchaser with duly executed forms and documents evidencing transfer of signing authority and control of the bank accounts of the Corporation in accordance with the instructions of the Purchaser;

- (b) provide the Purchaser with duly executed transfers for the 86.6% of the Shares being transferred by the Seller to the Purchaser;
- (c) deliver to the Purchaser endorsed share certificates representing 86.6% of the Shares; and
- (d) take all steps necessary for the Corporation to enter the Purchaser, or its nominee, on the books of the Corporation, as the holder of 86.6% of the Shares.

6. **Seller's Representations and Warranties**

The Seller represents and warrants to the Purchaser the following (and acknowledges that the Purchaser is relying upon such representations and warranties):

- (a) The Seller is the absolute beneficial owner of the 86.6% of the Shares that are being sold by it to the Purchaser, free and clear of any liens, security interests, charges, encumbrances or rights of others, and is exclusively entitled to dispose of such Shares.
- (b) The Seller is a corporation duly incorporated or continued, validly existing, and in good standing under the laws of the Province of Ontario and has all requisite power and authority to carry on its business as currently conducted.
- (c) The Seller has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement, and this transaction have been duly authorized by all necessary corporate action on the part of the Seller and the Corporation.
- (d) There has been no act or omission by the Seller that would give rise to any valid claim against the Purchaser or the 86.6% of the Shares being sold by the Seller to the Purchaser relating to a brokerage commission, finder's fee, or other similar payment.
- (e) The Seller is a resident of Canada for the purposes of the Income Tax Act (Canada).
- (f) This Agreement has been duly executed by the Seller and constitutes a legal and binding obligation of the Seller, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy and insolvency, by other laws affecting the rights of creditors generally, and by equitable remedies granted by a court of competent jurisdiction.

The representations and warranties given in this Agreement are the only representations and warranties; no other representation or warranty, either express or implied, has been given by the Seller to the Purchaser.

The Seller warrants to the Purchaser that each of the representations and warranties made by it will also be accurate and not misleading at the Closing Date. The Seller acknowledges that the Purchaser is entering into this Agreement in reliance on each warranty and representation.

Except for the representation and warranty contained in paragraph 6(a), which representation and warranty shall survive forever, the Seller's representations and warranties will survive the Closing Date of this Agreement for a period of five years, after which time, if no claim has been made by the Purchaser against the Seller regarding the breach or inaccuracy of a representation or warranty, the Seller will have no further liability with regard to any of the representations or warranties given in this Agreement.

7. **Purchaser's Representations and Warranties**

The Purchaser represents and warrants to the Seller the following (and acknowledges that the Seller is relying on such representations and warranties):

- (a) The Purchaser is a corporation duly incorporated or continued, validly existing, and in good standing under the laws of Cyprus and has all requisite authority to carry on its business as currently conducted.
- (b) The Purchaser has all necessary corporate power, authority and capacity to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement, and this transaction has been duly authorized by all necessary corporate action on the part of the Purchaser.
- (c) The Purchaser has not incurred any obligation, commitment, restriction, or liability of any kind, absolute or contingent, present or future, which would adversely affect its ability to perform its obligations under this Agreement.
- (d) The Purchaser has not committed any act or omission that would give rise to any valid claim against the Seller relating to a brokerage commission, finder's fee, or other similar payment.
- (e) The Purchaser is not a resident of Canada for the purposes of the Income Tax Act (Canada).
- (f) This Agreement has been duly executed by the Purchaser and constitutes a legal and binding obligation of the Purchaser, enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy and insolvency, by other laws affecting the rights of creditors generally, and by equitable remedies granted by a court of competent jurisdiction.

The representations and warranties given in this Agreement are the only representations and warranties; the Purchaser has given no other representation or warranty, either express or implied, to the Seller.

The Purchaser warrants to the Seller that each of the representations and warranties made by the Purchaser will be accurate and not misleading at the date of Closing. The Purchaser acknowledges that the Seller is entering into this Agreement in reliance on each warranty and representation.

The Purchaser's representations and warranties will survive Closing, after which time, if no claim has been made by the Seller against the Purchaser regarding the breach or inaccuracy of a representation or warranty, the Purchaser will have no further liability with regard to any of the representations or warranties given in this Agreement.

8. Conditions Precedent to Seller's Obligations

The obligation of the Seller to complete the sale of 86.6% of the Shares to the Purchaser under this Agreement is subject to the satisfaction of the following conditions precedent by the Purchaser, on or before the Closing Date, each of which is acknowledged to be for the exclusive benefit of the Seller and may be waived by the Seller entirely or in part:

- (a) All of the representations and warranties made by the Purchaser in this Agreement will be true and accurate in all material respects on the Closing Date.
- (b) The Purchaser will obtain or complete all forms, documents, consents, approvals, registrations, declarations, orders, or authorizations of any person or any governmental or public body, required of the Purchaser in connection with the execution of this Agreement and the completion of the transaction set out in this Agreement.
- (c) The Purchaser will execute and deliver the Promissory Note to the Seller.

9. Conditions Precedent to Purchaser's Obligations

The obligation of the Purchaser to complete the purchase of 86.6% of the Shares under this Agreement is subject to the satisfaction of the following conditions precedent by the Seller, on or before the Closing Date, each of which is acknowledged to be for the exclusive benefit of the Purchaser and may be waived by the Purchaser entirely or in part:

- (a) All of the representations and warranties made by the Seller in this Agreement will be true and accurate in all material respects on the Closing Date.
- (b) The Seller will obtain and complete all forms, documents, consents, approvals, registrations, declarations, orders, or authorizations of any person or governmental or public body that are required of the Seller for the proper execution of this Agreement and the completion of the transaction set out in this Agreement.

- (c) The Seller will have executed all documentation necessary to transfer the shares to the Purchaser.

10. Notices

Any notices or deliveries required in the performance of this Agreement will be deemed completed when couriered by internationally recognized courier to the recipient Party at the addresses set out below or as any such Party may later designate in writing:

Seller:

Xela Enterprises Limited
Suite 1200
2225 Sheppard Avenue East
North York, ON M2J 5C2

Attention: Juan Gutierrez

Purchaser:

Gadais Limited
c/o Totalserve Management Ltd.
P.O. Box 54425
3724 Limassol
Cyprus

Attention: Ricardo Castillo

11. Expenses/Costs

Each of the Parties agrees to pay all its own costs and expenses in connection with this Agreement.

12. Distributions

It is agreed that Digalta LLC will not make any dividend payments or other distributions on the Shares prior to the Closing, thus ensuring that all cash currently held by Digalta LLC will remain with Digalta LLC to the time of Closing and will thus be to the Purchaser's benefit.

Any rights to vote attached to the 86.6% of the Shares being sold by the Seller to the Purchaser will belong to the Seller before the Closing and will belong to the Purchaser after the Closing.

13. Mediation and Arbitration

In the event a dispute arises out of or in connection with this Agreement, the Parties will attempt to resolve the dispute through friendly consultation.

If the dispute is not resolved within a reasonable period then any or all outstanding issues may be submitted to mediation. If mediation is not successful in resolving the entire dispute or is unavailable, any outstanding issues will be submitted to final and binding arbitration in Toronto, Ontario in accordance with the laws of the Province of Ontario. The arbitrator's award will be final, and judgment may be entered upon it by any court having jurisdiction within the Province of Ontario.

14. Severability

The Parties acknowledge that this Agreement is reasonable, valid, and enforceable; however, if any part of this Agreement is held by a court of competent jurisdiction to be invalid, it is the intent of the Parties that such provision be reduced in scope only to the extent deemed necessary to render the provision reasonable and enforceable and the remainder of the provisions of this Agreement will in no way be affected or invalidated as a result.

15. Governing Law

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable within that province.

16. General Provisions

This Agreement contains the entire agreement between the Parties. Statements or representations which may have been made by any Party to this Agreement in the negotiation stages of this Agreement may in some way be inconsistent with this final written Agreement. All such statements are declared to be of no value to either Party. Only the written terms of this Agreement will bind the Parties.

This Agreement may only be amended or modified by a written instrument executed by all of the Parties.

A waiver by one Party of any right or benefit provided in this Agreement does not infer or permit a further waiver of that right or benefit, nor does it infer or permit a waiver of any other right or benefit provided in this Agreement.

This Agreement will not be assigned either in whole or in part by any Party without the written consent of the other Party.

This Agreement will pass to the benefit of and be binding upon the Parties' respective successors and permitted assigns.

The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other.

- 8 -

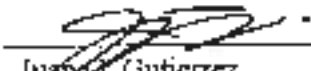
All of the rights, remedies and benefits provided in this Agreement will be cumulative and will not be exclusive of any other such rights, remedies and benefits allowed by law or equity.

Time is of the essence in this Agreement.

This Agreement may be executed in counterparts. Facsimile signatures are binding and are considered to be original signatures.

Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine gender include the feminine gender and vice versa. Words in the neuter gender include the masculine gender and the feminine gender and vice versa.

XELA ENTERPRISES LIMITED

by 

Juan G. Gutierrez
President

GADAIS LIMITED

by 

Ricardo Castillo
President

Schedule A

PROMISSORY NOTE

Borrower: Gadais Limited, a corporation incorporated under the laws of Cyprus

Lender: Xela Enterprises Limited, a corporation incorporated under the laws of the Province of Ontario, Canada

Maturity Date: April 2, 2013

Principal Amount CAD \$400,000.00

1. FOR VALUE RECEIVED, the Borrower promises to pay to the Lender at Suite 1200, 2225 Sheppard Avenue East, Toronto, Ontario or at such other address as may be provided in writing by the Lender to the Borrower, the principal sum of four hundred thousand Canadian dollars (\$400,000.00 CAD), without interest payable on the unpaid principal except after the Maturity Date after which interest will accrue on any unpaid amounts at the prime rate of interest charged by the Canadian Imperial Bank of Commerce plus 3% per annum.
2. This Promissory Note will be repaid in full on the Maturity Date.
3. The Borrower may prepay amounts then owing under this Promissory Note to the Lender, without further bonus or penalty.
4. This Promissory Note will be construed in accordance with and governed by the laws of the Province of Ontario and the laws of Canada applicable in such provinces. This Promissory Note may not be assigned by the Borrower or the Lender without the prior written consent of the other party.
5. All costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by the Lender in enforcing this Promissory Note as a result of any default by the Borrower, will be added to the principal then outstanding and will be paid immediately by the Borrower to the Lender.
6. This Promissory Note will enure to the benefit of and be binding upon the respective successors and permitted assigns of the Borrower and the Lender. The Borrower waives presentment for payment, notice of non-payment, protest and notice of protest.

- 2 -

IN WITNESS WHEREOF the undersigned has duly affixed its signature under seal on this 2nd day of April, 2008.

GADAIS LIMITED

by

Ricardo Castillo
President

This is Exhibit "9" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

AMENDED THIS MODIFIÉ CE	<u>Feb 28, 2013</u>	PURSUANT TO CONFORMÉMENT À
<input checked="" type="checkbox"/> RULE 1A, RÈGLE 25.02	<u>A</u>	
<input type="checkbox"/> THE COURT L'ORDONNANCE DU		
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**

BETWEEN:

XELA ENTERPRISES, LTD., GABINVEST, S.A., LISA, S.A.,
 JUAN GUILLERMO GUTIÉRREZ, JUAN ARTURO GUTIÉRREZ
 and 696096 ALBERTA LTD.

Plaintiffs

- and -

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.

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.

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: *Apex 12-11*
February 28, 2013 *[Signature]*

Issued by:

4 N Brown 9
Local Registrar *[Signature]*

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

JUAN JOSE GUTIERREZ MAYORGA

8a calle 8-82, zona 10
Colonia Las Margaritas
Guatemala, Ciudad

FELIPEANTONIO 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

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;

- (c) 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 plaintiff's 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 plaintiff's 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 plaintiff's 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

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.

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 Jose and Juan Luis have acted as co-presidents of Multi-Inversiones.

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

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

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.

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 Gutierrez 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

\$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.

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 Gutierrez-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.

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.

(c) 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.

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.

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.

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.

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-

Inversiones and Villamorey. 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.

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").

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

Boucheron's accounting books and records, and to disburse payments from Boucheron at Xela's direction.

82. In or about July, 2003, Barillas and Porras 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. Porras continued as legal counsel for Xela's Guatemalan subsidiaries. BPA, Barillas, and Porras 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.

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

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 reneged 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.

(c) 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

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";

- (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

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."

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.

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:

- (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 Guillermo 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."

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.

(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

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;

- (h) the False Criminal Complaint;
- (i) funding the False Criminal Complaint with \$1.85 Million;
- (j) the Boucheron Stock Purchase;
- (k) the False Petition 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.

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.

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.

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;

- (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.

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*.

167. The Plaintiffs propose that the trial of this action be held in Toronto.

Am 12-11
February 28, 2013 *M.*

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Lawyers for the Plaintiffs

XELA ENTERPRISES LTD. et al.

- and - CASTILLO et al.

Plaintiffs

Defendants

**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

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Lawyers for the Plaintiffs

File Number: T983544

This is Exhibit "10" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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December 17, 2019

Mr. Bobby Kofman
KSV Advisory Inc.
150 King Street West, Suite 2308
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Canada

VIA EMAIL
bkofman@ksvadvisory.com

Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)

Dear Mr. Kofman:

As you probably would anticipate, as a supplement to our efforts to collect unpaid dividends in Panama and Miami, we have been working to find alternatives to satisfy the Margarita Castillo judgment. We are now reasonably optimistic that we have identified a third party willing to advance the required sums. The expected transaction calls for payment directly to the Receivership, and we therefore ask that you provide us on an expedited basis the following details: (1) the total amount required to satisfy the Castillo judgment on or before December 31, 2019; (2) the total amount of current Receivership costs; (3) an estimate of any additional Receivership costs that you calculate will be incurred through December 31, 2019; and (3) wire instruction details for the appropriate bank account.

Separately, we understand that Xela has asked for your consent to an extension of the limitation on Receiver powers (Paragraph 4 in the Receivership Order), to enable us to bring our collection efforts in Panama and/or Miami to fruition. Given that the Court's calendar probably precludes consideration of this issue before year's end, and noting the possibility that Xela could satisfy the Castillo judgment within the next two weeks, as referenced above, we ask that you kindly consider giving us your assurance that you will take no action under Paragraph 4 of the Receivership Order until the Court rules on Xela's extension request, which we expect would be submitted to the Court, if still necessary at that time, during the

Mr. Bobby Kofman
December 17, 2019
Page 2

first half of January or as soon thereafter as appropriate to accommodate the Court's schedule.

We appreciate your courtesy and cooperation. We are available at your convenience should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Durkovic', with a long horizontal flourish extending to the right.

Andrew J. Durkovic
AMSTERDAM & PARTNERS LLP

cc: Via Email
Adam Slavens
Noah Goldstein
Kyle Plunkett
Steve Graff
Bob Amsterdam

This is Exhibit "11" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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 CARMEN S.
GUTIERREZ, as Executor of the Estate of Juan Arturo Gutierrez**

Respondents

**NOTICE OF MOTION
(Returnable January 9, 2020)**

XELA Enterprises Ltd. ("Xela") will make a motion to a judge presiding over the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on Thursday January 9, 2020, at 9.30 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion will be heard

Orally.

THE MOTION IS FOR:

- (i) An order, *nunc pro tunc*, varying and/or amending paragraph 4 of the Order of Justice McEwen dated July 5, 2019 (the "Receivership Order");

- (b) An order suspending the operation of the Receivership Order, *nunc pro tunc*, until further Order of this Court;
- (c) An Order, if necessary, abridging and validating the time and method of service of the motion material and dispensing with further service thereof;
- (d) The costs of this motion, if opposed; and,
- (d) such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

- (A) Xela will fully satisfy the judgment debt ("Castillo Judgment") owed to applicant, Margarita Castillo ("Ms. Castillo"), plus all receivership fees and expenses. The Receivership Order was obtained solely in support of the Castillo Judgment.
- (b) The Receivership Order provided for limited powers to the receiver provided that payment of the judgment in favour of Ms. Castillo was made by December 31, 2019, together with costs of the receivership. Due to unforeseen circumstances, there was an unexpected delay of transfer of funds;
- (c) However, Xela expects to cause the total sum of \$4,682,800.75 to be transferred to the receiver, thereby satisfying the Castillo Judgment (with enforcement costs) and all of the fees and expenses of the receivership during the week of January 13, 2020;
- (d) In light of Xela's impending satisfaction of the Castillo Judgment and payment of the receivership fees and expenses, there will be no prejudice if the application of paragraph 4 of Justice McEwen's order is extended;
- (e) Xela respectfully request that the restrictions placed on the Receiver's powers by paragraph 4 of the Receivership Order be extended until further court order while the respondents satisfy any prerequisites that the court may deem appropriate.
- (f) Rules 1.04, 2.02, 2.03, 3.02, 37, 57 and 59.06 of the *Rules of Civil Procedure*;

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

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

(A) The Affidavit of Harald Johannessen Hals to be sworn;

(B) Such further and other evidence as counsel may advise and this Honourable Court may permit.

DATED: JANUARY 7, 2020

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AND TO: **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF
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Ontario Lawyers for BDT Investments Inc.

AND TO: **EMPRESAS ARTURO INTERNATIONAL LIMITED**
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Fax: 246.435.0230

This is Exhibit "12" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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 Direct: 416.865.5436
 Email: kplunkett@airdberlis.com

January 8, 2020

BY EMAIL

Cambridge LLP
 331-333 Adelaide St. West
 Suite 400
 Toronto, Ontario M5V 1R5

Attention: Chris Macleod and Joan Kasorl

Dear Sirs/Mesdames:

Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-0001)

And Re: Motion Record of Xela dated January 7, 2020

As you are aware, we are the lawyers for KSV Kofman Inc. ("KSV"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued and entered on July 5, 2019 (the "**Appointment Order**").

On behalf of Xela, you have served a notice of motion purportedly returnable January 9, 2020 for, among other things, an order suspending the operation of the receivership of Xela (the "**Receivership**") on the grounds that Xela's subsidiary, Lisa, S.A., has arranged for financing to satisfy the judgment in favour of the applicant in the Receivership, Margarita Castillo (the "**Applicant**"), together with all costs of the Receivership. The Receiver will oppose the motion tomorrow for the reasons below.

The motion is not properly returnable January 9, 2020, as only a 9:30 a.m. chambers appointment has been booked on that date. Pursuant to Part X of the *Consolidated Practice Direction Concerning the Commercial List*, only *ex parte*, urgent, scheduling or consent matters are to be dealt with at Commercial List chambers appointments. In any case, Xela's Motion Record was only served on the Service List on January 7, 2020, which two-days' notice is insufficient for the Receiver or other stakeholders to prepare appropriate responses.

It is also inappropriate to move to "suspend" the Receivership before Xela has paid off its obligations to the Applicant and the Receiver, at very least. In his affidavit sworn December 30, 2019 in support of Xela's motion, Harald Johannessen Hals (the "**Hals Affidavit**") states that the loan proceeds will be available next week. There is therefore no apparent reason for Xela's motion to be heard earlier than that.

If Xela wishes the loan agreement, or the existence thereof, to be considered as evidence before the Court, it should be provided in a further sworn affidavit by Mr. Hals or some other appropriate individual with knowledge of the transaction. In the absence of receipt of actual loan proceeds, there is no other way for the Receiver, as the officer of the Court, to assess and advise the Court on the validity or commercial

reasonableness of the loan transaction and thus no way for the Court to properly consider the merits of Xela's motion.

The above is without prejudice to any arguments the Receiver may make in respect of Xela's motion even if the motion's hearing is scheduled on a date after Xela has paid its obligations to Xela and the Receiver. As a Court-appointed receiver and manager, the Receiver's duties run to the Court and to all stakeholders of Xela, as their interests may appear, not just to the Applicant. The Receiver therefor does not concede that the making of such payments would, on its own, be sufficient grounds to terminate the Receivership.

Even apart from Xela's motion, the Receiver needs to be able to determine how the economics of the proposed Lisa, S.A. loan affect the interests of other stakeholders of Xela or its subsidiaries. For that reason, on behalf of the Receiver, we formally request of Xela and of any officer, director or shareholder of Xela giving instructions to your firm, a copy of the Lisa, S.A. loan agreement described in the Hals Affidavit along with a copy of any closing agenda prepared in connection with contemplated loan transaction. Our authority for this request lies in paragraph 6 of the Appointment Order, which requires all persons to provide to the Receiver, among other things, any documents, contracts and information of any kind relating to Xela. Our authority for the request also lies in paragraph 3(p) of the Appointment Order, by which the Receiver is now authorized and empowered to exercise any shareholder rights that Xela might have, including Xela's 100% indirect ownership of Lisa, S.A. (through Gabinvest S.A.), to the exclusion of all other persons, including Xela itself. The limitations placed on this power by paragraph 4 of the Appointment Order only concerned exercise of the power in connection with litigation proceedings and, in any case, only applied until December 31, 3019.

Yours truly,

AIRD & BERLIS LLP



Kyle B. Plunkett

*cc by Email: Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Same Babe and Steve Graff, Aird & Berlis LLP*

38459978.2

This is Exhibit "13" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Amanda Masuku

Subject: FW: Receivership of Xela Enterprises Ltd
Attachments: Order of Justice McEwen - October.29.2019.pdf; Order (appointing Receiver) - Justice McEwen dated July 5-2019.pdf; (2020-01-07) Motion Record.pdf

From: Kyle Plunkett <kplunkett@airdberlis.com>
Sent: January 9, 2020 12:58 PM
To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasoz@cambridgellp.com>
Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>
Subject: Re: Receivership of Xela Enterprises Ltd

Chris, Joan,

Further to our attendance before Justice McEwen this morning, please find attached a copy of the Disclosure Order we referred to during our discussions this morning, which order issued by His Honour on October 29, 2019. We also refer to paragraphs 5 and 6 of the Appointment Order, which also requires cooperation and disclosure of all Persons with knowledge of the Company and production of any books and records. To date, the Receiver has either (i) not received a response to its numerous requests for copies of the underlying agreements relating to the reviewable transactions referred to in the Receiver's First Report; or (ii) been advised by the parties that they are not prepared to comply with the Order and/or have denied access to the Receiver.

In addition, and per our discussions following our attendance before His Honour, the Receiver hereby requests that your client provide to the Receiver any and all documentation and details relating to the proposed loan arrangement to be entered into by the Company's subsidiary, Lisa S.A., which is referenced in the Affidavit of Harald Johannessen Hals dated December 30, 2019 by no later than **12:00 pm tomorrow, January 10, 2020**, so that the Receiver may review and consider the terms of such arrangement. If by noon tomorrow the Receiver is not provided with the full details of the loan arrangement or if the Receiver is not satisfied with the proposed terms of the loan, taking into account the interest of all stakeholders, the Receiver will take whatever steps it deems necessary (and that are in the best interest of Xela and its stakeholders), as permitted by the Receivership Order, to protect the assets and business.

Kind regards,

Kyle

Kyle Plunkett

T 416.865.3406
 F 416.863.1515
 E kplunkett@airdberlis.com

Aird & Berlis LLP | Lawyers
 Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Canada M5J 2T9 | airdberlis.com



This is Exhibit "14" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Amanda Masuku

Subject: FW: Receivership of Xela Enterprises Ltd

From: Kyle Plunkett <kplunkett@airdberlis.com>

Sent: January 10, 2020 12:11 PM

To: Joan Kasozi <jkasozi@cambridgellp.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: RE: Receivership of Xela Enterprises Ltd

Thanks, Ms. Kasozi.

No further steps should be taken by Lisa with respect to the loan until the Receiver has been able to review and make a determination as to the terms of the proposed loan documents.

Kyle Plunkett

T 416.865.3406

F 416.863.1515

E kplunkett@airdberlis.com

Aird & Berlis LLP | Lawyers
 Brookfield Place, 181 Bay Street, Suite 1800
 Toronto, Canada M5J 2T9 | airdberlis.com



This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

From: Joan Kasozi [<mailto:jkasozi@cambridgellp.com>]

Sent: January-10-20 11:45 AM

To: Kyle Plunkett <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Alvaro Almengor <alvaro.almengor@hatstone.com>; Carl O'Shea <carl.oshea@hatstone.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>

Subject: RE: Receivership of Xela Enterprises Ltd

Mr. Plunkett:

It is unreasonable to expect a response within such a short timeframe. However, we are in the process of obtaining some information and will response to your email by end of day.

I trust the foregoing is satisfactory.

Best,

N. Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 6th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasozi@cambridgellp.com
Website: www.cambridgellp.com



This is Exhibit "15" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)



SENT VIA EMAIL TO KPLUNKETT@AIRDBERLIS.COM

January 13, 2020

Chris Macleod
416.477.7007 ext. 303
cmacleod@cambridgellp.com

Mr. Kyle Plunkett
Mr. Steve Graff
AIRD & BERLIS LLP
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Dear Mr. Plunkett:

Re: MARGARITA CASTILLO and XELA ENTERPRISES LTD. et al.

I write in response to your email of January 9, 2020. We appreciate your courtesy as we come fresh to the matter on behalf of Xela Enterprises Ltd. ("Xela"), and we acknowledge your communication below.

First, Xela respectfully disagrees that it has in any way resisted or failed to comply with its disclosure obligations, or that its conduct has been anything other than appropriate in the circumstances. We take specific issue with the notion that Xela has "copies of the underlying agreements relating to the reviewable transactions referred to in the Receiver's First Report" that have not been provided to you. Having said that, we invite you to be specific about anything you believe is still missing, and we will do our best to make sure Xela provides everything it has.

Second, we acknowledge your request for information to evaluate the loan arrangement through which Xela proposes to satisfy the Margarita Castillo judgment and all other creditors, fees and expenses of the receivership (the "Loan"). Xela's knowledge of the Loan is as follows: (1) it is being procured by LISA, S.A., a Panama corporation ("LISA"), from a third party that is unrelated to any Xela entity or any entity owned by The ArtCarm Trust; (2) the Loan is adequate to satisfy the monetary threshold for a motion to discharge the receivership, according to the totals provided by the Receiver when he learned of the Loan in December 2019; and (3) LISA will pledge some of its common shares of Villamorey, S.A. as collateral for the Loan, and nothing more.

We think this information is enough for a finding that the Loan is in the best interest of Xela and its stakeholders. However, in case the Receiver should disagree, we have instructed LISA to cooperate, and we respectfully invite the Receiver to direct any further questions directly to LISA.

Yours very truly,

CAMBRIDGE LLP

Per:



CHRIS MACLEOD

Signed electronically on behalf of N. Joan Kasozi

Copy: Bobbie Kofman, email: bkofman@ksvadvisory.com

Steve Graff, email: sgraff@airdberlis.com

Andrew Durkovic, email: a.durkovic@amsterdandpartners.com

This is Exhibit "16" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Amanda Masuku

Subject: FW: Receivership of Xela Enterprises Ltd

From: Bobby Kofman [<mailto:bkofman@ksvadvisory.com>]

Sent: Monday, January 13, 2020 4:30 PM

To: Joan Kasozi <jkasoz@cambridgellp.com>; Kyle Plunkett <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Subject: Re: Receivership of Xela Enterprises Ltd

Thank you.

This information is insufficient.

Bobby Kofman
President and Managing Director
KSV Advisory Inc.
(o) 416.932.6228
(c) 647.282.6228
bkofman@ksvadvisory.com

From: Joan Kasozi <jkasoz@cambridgellp.com>

Sent: Monday, January 13, 2020 4:19:39 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>; Chris Macleod <cmacleod@cambridgellp.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Subject: RE: Receivership of Xela Enterprises Ltd

Dear Mr. Plunkett:

Please find attached a letter of today's date from Mr. Macleod.

Best,

N. Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 6th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasoz@cambridgellp.com
Website: www.cambridgellp.com



This is Exhibit "17" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Sam Babe

Direct: 416.865.7718

Email: sbabe@airdberlis.com

January 14, 2020

BY EMAIL**Cambridge LLP**

331-333 Adelaide St. West

Suite 400

Toronto, Ontario M5V 1R5

Attention: Chris Macleod and Joan Kasozi

Dear Sirs/Mesdames:

**Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)**

As you are aware, we are the lawyers for KSV Kofman Inc. ("**KSV**"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued and entered on July 5, 2019 (the "**Appointment Order**").

I am writing in response to your letter dated January 13, 2020 wherein you provide certain information about the proposed loan (the "**Loan**") to LISA, S.A. ("**LISA**"), the proceeds of which are to be used to pay debts of Xela to the Receiver and to the applicant (the "**Applicant**") in the above-referenced receivership proceedings (the "**Receivership**"). You have indicated that it is Xela's intention to bring back its motion for termination of the Receivership (the "**Motion**") based on the satisfaction of such debts.

In your letter you state that Xela has the following knowledge of the Loan: (a) it is to be made by a party that is not owned by LISA or by The ArtCarm Trust; (b) the Loan proceeds will be adequate to repay the debts to the Receiver and the Applicant; and (c) the only security to be granted is a pledge of shares in Villamorey, S.A. This limited information is not sufficient for the Receiver to evaluate whether the Loan is in the best interests of the stakeholders of Xela. Without limitation, you have not informed us whether the Loan will be sufficient or purposed to pay debts of Xela to other creditors, a number of whom have requested that the Receivership not be terminated.

The following facts lead us to believe that the principal of Xela giving your firm directions has the draft loan documentation: (a) the Loan is being procured for Xela's ultimate benefit by one of its indirect 100% subsidiaries; (b) Xela's principal knows the identity of the lender and the terms of the Loan; and (c) Xela's principal had confidence enough in the Loan to cause Xela to bring the Motion. To repeat the request made in Kyle Plunkett's letter of January 8, 2020, please provide a copy of the Loan agreement and any closing agenda. We refer you again to paragraph 6 of the Appointment Order which imposes obligations on Xela's principal which cannot be shed simply through your suggestion that we seek any further information from LISA directly.

Page 2

Until the Receiver receives and has evaluated the requested Loan documentation, it will not be in a position to approve of the Loan transaction and, until such time, the Receiver explicitly objects to LISA completing the Loan transaction.

Yours truly,

AIRD & BERLIS LLP

A handwritten signature in blue ink, appearing to read 'Sam Babe', with a stylized, flowing script.

Sam Babe

*cc by Email: Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Kyle Plunkett and Steve Graff, Aird & Berlis LLP*

38528800.2

AIRD BERLIS

This is Exhibit "18" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Amanda Masuku

Subject: FW: Receivership of Xela Enterprises Ltd

From: Andrew J. Durkovic <a.durkovic@amsterdandpartners.com>

Sent: January 16, 2020 4:55 PM

To: Kyle Plunkett <kplunkett@airdberlis.com>

Cc: Steve Graff <sgraff@airdberlis.com>; Sam Babe <sbabe@airdberlis.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Joan Kasozi <jkasoz@cambridgellp.com>; Chris Macleod <cmacleod@cambridgellp.com>

Subject: RE: Receivership of Xela Enterprises Ltd

Dear Kyle:

As you know, we are international lawyers for LISA, S.A., a Panama corporation ("LISA"), and counsel of record for LISA in the garnishment case in Miami. We understand that the receiver is demanding documents and other details about the loan LISA is procuring to seek to discharge the receivership (the "Loan"). Xela has instructed LISA to cooperate as much as it can.

As you can appreciate, this is a unique receivership. It was created at the behest of Margarita Castillo, who – if allegations in pending litigation in Toronto are true – is acting in conspiracy with the majority stakeholders (*i.e.*, the so-called "Cousins") of the poultry conglomerate in Guatemala that has been trying for decades to avoid paying LISA its due share of dividends (approaching US\$400 million) while paying themselves in full. At the same time, LISA's stake in the poultry conglomerate is Xela's biggest asset. Thus, the Cousins have a special interest in the outcome of the receivership, as underscored by the presence of lawyers from Stikeman Elliott LLP at the case conference earlier this week. Make no mistake; the Cousins are using this receivership to try to achieve an inexpensive win in a high-stakes, 20-year-old multijurisdictional contest.

Therefore, in order to discharge the receivership, LISA's Board of Directors gave its President, on or about December 30, 2019, the authority to procure the Loan. As you might anticipate in these circumstances, LISA did not share the details of the Loan with Xela beyond confirming that it was not a loan from any of the ArtCarm Trust entities, it was adequate to meet the threshold in Paragraph 25 of the receivership Order, and that some of LISA's shares of Villamorey were being pledged as security, but nothing more. All of the details of the Loan, including loan documents, were and are held exclusively by LISA. More importantly – owing to past conduct of the Cousins and the unique circumstances of the receivership – the lender required LISA to make a confidentiality agreement as a condition for the Loan, barring LISA from disclosing the identity of the lender and any details of the Loan to any third parties, including without limitation Xela. Thus, LISA is under a contractual duty to withhold all information concerning the Loan in all circumstances short of a Panama Court Order compelling disclosure, which we are not certain would issue even if the receiver's powers in Panama were recognized in principle by the Court.

Lastly, we emphasize that LISA considers the Loan to be integral to the preservation of its interest in the poultry conglomerate. LISA will therefore react to any improper interference with the Loan. Having said that, we are confident that the receiver can be relied upon to act appropriately in this regard, and we appreciate your courtesy and professionalism.

With best regards, -Andy

Andrew J. Durkovic

This is Exhibit "19" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

AIRD BERLIS

Kyle B. Plunkett
 Direct: 416.863.3406
 Email: kplunkett@airdberlis.com

January 17, 2020

BY EMAIL

Amsterdam and Partners LLP
 1054 31st St NW, STE 110
 Washington, DC 20007
 USA

Attention: Andrew Durkovic

Dear Sirs:

Re: Receivership of Xela Enterprises Ltd. ("Xela")
(Ontario Court File No. CV-11-9062-00CL)

As you are aware, we are the lawyers for KSV Kofman Inc. ("KSV"), in its capacity as the court-appointed receiver and manager (in such capacity, the "**Receiver**") of Xela, appointed pursuant to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued and entered on July 5, 2019 (the "**Appointment Order**").

I am writing in response to your email of January 16 and further to our letter to Canadian counsel for Mr. Juan Guillermo Gutierrez ("**Juan Guillermo**"), Cambridge LLP, dated January 14, a copy of which is enclosed as **Schedule A** hereto.

In your email you refuse, on behalf of LISA, S.A. ("**LISA**"), to comply with the Receiver's repeated request for information and documentation relating the proposed loan (the "**Loan**") to LISA ("**LISA**"), the proceeds of which are to be used to pay debts of Xela to the Receiver and to the applicant in the above-referenced receivership proceedings (the "**Receivership**"). As you note, LISA is a subsidiary of Xela and a significant asset and source of recovery for Xela's stakeholders. Such refusal by LISA and Juan Guillermo is contrary to the spirit of our chambers appointment before Justice McEwen on January 9, 2020. As counsel for Juan Guillermo can attest, Justice McEwen was very clear that full disclosure of the loan documentation by Juan Guillermo and LISA was to be provided to the Receiver prior to LISA entering into the Loan.

Your email is not an answer to our January 14 letter. In particular, your email does not relieve Juan Guillermo or any other principal of Xela from the Court-imposed obligation to comply with the Receiver's repeated request for information and documentation relating the Loan. By copying Cambridge LLP on this letter, I put them on notice that we still expect an appropriate, timely response from them to our January 14 letter. It is the Receiver's position that the terms of the Appointment Order regarding disclosure trump any confidentiality provisions contained in purported loan agreement. The Receiver will respect an appropriate confidentiality provision. The fact that the potential lender insisted on keeping its identity confidential is a significant concern to the Receiver regarding the propriety and nature of the Loan. The Receiver will be bringing these concerns, among others, to the attention of the Court.

Furthermore, Mr. Gutierrez and LISA have to date failed to comply with the Order of Justice McEwen dated October 29, 2019 (the "**Disclosure Order**"), pursuant to which various parties, including LISA, were ordered to produce all information pertaining to certain transactions, including the Assignment Transaction (as defined in the Disclosure Order, a copy of which was delivered to you previously).

Although the Receiver was appointed by the Court upon application of the applicant judgement creditor, Margarita Castillo (the "**Applicant**"), the Receiver's duties are to the Court and to all the stakeholders of Xela. The Receiver is not directed by nor specifically accountable to the Applicant, nor does it inappropriately disclose information to the Applicant or otherwise. Juan Guillermo has, at all times, had competent Canadian counsel acting for Xela to challenge any impropriety in the appointment of the Receiver or the conduct of the Receivership.

As requested by the Receiver's representative, Bobby Kofman, in his reply to your email, please advise immediately if the Loan transaction has closed and if it the Loan has been advanced. If either has not occurred, please advise immediately when that is scheduled to occur.

To repeat what was said in our January 14 letter, the Receiver will not be in a position to approve of the procurement of the Loan or any loan for that matter until the Receiver receives and has evaluated the requested Loan documentation in full and, until such time, the Receiver explicitly objects to LISA completing the Loan transaction. As you are aware, any limitation imposed on the Receiver under the Appointment Order have automatically expired as of December 31, 2019. The Receiver will take any and all steps it deems necessary to protect and preserve the debtor's property, including its ownership interest in its various subsidiaries, which steps may include pursuing all recoveries and remedies available to the Receiver with respect improper transactions carried out by Xela and its subsidiaries prior to its appointment.

If Juan Guillermo continues to refuse to comply with the Receiver's information request, the Receiver will take such steps as it deems appropriate to protect the integrity of the Receivership and the interest of all stakeholders of Xela, all of which will be reported to the Court. Such steps may include, without limitation, a motion to hold Mr. Gutierrez in contempt of Court orders, which orders he continues to wilfully disregard.

Yours truly,

AIRD & BERLIS LLP



Kyle Plunkett

cc by Email: *Chris Macleod and Joan Kasozi, Cambridge LLP*
Bobby Kofman and Noah Goldstein, KSV Kofman Inc.
Sam Babe and Steve Graff, Aird & Berlis LLP

38572522.3

This is Exhibit "20" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

From: Carl O'Shea <carl.oshea@hatstone.com>
Sent: Wednesday, February 26, 2020 6:38 AM
To: Harald Johannessen | L; Alvaro Almengor
Subject: Re: Xela - Settlement meetings
Attachments: Power of Attorney, February 24, 2020 - Authenticated and Legalized.pdf

Hello Harald

Thank you for your email.

As promised, please find attached a pdf copy of the authenticate and legalized power of attorney. The original is being couriered to Hatstone's office in Panama.

We trust this is in order, but if you have any queries then please let Alvaro and I know.

As mentioned in the previous email, in order for the meeting to proceed on Friday, it is a requirement from the Receiver that its changes to the boards of both Gabinvest and Lisa are accepted. Again, should a full and final settlement be concluded, then the boards can then be changed as you wish.

Please kindly confirm by return that the changes are accepted so that we may work together to progress this matter on Friday.

I look forward to hearing from you by return.

Best

Carl O'Shea
Group Partner

Jersey T +44 1534 761 180 M +44 7700 326 852
Panama T +507 830 5300 M +507 6501 8530

The logo for Hatstone, featuring the word "HATSTONE" in a bold, white, sans-serif font, centered within a solid blue rectangular background.

BVI | JERSEY | LONDON | MALTA | PANAMA | SOUTH AFRICA

www.hatstone.com

From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Monday, 24 February 2020 at 14:41
To: Alvaro Almengor <alvaro.almengor@hatstone.com>
Cc: Carl O'Shea <carl.oshea@hatstone.com>
Subject: Xela - Settlement meetings

Guatemala, febrero 24 de 2020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día de hoy debo realizar las siguientes precisiones:

- ☐ El receiver debe de velar por los intereses de XELA y no exclusivamente por los intereses de la Señora Margarita Castillo, como ha sido el caso hasta la fecha.
- ☐ En desarrollo de la reunión en mención la firma HATSTONE, quedo debidamente informado que el mayor acreedor de LISA S.A., es la sociedad BDT INVESTMENTS.
- ☐ Que hoy en día se cuenta con la suficiente información para afirmar y probar que la señora Margarita ya fue pagada en su totalidad. Es obligación del receiver estudiar los documentos que así lo acreditan.
- ☐ Respecto de las acciones arbitrariamente desplegadas por ustedes a fin de recomponer la directiva de LISA y GABINVEST, se cometieron actos arbitrarios e ilegales a saber:

El nombramiento realizado por la Corte de Ontario, establece claramente dos situaciones:

1.El Recevier Appointment fue otorgado a KSV Kofman Inc., es decir que ÚNICAMENTE, la entidad KSV Kofman Inc, puede en nombre del Deudor (Xela Enterprises, Ltd) actuar como Administrador Judicial (Receiver) de los bienes, activos, propiedades del Deudor.

Con lo anterior, encontramos una clara LIMITACIÓN de actuación del señor Álvaro Almengor, en representación de la firma forense HATSTONE ABOGADOS, para tomar disposición sobre los activos del Deudor en Panamá. Para que dicho escenario legal pudiese haber tenido las resultas buscadas, el Administrador Judicial nombrado, tuvo que haber cumplido con las normas de derecho internacional necesarias para que su nombramiento fuera válido en la República de Panamá. Ya que la firma HATSTONE ABOGADOS y sus representantes tienen una falta de legitimidad activa para actuar en nombre del Administrador Judicial, situación que a la fecha aún persiste.

2.El Receiver Appointment claramente establece, que dicho nombramiento se ejecuta de conformidad con la 101 de los Tribunales de Justicia, R.S.O. 1990, c.C.43 (section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43).

Es decir, que el nombramiento del Administrador Judicial, es ejecutado en cumplimiento con una norma legal aplicable únicamente en la República de Canadá, y para que la misma sea ejecutada fuera del ámbito territorial de dicha corte, el Administrador Judicial nuevamente, debe cumplir con las normas de derecho internacional aplicables al caso, y que una autoridad con facultad y jurisdicción dentro de la República de Panamá, emita la orden que permita al Administrador Judicial ejecutar sus atribuciones.

Sumado a lo manifestado en precedencia, los artículos de incorporación de las sociedades LISA y GABINVEST, son claros en los requerimientos que se deben dar para el cambio de directores, procedimiento que fue ignorado por la sociedad HATSTON, quien a su saber y entender consideró que bastaba con una orden del Receiver.

Ambas limitaciones las encontramos contenidas y sostenidas, bajo el amparo factico-jurídico, de que, aunque Xela Enterprises, sea la beneficiaria final de las entidades GABINVEST, S.A. y LISA, S.A., cada una de éstas son personas jurídicas distintas, con domicilios y regulaciones distintas, por lo que cumplir con las formalidades tanto intrínsecas como extrínsecas resulta eminentemente necesario para darle validez a los actos que el mismo Administrador Judicial contempla realizar.

No obstante, lo anterior todas las partes continúan con un ánimo conciliatorio, siempre y cuando la firma HATSTONE, cuente con un poder y/o mandato debidamente constituido bajo las leyes de la República de Panamá.

Sin otro particular

Harald Johannessen
Director - Presidente
Lisa, S.A.

El 24/02/2020, a la(s) 08:03, Carl O'Shea <carl.oshea@hatstone.com> escribió:

Dear Harald

Following on from the meeting on Friday 21 February in Bogota, I have now reported back to the Receiver and it is pleased to hear it was a constructive initial settlement meeting.

Could you please kindly forward this email to the other attendees including Juan and BDT.

At the meeting it was proposed to have a subsequent settlement meeting in Panama on Friday 28 February. I have passed on the request that the meeting be attended by Margarita and/or her representative. The parties are happy for Hatstone to attend the meeting being based in Panama. As mentioned any settlement offer will need to be considered by the Receiver and approved by the Canadian Court.

During the meeting we discussed the role and authority of the Receiver. As part of its role, the Receiver is responsible for understanding and securing the assets of Xela for the benefit of all of its stakeholders. The Receiver has been trying to do this, but has so far been prevented from doing so in relation to the two Panama companies, Gabinvest S.A and Lisa S.A.

The Receiver has advised me that prior to the 28 February meeting taking place, you accept the Receiver's changes to the boards of each of these companies: namely, the board of Gabinvest S.A is replaced entirely by the Receiver's representatives and three representatives are added to the board of Lisa S.A making it a mixed board.

Of course, should a full and final settlement be concluded, then the board can then be changed as you wish.

Consideration will need to be given to whom shall replace AFRA as resident agent of the two companies following its resignation. The Receiver would like Hatstone to provide this role. Again, the resident agent can be replaced with a party of your choosing when a settlement is concluded.

As we discussed and agreed at the meeting, for the purposes of trying to settle this matter, we need to focus on an amount which is acceptable to both sides and try as best as possible to put aside the history. The Receiver is willing to consider any reasonable amount you would like to put forward together with a clear deadline for payment. As noted, the Receiver is appointed over Xela for the benefit of all stakeholders, not just Margarita. If you would like to propose a figure prior to the Friday meeting then please kindly do so.

At the same time we held a meeting in Bogota a meeting was held at Chambers before Justice McEwen. I am sure the serious content of that meeting has been communicated to Juan and he is aware that a court date has been set for 24 March (or earlier, if necessary).

In order for the Friday meeting to take place there would appear to be two requirements: (1) the power of attorney executed by the Receiver in favour of Hatstone attending the settlement meetings is notarised and apostilled; and (2) the proposed changes to the two boards are accepted until settlement is reached or the matter is otherwise decided.

Without the above two requirements being satisfied then it would appear the next settlement meeting cannot take place and matters will need to be left to the Canadian Court on 24 March.

We are dealing with requirement number (1). Can you please confirm you will deal with requirement number (2). In relation to Gabinvest, requirement number (2) could be dealt with by Quiros withdrawing his resolution and for Lisa a new resolution could agreed between the parties as soon as possible for submission.

If you have any queries then please do not hesitate to contact Alvaro or me.

All the best

Carl O'Shea
Group Partner

Jersey T +44 1534 761 180 M +44 7700 326 852
Panama T +507 830 5300 M +507 6501 8530

<image001.png>

BVI | JERSEY | LONDON | MALTA | PANAMA | SOUTH AFRICA

www.hatstone.com

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This is Exhibit "21" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

From: Alvaro Almengor <alvaro.almengor@hatstone.com>
Sent: Wednesday, March 11, 2020 5:52 PM
To: Harald Johannessen | L
Subject: Re: Correo electrónico del 24 de Febrero del 2,020

Buenas tardes Lic. Harald,

Primeramente confirmamos que hemos remiditos sus correos con sus adjuntos al Receiver como nos lo ha solicitado y a fin de minimizar cualquier mal entendido. El Receiver allá maneja sus traducciones.

Segundo, reiteramos la petición de reunión entre el Sr. Juan y el Receiver en Canadá y paso a copiarle en inglés textualmente la respuesta para evitar de igual forma cualquier error en la traducción:

I am not prepared to meet with Juan in the absence of their agreement to our Board changes. We will be asking for a contempt order. You can tell them that.

En resumen el Receiver reitera su solicitud de cambios en la Junta Directiva propuesta anteriormente.

Quedamos atentos.

Saludos

Alvaro Almengor
 Group Partner
 P +507 830 5300
 M +507 6678 6126



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The Hatstone Group and the Folio Group are very pleased to share with you that, subject to regulatory consent, we are merging.

Further details can be found [here](#).

www.hatstone.com



We have updated our privacy notice to take into account recent changes to European data protection legislation. If you would like to find out more about the personal data we hold and how we may use that data then please see our Hatstone Group [Privacy Notice](#).

From: Harald Johannessen | L <H_Johannessen@granadavalley.com>
Date: Wednesday, 11 March 2020 at 09:24

To: Alvaro Almengor <alvaro.almengor@hatstone.com>

Subject: Correo electrónico del 24 de Febrero del 2,020

Señores:

HATSTONE

Atn. Lic. Álvaro Almengor

Ref: Correo Electrónico de, febrero 24 de 2020

Respetados señores, en atención a su correo del día 10, hoy debo realizar las siguientes precisiones, como quiera que el informe que pretende presentar el reciever y los correos suyos demuestran desinformación:

- ☐ No obstante haber solicitado por medio suyo una reunión del reciever con el señor Juan Guillermo Gutierrez, no hemos recibido respuesta a la misma. Situación que resulta bastante exótica por decir lo menos.
- ☐ En la jurisdicción panameña cursan y/o cursaron varios procesos civiles a saber que son relevantes para los intereses de los acreedores de LISA S.A.:
 1. Juzgado 11 LISA VS VILLAMOREY, resoluciones las cuales fueron aportadas en PDF, ayer a ustedes.
 2. Juzgado 12 BDT VS LISA, con sentencia condenatoria a favor de BDT Y **AUN CON EL CONOCIMIENTO DE LA SENTENCIA LA CONTRAPARTE HA ACUSADO A LISA DE ACTOS FRAUDULENTOS.**
 3. Juzgado 6 LISA VS VILLAMOREY, demanda de daños y perjuicios.
 4. Demanda de Rendición de cuentas LISA VS VILLAMOREY en reparto.
- ☐ Se hace necesario fijar fecha y hora para reunión donde aportaremos las copias autenticadas de todas y cada una de las actuaciones de los procesos relacionados en precedencia.
- ☐ De no fijarse fecha para la celebración de dicha reunión, consideramos negligente la posición del reciever como de los abogados con poder y procederemos con las acciones judiciales, con el objetivo de proteger tano a LISA como a los demás acreedores,

Harald Johannessen

Director - Presidente

Lisa, S.A.

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This is Exhibit "22" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	TUESDAY, THE 27 th
)	
JUSTICE MCEWEN)	DAY OF OCTOBER, 2020

B E T W E E N:

(Court Seal)

MARGARITA CASTILLO

Applicant

and

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

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES
LTD.

ORDER

THIS CASE CONFERENCE, requested by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and property of Xela Enterprises Ltd. (the “**Company**”) was heard virtually this day via the Zoom videoconferencing platform by judicial videoconference at Toronto, Ontario due to the COVID-19 crisis.

ON READING the material filed by the parties, and on hearing the submissions of the lawyers for the Receiver and such other counsel as were present and listed on the Counsel Slip.

1. **THIS COURT ORDERS** that within seven days of the Order, Arturos Technical Services Ltd. (“ATS”) will schedule a mutually convenient date with Duff & Phelps, the Receiver’s Forensic Specialist, for the purpose of providing the Forensic Specialist access, in accordance with this Order, to certain servers more particularly described in Schedules “A” and “B” (collectively the “Servers”).

2. **THIS COURT ORDERS** that upon being provided with the access contemplated in paragraph 1 of this Order, Duff & Phelps be and is hereby authorized and directed to make a single disk image of each of the Servers listed in Schedule “A” (together, the “Images”) to be held by Duff & Phelps in accordance with the terms of this Order.

3. **THIS COURT ORDERS** that upon being provided with the access contemplated in paragraph 1 of this Order, ATS shall deliver up the Servers at Schedule “B” to Duff & Phelps (the “Schedule B Servers”) to be held by Duff & Phelps in accordance with the terms of this Order.

4. **THIS COURT ORDERS** that Duff & Phelps will make no additional copies or images of the Servers or any of the Images.

5. **THIS COURT ORDERS** that Duff & Phelps shall maintain and preserve the Images and Schedule B Servers until further order of this Court or written consent of the Receiver and ATS.

6. **THIS COURT ORDERS** that Duff & Phelps shall not conduct, or permit any other person to conduct, any analysis or review of the Images or Schedule B Servers or any data contained in the Images or Schedule B Servers, without a further order of this Court or written consent of the Receiver and ATS.



(Signature of Judge)

SCHEDULE “A”**Description of Servers**

Servers located at Cogent Canada, Inc., 245 Consumers Rd., Suite 300, North York, ON M2J 1R3:

1. XL88-5, serial number: KQYWHNG
2. XL88-15, serial number: 06KN471
3. XL88-25, serial number: KQ63ZVA
4. XL88-1, serial number: KQYWHNA
5. XL88-20, serial number: KQ6930H
6. XL88-30, serial number: KQ8X0LK
7. XL88-35, serial number: E2BG115

SCHEDULE “B”**Description of Additional Servers described as non-operational**

	Hardware	Serial #
1.	IBM System x 3650 M3 7945-AC1 7945N2U	KQYWHPF
2.	IBM System x3550 7978 7978CCU	99L6433
3.	IBM System x3550 7978 7978CCU	99L6432

MARGARITA CASTILLO
Applicant

-and-

XELA ENTERPRISE LTD. et al.
Respondents

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

27 Oct 20

Order to go on consent as per the draft filed and signed.

McEwen

ONTARIO

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

PROCEEDING COMMENCED AT
TORONTO

ORDER

LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP

Barristers

130 Adelaide Street West, Suite 2600
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AIRD & BERLIS LLP

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Kyle Plunkett

Email: kplunkett@airdberlis.com

Sam Babe

Email: sbabe@airdberlis.com

Tel: (416) 863-1500

Fax: (416) 863-1515

Lawyers for the Receiver

This is Exhibit "23" referred to in the Affidavit of Juan Guillermo Gutierrez sworn by Juan Guillermo Gutierrez at the City of Toronto, in the Province of Ontario, before me on February 22, 2021 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Amanda Masuku

Subject: FW: Xela - Draft Order

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: October 25, 2020 4:57 PM

To: Monique Jilesen <mjilesen@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; Derek Knoke <dknoke@litigate.com>

Subject: Re: Xela - Draft Order

His flight returns next Monday. He will be in quarantine and we will act as his agent and pick up the devices and meet with D&P for mirror imaging within the timeline.

However, the only concern is if there is a delay for any reason in the flight or his mother in law dies he may be delayed. In that case we do not want him to be in breach of the court order.

Mother in law is having surgery and Juan and his wife will attend and be back next Monday barring any unforeseen events.

Happy to speak and see if we can arrive at language that works.

From: Monique Jilesen <mjilesen@litigate.com>

Date: Sunday, October 25, 2020 at 4:42 PM

To: Joan Kasozi <jkasozi@cambridgellp.com>, Derek Knoke <dknoke@litigate.com>

Cc: Chris MacLeod <cmacleod@cambridgellp.com>

Subject: RE: Xela - Draft Order

Hi Joan –

I don't think we are going to be agree to the language below given the pandemic and the uncertainty of what it would mean. We don't know when, where or how Juan is in Guatemala and have no control over his return. When he returns he will be required to be quarantined for 14 days and won't be able to attend in person to deal with this order. Please provide us with a fixed date in which the order can be complied with. There is no reason Juan's personal presence is needed for this order -you or other agents of Juan can be in attendance if there is any concern about the imaging.

Thanks

Monique

“or within one day after Juan Guillermo's return from Guatemala to Canada,”

From: Joan Kasozi <jkasozi@cambridgellp.com>
Sent: October 25, 2020 3:39 PM
To: Monique Jilesen <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Cc: Chris Macleod <cmacleod@cambridgellp.com>
Subject: Xela - Draft Order

Hi Monique and Derek,

Please find attached the Draft Order with our revisions. We are available to discuss.

Best,

Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
Direct: (416) 240 1765
Email: jkasozi@cambridgellp.com
Website: www.cambridgellp.com



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Amanda Masuku

From: Joan Kasozi
Sent: February 22, 2021 6:17 PM
To: Amanda Masuku
Subject: FW: Margarita Castillo v Xela Enterprises Ltd. et al.
Attachments: (2020-11-16) Letter to Receiver re Disclosure Final 1.pdf; (2020-05-04) Final Letter re Xela.pdf

From: Joan Kasozi
Sent: November 16, 2020 8:31 PM
To: 'Monique Jilesen' <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Cc: Chris Macleod <cmacleod@cambridgellp.com>; 'Brian H. Greenspan' <bhg@15bedford.com>; Michelle M. Biddulph <mmb@15bedford.com>; Peter Griffin <pgriffin@litigate.com>
Subject: Margarita Castillo v Xela Enterprises Ltd. et al.

Dear Counsel,

Please find attached a letter of today's date from Mr. MacLeod and the enclosure referenced in the letter.

Best regards,

Joan Kasozi
 Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor
 Toronto, ON, M5V 1R5
 Phone: (416) 477 7007 ext. 331
 Direct: (416) 240 1765
 Email: jkasozi@cambridgellp.com
 Website: www.cambridgellp.com





SENT VIA EMAIL TO MJILESEN@LITIGATE.COM AND DKNOKE@LITIGATE.COM

November 16, 2020

Chris MacLeod
cmacleod@cambridgellp.com

Derek Knoke
Monique Jilesen
Peter Griffin
Lenczner Slaght
2600-130 Adelaide Street West
Toronto, ON M5H 3P5

Dear Counsel:

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

This letter follows our formal request on May 4, 2020, a copy of which is attached for reference. As indicated, we asked for limited but specific information from the Receiver more than seven months ago, but as of today the Receiver has not provided a single document in response to our request. Indeed, he has not so much as acknowledged our correspondence on this issue, despite his continuing pursuit of information and other items from Juan Guillermo Gutierrez and others.

We therefore renew our request for the following information:

- a) a list of all monies transferred to the Receiver for the prosecution of the Receivership, including dates, amounts and sources;
- b) copies of all communications involving the Receiver and/or its counsel, on the one hand, and Margarita Castillo and/or her counsel, on the other hand; and
- c) copies of all communications involving the Receiver and/or its counsel, on the one hand, and any representative of the majority shareholders of Villamorey and the Avicola Group, on the other hand.

As the beneficial owner of 100% of the voting shares of Xela Enterprises Ltd. ("Xela"), Mr. Gutierrez is entitled to this information. Further, in light of various events that have occurred in Panama and Guatemala since the Receiver acquired full Receivership powers in January 2020, the requested information is increasingly relevant. Accordingly, we ask that the information be supplied forthwith.

Relatedly, we respond to your letter dated October 22, 2020, wherein you ask us to explain the contention that the Receiver attempted to take control of LISA's board of directors in Panama illegally. This assertion has already been explained in Mr. Gutierrez's affidavit dated March 31, 2020 (beginning at Paragraph 31), but we repeat the substance here.

The LISA bylaws provide that an increase in the maximum allowable number of directors requires an extraordinary shareholder meeting. The Hatstone law firm submitted statements to the Corporate Registry in Panama that a valid Gabinvest meeting had occurred, but the statements were false because any such purported meeting convened by the Receiver and/or his agent in Panama required first that the Receiver domesticate his appointment Order in Panama, which never occurred. Further, even if the Receiver had domesticated his appointment Order in Panama, the Hatstone firm acted without first obtaining a power of attorney from the Receiver, which is a strict requirement in Panama. In this regard, we would appreciate some verifiable proof of the date on which the Receiver delivered its purported power of attorney to Hatstone.

Unfortunately, the Receiver's conduct through his Panamanian agent interfered with a loan commitment given to LISA in December 2019, which would have fully satisfied the Margarita Castillo judgment and given Xela grounds to move for dissolution of the Receivership. Therefore, the Receiver's conduct had the effect of extending the receivership unnecessarily, such that all costs incurred in 2020 could have been avoided. Additionally, the information we have requested above will assist us in evaluating whether the Receiver's actions have been proper thus far.

Separately, as you know, we requested a longer deadline for Mr. Gutierrez to produce his personal devices for imaging in light of the discovery of a cancerous tumor in his 96-year-old mother-in-law ("Mrs. Johannessen), who lives in Guatemala. We informed you before the Court's Order dated October 27, 2020 was issued that Mrs. Johannessen had been scheduled for emergency surgery, that Mr. Gutierrez and his wife would be traveling to Guatemala to be with her, and that their itinerary called for their return in advance of the production deadline.

Regrettably, Mrs. Johannessen suffered complications from the original surgery, and has since been sedated two additional times for follow-up procedures. She is now battling infection, as well as collapsed lungs, and has been placed on a ventilator in the hospital intensive care unit. These facts are confirmed in correspondence from Mrs. Johannessen's doctor, a copy of which is attached. In anticipation of these possibilities, we included language in the production order that contemplated an extension of the production deadline, either by agreement or court order. We therefore request that you agree to such an extension until the day after Mr. Gutierrez returns from Guatemala, which would occur as soon as a flight is available following either Mrs.

Johannessen's release from the hospital or her funeral, if such were the unfortunate circumstance. We would agree, of course, to provide verifiable updates on reasonable intervals. Kindly give us your response, forthwith.

Thank you in advance for your attention to these issues.

Yours very truly,

CAMBRIDGE LLP

Per:

A handwritten signature in black ink, appearing to be 'CM' with a stylized flourish.

CHRIS MACLEOD

CRM/jk

Signed electronically on behalf of Chris MacLeod

Enclosure: Letter from Chris Macleod to Receiver's counsel dated May 4, 2020

Amanda Masuku

From: Joan Kasozi
Sent: February 22, 2021 6:17 PM
To: Amanda Masuku
Subject: FW: Margarita Castillo v Xela Enterprises Ltd. et al.
Attachments: Doctor's letter.pdf

From: Joan Kasozi
Sent: November 17, 2020 5:57 PM
To: 'Monique Jilesen' <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Cc: 'Brian H. Greenspan' <bhg@15bedford.com>; Chris Macleod <cmacleod@cambridgellp.com>
Subject: FW: Margarita Castillo v Xela Enterprises Ltd. et al.

Dear Counsel,

Please find attached the Doctor's letter regarding Mrs. Johannessen's condition.

Best regards,

Joan Kasozi
Litigation Associate

CAMBRIDGE LLP

333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5
Phone: (416) 477 7007 ext. 331
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Dr. Carlos Eduardo Pineda M.
Cirugía General - Colon, Recto y Ano

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Fax: 2361-9404 Telesucha: 2232-3232 • 1700
E-mail: drepineda@gmail.com

November 13th, 2020.

To whom it may concern,

Mrs. Eline Johannesen, has had some respirator and septic complications reason for what her discharge from ICU has been held. Her daughter Wenke Gutierrez has to make changes on her planning

Yours.

Carlos Eduardo Pineda M.
Médico y Cirujano
Colegiado No. 3,175
Carlos Eduardo Pineda Molina
MD

Amanda Masuku

Subject: FW: In the Matter of the Receivership of Xela Enterprises Ltd. [LS-LSRSGDOCS.FID635496]

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: December 2, 2020 7:08 AM

To: Derek Knoke <dknoke@litigate.com>

Cc: Joan Kasozi <jkasozi@cambridgellp.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>; Peter Griffin <pgriffin@litigate.com>; Monique Jilesen <mjilesen@litigate.com>

Subject: Re: In the Matter of the Receivership of Xela Enterprises Ltd. [LS-LSRSGDOCS.FID635496]

His mother in law died friday Nov. 27. They are handling her burial and affairs and will return thereafter.

I will follow up with him at the end of this week for an update.

Regards,
Chris

Sent from my iPhone

On Dec 2, 2020, at 6:16 AM, Derek Knoke <dknoke@litigate.com> wrote:

Chris and Joan,

Can you please update us about when Juan Guillermo intends to return to Canada?

Derek

From: Derek Knoke

Sent: Tuesday, November 24, 2020 2:37 PM

To: Chris Macleod <cmacleod@cambridgellp.com>; Joan Kasozi <jkasozi@cambridgellp.com>

Cc: Bobby Kofman <bkofman@ksvadvisory.com>; Noah Goldstein <ngoldstein@ksvadvisory.com>;

Peter H. Griffin (<pgriffin@litigate.com>) <pgriffin@litigate.com>; Monique Jilesen

(<mjilesen@litigate.com>) <mjilesen@litigate.com>

Subject: In the Matter of the Receivership of Xela Enterprises Ltd. [LS-LSRSGDOCS.FID635496]

Chris and Joan,

Please see attached a letter from Monique Jilesen and the enclosure referenced in the letter.

Derek

<image001.png>

Derek Knoke*

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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISES LTD. et al
Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT OF JUAN GUILLERMO GUTIERREZ
Sworn February 22, 2021

CAMBRIDGE LLP
333 Adelaide Street West
4th Floor
Toronto, Ontario
M5V 1R5

Chris Macleod (LSUC# 45723M)
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Tel: 647.346.6696

N. Joan Kasozi (LSUC# 70332Q)
jkasozi@cambridgellp.com

Tel: 416.477.7007
Fax: 289.812.7385

Lawyers for the Respondent,
Juan Guillermo Gutierrez

This is Exhibit "F" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

CV-11-9062-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MARGARITA CASTILLO

Applicant

- and -

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

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA
ENTERPRISES LTD.

This is the Cross-Examination of
JUAN GUILLERMO GUTIERREZ, produced on behalf of the
Corporate Respondent XELA ENTERPRISES LTD. and his own
behalf herein, on his Affidavit sworn February 22, 2021,
taken by Zoom Video-conference, through the offices of
Network Reporting & Mediation, One First Canadian Place,
100 King Street West, Suite 3600, Toronto, Ontario,
M5X 1E3, on the 5th day of March, 2021.

A P P E A R A N C E S:

Jeffrey S. Leon	-- for the Applicant
Chris MacLeod	-- for the Respondent
Philip Cho	Juan Guillermo Gutierrez
Ada Jeffrey	-- for Arturo's Technical Services
Monique Jilesen	
Derek Knoke	-- for the Receiver KSV

I N D E X O F P R O C E E D I N G S

DESCRIPTION	PAGE NO.
JUAN GUILLERMO GUTIERREZ; Affirmed	4
Cross-Examination by Ms. Jilesen	4

I N D E X O F U N D E R T A K I N G S

Undertakings are found on the following pages:

N/A

I N D E X O F U N D E R A D V I S E M E N T S

Under advisements are found on the following pages:

135 (2)

I N D E X O F R E F U S A L S

Refusals are found on the following pages:

N/A

The list of undertakings, under advisements and refusals is provided as a service to counsel and does not purport to be complete or binding upon the parties.

March 5, 2021

J. Gutierrez

3

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2

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6 Questions from Receiver 11

7 2 July 2017 endorsement from
8 McEwan, J 22

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14 Mr. MacLeod and Ms. Jilesen 134

15 7 January 2021 email chain 150

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1 -- upon commencing at 10:02 a.m.

2 JUAN GUILLERMO GUTIERREZ; Affirmed

3 EXAMINATION BY MS. JILESEN:

4 1 Q. Mr. Gutierrez, you swore an affidavit
5 February 22, 2021?

6 A. Yes.

7 2 Q. And do you have that before you?

8 A. No.

9 3 Q. No? Okay. So we'll pull it up when we
10 need to. But you've read it in preparation for this
11 examination?

12 A. Yes, I did.

13 4 Q. Okay. And do you have any corrections to
14 the affidavit?

15 A. No corrections.

16 5 Q. No corrections?

17 A. No.

18 6 Q. Okay. Thank you. I just want to
19 understand, in this proceeding you have been represented
20 by counsel since the Receiver was appointed in
21 July 2019. Correct?

22 A. Yes.

23 7 Q. And when orders are issued by the Court,
24 do you receive and review them?

25 A. You're a little low. I can't hear your

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5

1 voice. Can you get closer to the computer? Because I
2 can't hear you well.

3 8 Q. Right, one second. Is that better?

4 A. A little better. Yeah. It's still kind
5 of low, but that's fine. I feel I can hear you now.

6 9 Q. It should be --

7 MR. GOLDSTEIN: I can hear you clearly, for
8 what it's worth.

9 THE DEPONENT: Yeah, I can hear you --

10 MR. MACLEOD: No problem here.

11 BY MS. JILESEN:

12 10 Q. Okay. I will do my best, Mr. Gutierrez,
13 to speak up.

14 A. I can hear you now.

15 11 Q. Okay, great. So my question was that when
16 orders are issued in this proceeding, you receive them
17 and you review them. Correct?

18 A. Yes.

19 12 Q. And when the Receiver issues a report, you
20 receive those and review them as well. Right?

21 A. Yes, I have reviewed it.

22 13 Q. And I just want to understand one thing as
23 far as the background. You're a businessman, right,
24 sir?

25 A. Yes.

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J. Gutierrez

6

1 14 Q. You are not a lawyer qualified in any
2 jurisdiction in the world?

3 A. No.

4 15 Q. You do not have a Panamanian law degree.

5 A. I don't.

6 16 Q. And you have been involved directly or
7 through your companies in litigation in Panama?

8 A. Not directly. I personally have not been
9 directly involved in any litigation.

10 17 Q. But through companies you're associated
11 with.

12 A. Yes.

13 18 Q. And you have access to Panamanian lawyers.

14 A. I personally don't, the companies did. I
15 don't have any Panamanian lawyers representing me in any
16 way.

17 19 Q. But you know lawyers in Panama, correct?

18 A. I do know people, yes.

19 20 Q. Right, okay. So I'm going to take you
20 through various parts of your affidavit. If, Mr. Knoke,
21 could take us to paragraph 55 of the affidavit. He's
22 going to pull it up on the screen for us.

23 One of the things you do, Mr. Gutierrez, is to
24 object in the affidavit to the Receiver's review of the
25 'reviewable transactions' as we've defined them. And

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1 it's your position, I take it, that the Receiver should
2 not be reviewing the reviewable transactions?

3 A. All I said in there is that in my opinion
4 they're not necessary to be reviewable. I think they're
5 perfectly fine transactions from a business point of
6 view.

7 21 Q. And you'd agree with me that in order to
8 determine if they're perfectly fine transactions from a
9 business point of view, that the Receiver would want
10 information about those transactions and documents in
11 order to satisfy itself that they're perfectly good
12 transactions. Right?

13 A. Yes, I would say so. Yes.

14 22 Q. Right. And so in this paragraph 55, in
15 the middle, you say -- the second sentence says:

16 The first involvement the Receiver
17 has identified is the EAI
18 transaction, which involved my
19 father's estate planning
20 culminating in 2016, shortly before
21 he passed away. At the time EAI
22 owed him approximately \$9 million.

23 And the Receiver asked you for evidence of that loan.
24 Do you recall that?

25 A. Yes. And I responded to questions.

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J. Gutierrez

8

1 23 Q. And you told the Receiver that you didn't
2 have any documents to support that loan. Right?

3 A. I don't, because I'm not my father nor am
4 I EAI, so I don't have any documentation on that.

5 24 Q. And we can pull it up, but I think what
6 you told the Receiver was that you were -- that Xela was
7 conducting inquiries to find any financial statements
8 that might reflect the debt. Did you conduct those
9 inquiries?

10 A. Yes, I did. And I couldn't find anything
11 I did not provide to the Receiver. Everything that we
12 found was provided.

13 25 Q. And where did you make inquiries of?

14 A. Well, I asked from my -- the guy who was
15 my CFO during the time that Xela was operational,
16 Mr. Korol, he helped me out. I had several meetings
17 with him trying to find all of the questions. And I
18 never handled any documentation. I was not the finance
19 guy, so I never had direct access to details. I only
20 had the overviews and the final -- financial statements
21 that were presented to the board. So I had no access to
22 documentation. So I asked the people that at the time
23 would have known, and they gave me what they had. And I
24 pass it over to the Receiver.

25 26 Q. And what Mr. Korol had was access to the

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J. Gutierrez

9

1 Xela records which were held at ATS. Right?

2 A. That's correct.

3 27 Q. Right. And you understand that that is
4 what the Receiver is seeking now, to review the Xela
5 records which are held at ATS. Right?

6 A. All of the Xela records are in the hands
7 of the Receiver, because he took possession of all the
8 physical records. Besides that we had provided them,
9 through Torys at the time, when he asked the question
10 first.

11 28 Q. Right. So the Receiver has the physical
12 records, but one of the things Mr. Korol did was review
13 the electronic records, right?

14 A. There's no electronic records. There's
15 only physical records.

16 29 Q. Sir, there are electronic records.
17 There's a whole ER financial system, as I understand it,
18 of Xela on the servers. Your chief financial officer
19 used a computer, I take it, at Xela?

20 A. Well, yes, he used a computer, but I don't
21 know what -- I don't know the systems. I'm not a
22 systems guy, and I'm not the finance guy.

23 30 Q. Right. So --

24 A. I don't know.

25 31 Q. Right. So --

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10

1 A. It's not something I can answer, because I
2 don't know.

3 32 Q. Fair enough. So if we wanted to know
4 about the records, we should ask Mr. Korol --

5 A. Yes.

6 33 Q. -- about how to get access to the
7 financial records. A good person for us to ask would be
8 Mr. Korol.

9 A. You're asking about the EAI transaction,
10 or are you asking about all the records?

11 34 Q. All of the records now.

12 A. Because it depends what it is about.
13 You're asking about the EAI transaction it's nothing
14 electronic or probably not even physical in Xela,
15 because Xela wasn't part of that transaction.

16 35 Q. After you delivered the written answers to
17 the Receiver in 2019, did you make any further inquiries
18 to identify records relating to the EAI transaction?

19 A. I did the inquiries as I was requested by
20 the Receiver. And I reported to him all I found. After
21 that, I did not do anything else, because there's
22 nothing else to do. There's nowhere else to ask.

23 36 Q. So I'm just going to take you now to your
24 answer -- the answers which were delivered in August of
25 2019.

March 5, 2021

J. Gutierrez

11

1 A. M'hm.

2 37 Q. So you'll see at the top there, sir, it
3 says, "Xela's answers provided to questions received
4 from KSV Kofman".

5 A. Excuse the interruption. Could the screen
6 be increased a little in size, because the numbers very
7 small. I barely can read it.

8 38 Q. Yes.

9 A. Okay, that's better. Thank you.

10 39 Q. All right. So you'll see it's -- and then
11 it says they were delivered on August 22, 2019. And you
12 recognize these as the answers you worked on with your
13 counsel Mr. Korol in 2019?

14 A. Yes. It looks like that, yes.

15 MS. JILESEN: All right. If we can mark this
16 as the first exhibit? That will be Exhibit 1.

17 -- EXHIBIT NO. 1: August 22, 2019 Answers to
18 Questions from Receiver

19 BY MS. JILESEN:

20 40 Q. And if we could just go to page 6 of this
21 document. So you'll see the question is to provide a
22 summary of the debt. And you'll see the answer on the
23 right-hand side, that the indebtedness that led to the
24 transaction originated 20 years ago. But the next
25 paragraph -- sorry, this is (d) right at the top. The

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J. Gutierrez

12

1 next paragraph is:

2 Xela's conducting inquiries to find
3 any audited or externally verified
4 financial statements that might
5 reflect the debt. To the extent
6 that any such statement is located,
7 it will be provided.

8 And so you confirmed to me earlier that you did not
9 conduct any further inquiries after the answer was
10 provided.

11 A. But what I just said is that after we
12 confirmed there was nothing else found, we informed the
13 Receiver and we haven't done anything after. But I did
14 comply with this. The thing is, there's nothing else we
15 can provide.

16 41 Q. Right. But after --

17 A. There's no information. The only
18 information that was available that we found was
19 delivered to the Receiver. And --

20 42 Q. What I'm asking you, or asking you to
21 confirm, is that after August 22, 2019, you didn't make
22 any further inquiries because, as you say, there was
23 nothing else to be found.

24 A. No, that's not accurate. I did never say
25 that after this date, that specific date. I don't even

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J. Gutierrez

13

1 remember what day of the week that day was, much less
2 what happened immediately after.

3 What we did is, and what I did with the help
4 of Mr. Korol, I research everywhere. I ask the
5 questions where I could ask the questions. And when we
6 came convinced that we could no longer find anything
7 else, we stopped looking. Because there's nothing else
8 to found. And the Receiver was informed of that through
9 at the time the Torgs firm.

10 43 Q. Right. And this is a document -- you
11 recognize this is a document that was provided from
12 Torgs. Right?

13 A. Yes.

14 44 Q. Okay. All right. So we'll leave this for
15 now, and let's go back to your affidavit. You said to
16 me earlier that Xela was not part of the EAI
17 transaction, but EAI was a sub of Xela at the time,
18 right?

19 A. Yes, but you have to understand that our
20 company, since its inception in 1984, because we have
21 international operations, we were very clear and
22 established a very clear policy that was respected all
23 the way to the end of Xela, that the subsidiaries were
24 to be handled arm's-length with their own mind and
25 management and complete independence.

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J. Gutierrez

14

1 Xela was not to run the operating businesses.
2 Xela is just holding company. And Xela's focus was in
3 looking for other investments or opportunities, rather
4 than getting involved in the operations. They were
5 miles away from here. That would be a bad policy. So
6 each company, EAI and all the other companies, they all
7 had a board of directors and their executives, and each
8 of them operated independent from Xela.

9 45 Q. But when you say that, sir, each of the
10 companies had you or one of your family members either
11 on the board or as an officer or director. They were
12 not completely independent.

13 A. That's not accurate. Actually, we can
14 look, and most of our companies, none of my family
15 members were board members. I can give you example:
16 Best (ph.), Lisa, Crystal, companies that are referred
17 to in all this documentation that you're showing me.
18 All those companies, none of us ever, no family member
19 was ever a member of the board.

20 In the Barbados operations, I was a member for
21 some time. I understand my son Andres is on some
22 boards. But we're just as board members. We don't have
23 any role as operating officers or anything. Those
24 companies have professional independent management
25 located where the operations of those are, depending

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J. Gutierrez

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1 what country it is.

2 46 Q. I mean, we can go through the tree, but
3 where Xela is the sole shareholder, it had the ability
4 to appoint the directors? Right?

5 A. Well, there was a shareholder meeting and
6 the directors were appointed. But as I said before, we
7 selected professional managers that could run the
8 businesses independently. You look at the
9 qualifications of the board members, they're all
10 independent people with clear backgrounds, strong
11 personalities. They're professionals. And we never
12 micromanaged any of our businesses at all. Never from
13 the beginning, nor at the end.

14 47 Q. The transfer of BTD and Arven was done by
15 your father, not by independent managers or directors,
16 correct?

17 A. I wasn't part of that, so I cannot tell
18 you how that was actually executed. But my dad was not
19 acting on behalf of Xela. He was acting on his own
20 behalf. That was a promissory note that was owed to him
21 personally from way back, I don't remember when. He
22 injected the funds, monies that these companies were
23 utilizing for their investments and their operations.
24 And he had promissory notes for every money he advanced
25 to companies.

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16

1 My understanding, and as I said before, I was
2 not part of that transaction. My understanding is my
3 father at one point decided that he wanted to be paid,
4 and he approached the board of EAI. I don't know who he
5 talked to and how he did it, because he never told me
6 anything about that.

7 48 Q. But EAI was an important asset of Xela,
8 and your position is that, notwithstanding, that Xela
9 was the sole shareholder of EAI and that it was your
10 father's debt. You had no conversation with either your
11 father or the directors of EAI with respect to that
12 transaction?

13 A. During the year that he -- I don't know
14 exactly when he started the process and how it was
15 handled. But if you look at the dates, all that stuff
16 happened during 19 -- 2015. During that year I was
17 completely away from Xela for a whole year taking a sort
18 of a leave. That's why I was not -- I didn't see my
19 father more than a few times that year. We did not talk
20 frequently about this, and he didn't mention it to me
21 until afterward.

22 49 Q. All right. So and you understand... I
23 want to get back to your affidavit, sir, but you
24 understand that the point of the reviewable transactions
25 is that the Receiver is seeking records and information

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J. Gutierrez

17

1 about the reviewable transactions. Right? And so that
2 you say you don't have any information about it. But
3 you understand that the Receiver is simply seeking the
4 records and information relating to the transaction.
5 You are telling us you can't provide that. Is that
6 right?

7 A. I already answered that question several
8 times to Mr. Kofman. We provided everything that we had
9 in our records. What I don't have, I cannot provide. I
10 want to cooperate in every way I can. I have done it
11 all along. But I cannot give you something I don't
12 have. So what can I do? I don't have any of that
13 information, so I cannot provide it. And I did the
14 research that was request from me, and what I found was
15 provided to the Receiver. So that's as far as I can go.

16 50 Q. All right. So one of the things you do in
17 your affidavit is, you raise a concern about the
18 Receiver's lack of interest in what you call the
19 'conspiracy action'. So this is an Ontario proceeding
20 brought by Xela against Margarita, Ricardo and the
21 Nephews.

22 A. Yes.

23 51 Q. And you make some of those -- the
24 allegations in that claim, I take it, are similar to the
25 ones you make in your affidavit starting at

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J. Gutierrez

18

1 paragraph 32? We'll just pull it up.

2 A. I don't remember paragraph 32. If you can
3 show it to me, I would appreciate it.

4 52 Q. Yes. We're just doing that right now. So
5 there's a whole section here, paragraph 32 to 47. And
6 it may be if we just -- I'll let you read those two
7 paragraphs. Let me know when you've done that and we
8 can just --

9 A. Which paragraphs you want me to read?

10 53 Q. Just read paragraph 32 and 33 for the
11 moment.

12 A. Okay. Sorry, could you increase the size
13 slightly more? Because it's a little small. That's
14 perfect, thank you.

15 54 Q. Let me know when you're done, sir.

16 A. I can't read the end of paragraph 33.
17 Thank you. Yes.

18 55 Q. I'm just going to ask that we drop down to
19 paragraphs 46 and 47. So this is all from the same
20 section under the same heading. And you'll see, if we
21 just pull down a little bit so we can see all of 47.
22 That's perfect. And it says:

23 Accordingly... in 47 ...shortly
24 after these events occurred, Xela,
25 my father and I filed a complaint

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J. Gutierrez

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1 for civil conspiracy against
2 Margarita, the Nephews and others.

3 So my question, sir, is --

4 A. Sorry, where is that? I can't see that.

5 56 Q. Paragraph 47.

6 A. 47. Okay, 47. I thought you said 46
7 before, sorry. Go ahead.

8 57 Q. And so I don't want to take you to all the
9 paragraphs from 32 to 47, but I just want to understand
10 that in your affidavit, starting at paragraph 32 through
11 here to 47, I take it you're repeating the allegations
12 that you have made in the conspiracy action. Right?

13 A. Yes. I bring them up because I think
14 they're pertinent to what's going on. And I attempted
15 to work with the Receiver on this. I think the Receiver
16 should pay attention to this very critical issues.

17 58 Q. And as I understand it, you've previously
18 raised the conspiracy action as a reason to stay the
19 enforcement of the Castillo judgment, right?

20 A. I'm not sure what exactly you refer to. I
21 don't remember exactly, exactly in those terms. So you
22 can expand a little bit?

23 59 Q. Sure. I'm going to ask my colleague to
24 pull up an endorsement of Justice McEwan from July 6,
25 2017.

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20

1 A. M'hm.

2 60 Q. At some point, sir, you sought to have the
3 judgment, the Castillo judgment, stayed. You wouldn't
4 have to pay it because of the conspiracy action
5 outstanding. Right?

6 A. Yes. This is not in the context of the
7 Receivership. This happened much sooner.

8 61 Q. Correct. I agree. First you tried to
9 have them heard together, and that was denied by Justice
10 Newbould, right?

11 A. Correct.

12 62 Q. And then, before Justice McEwan, as you
13 say much earlier in 2017, you tried to have the
14 conspiracy action -- sorry, the Castillo judgment
15 stayed, and Justice McEwan declined to do that in
16 July 2017. Right?

17 A. We requested that, I remember, because
18 Xela's financial resources were so limited. And our
19 allegations against my sister are such that she's -- she
20 could be found liable for a number that far exceeded the
21 amount of the judgment. So we were requesting --
22 respectfully requesting the Court to advance this
23 allegation, which should have been done together, but
24 they weren't, in order to satisfy the judgment and
25 resolving the matter. Because this is a long-standing

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21

1 outstanding issue. And it's all interrelated, as you
2 can see in my affidavit. It's kind of explained how
3 related they are.

4 63 Q. But ultimately Justice McEwan declined,
5 for the reasons he set out in this endorsement, to stay
6 the payment of the Castillo judgment. Right?

7 A. I can't read the rest of the -- I don't
8 remember, frankly, so I don't remember exactly the
9 reasons that the judge quoted. But his decision is his
10 decision, and I respect it.

11 MS. JILESEN: All right. Can we just mark
12 this, this endorsement, as -- we can mark it as Exhibit
13 "A" for identification, or if you're fine with it,
14 counsel, we could mark it as Exhibit 2. Let me know.

15 MR. MACLEOD: Let's mark it just to keep it --
16 let's mark it as Exhibit 2.

17 MS. JILESEN: As Exhibit 2. Okay, great.
18 Thank you.

19 MR. MACLEOD: Undertakings chart?

20 MS. JILESEN: Sorry, Mr. MacLeod?

21 MR. MACLEOD: I think Exhibit 1 was an
22 undertakings chart.

23 MS. JILESEN: Correct, from August 22, 2019.

24 MR. MACLEOD: Marked as Exhibit 2 so it flows.

25 MS. JILESEN: Yes. Sorry, I'm just having

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1 trouble hearing you, Mr. MacLeod.

2 MR. MACLEOD: Sorry. Yes, let's mark it as
3 Exhibit 2 so it's consistent --

4 MS. JILESEN: Yes. Thank you.

5 THE COURT REPORTER: Exhibit 2 marked.

6 -- EXHIBIT NO. 2: July 2017 endorsement from McEwan, J.

7 BY MS. JILESEN:

8 64 Q. All right. Next I'm going to take you to
9 paragraph 17 of your affidavit, sir. I don't even
10 really need you to go there. Mr. Gutierrez, you
11 expressed concern -- we don't need to go there right at
12 the moment, Mr. Knoke.

13 Mr. Gutierrez, you expressed concern in your
14 affidavit about what the Receiver's asking about in
15 terms of imaging and having access to your personal
16 devices. Right?

17 A. Yes, I expressed some concerns.

18 65 Q. And you're aware that the Receiver sought
19 imaging of your devices dating back to a case conference
20 in September of 2020. Right?

21 A. That sounds possibly correct, yeah. I
22 don't remember the dates.

23 66 Q. And it was after that case conference that
24 your lawyers negotiated the consent order that you refer
25 to. And we can take you to that at paragraph 111 of

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1 your affidavit. We don't need to go to your affidavit.
2 You do recall that your lawyers negotiated a consent
3 order relating to your devices. Right?

4 A. That's my understanding.

5 67 Q. And then I'm going to take you now to the
6 order that was made on October 27th, 2020. You actually
7 say attached is Exhibit 22 to your affidavit, but I'll
8 just let Mr. MacLeod know that it's the wrong order
9 attached. So we'll take you to the correct order dated
10 October 27th, 2020.

11 So if you'll just, yeah, go to the top.
12 You'll see there's October 27th, 2020. If we just
13 scroll down a little bit, you'll see it happened at a
14 case conference. And then the first heading is "Juan
15 Guillermo's Devices". So the first paragraph says that
16 within seven business days of the order, you would
17 provide to the Receiver's forensic specialist, Duff &
18 Phelps, all of the devices used by you, which do or may
19 include Xela information. And you did provide your
20 devices to Duff & Phelps, but you just did not do that
21 within seven business days of the order, right?

22 A. The order was issued on the 27th, and as
23 you know, because it was reported immediately, I asked
24 our lawyers to communicate with you immediately. I had
25 an emergency trip with my wife two days earlier, on the

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1 25th, I believe it was, because my mother-in-law was
2 passing away and we wanted to see her. And I had to be
3 supportive and the order came out afterward. So when
4 that happened I wasn't in town. So it was my
5 understanding is that my lawyers and yourselves were
6 discussing ways to do it as soon as I return, and which
7 we did.

8 68 Q. And you returned from Guatemala on
9 December 17th, 2020?

10 A. That's correct.

11 69 Q. And as I understand it, your mother-in-law
12 died in Guatemala on November 27th, 2020?

13 A. Yes.

14 70 Q. And you swore an affidavit in support of
15 the criminal complaint in Panama on December 3rd, 2020,
16 when you were in Guatemala. Right?

17 A. I sign a sworn testimony. I wouldn't call
18 it in support, because I wasn't supporting anything. I
19 was asked if I had participated in a shareholder
20 meeting, in my personal capacity or in the capacity as
21 president of Xela, and I responded I did not. So then I
22 was asked if I will sign testimony on that regard, and
23 since that was true, and I wasn't accusing or alleging
24 anything other than I was not present, because I was not
25 present, so I signed.

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1 71 Q. So we'll get back to your affidavit. But
2 that affidavit from December -- you were in Guatemala
3 six days after your mother-in-law died, and you swore an
4 affidavit in respect of Xela. Right?

5 A. I don't know if you can call it an
6 affidavit. It's a completely different type of
7 legislation down there. The affidavit's basically me
8 writing my statement. And in those case -- that cases
9 it's a sworn testimony basically answering a question,
10 which is slightly different than writing an affidavit.
11 So I wouldn't call it an affidavit. I think that's
12 the --

13 72 Q. You gave sworn testimony on December 3,
14 2020, while you were in Guatemala, right?

15 A. Yes. And actually, it's not sworn
16 testimony. Because as I said, it's not like here. Here
17 when you write an affidavit, the affidavit is written,
18 and before it's signed, it's sworn in front of the
19 notary or the officer that has the oath taken, officer I
20 don't know the title.

21 In Latin America it's different. In Latin
22 America you have a conversation with the notary. The
23 notary writes, like a minute, like a document, and then
24 you just sign what it says in there is what you said.
25 And the one who swears under oath is actually the notary

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1 who is attesting what the document says. And I was
2 asked if I participated in the shareholder meeting as
3 president of Xela or as myself, and I said no, I was
4 not.

5 73 Q. I'm going to ask you some more questions
6 about that document, sir, but what you just described,
7 appearing before a notary six days after your
8 mother-in-law died, you appeared before a notary,
9 answered some questions, and signed the document.
10 Right?

11 A. Actually, the notary came to me, asked me
12 the questions, and I signed the document.

13 74 Q. Right. On December 3, 2020.

14 A. Right.

15 75 Q. Okay. And you then returned from
16 Guatemala on December 17th, right?

17 A. Right.

18 76 Q. And you didn't deliver up your devices
19 immediately upon your return. That didn't happen until
20 January 5th, right?

21 A. I was subject to a 14-day mandatory
22 quarantine. So for 14 days I could not meet anybody or
23 go anywhere. I had to stay at home. Which I complied
24 with 100 percent, like I always comply. So as soon as
25 the quarantine was over, the earliest date available

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1 where the experts were available, yeah, was the date
2 they called me for.

3 77 Q. You understood that it was the Receiver's
4 position that you didn't -- your presence was not
5 necessary for the imaging of the devices, right?

6 A. I didn't understand that. Nobody
7 explained that to me in any way. But my presence was
8 necessary to -- for myself to protect my information.
9 Because the majority, if not all, of the information on
10 my devices is personal in nature. It's my privates --
11 my private information. It's nothing with business. It
12 has a lot of content that has nothing to do with Xela,
13 much less with this action or this Receivership. So I
14 wanted to make sure that my data was not going to be
15 just going around, particularly after I learned that the
16 person taking it was not Duff & Phelps but was a company
17 called Kroll.

18 78 Q. You understood that you were subject to a
19 court order, and that you were late.

20 A. I complied with the court order as soon as
21 it was physically possible. And by the way, my
22 understanding is that Mr. MacLeod was in constant
23 communication with you regarding the status of my
24 situation. So it's not that I just disobeyed. I did
25 comply with the order as soon as it was physically

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1 possible.

2 79 Q. If we could go to Exhibit 23 to your
3 affidavit. It's a document you've attached to your own
4 affidavit.

5 MR. MACLEOD: Counsel? Sorry to interrupt.

6 MS. JILESEN: Yes?

7 MR. MACLEOD: Exhibit 22 you
8 said...(inaudible).

9 MS. JILESEN: We can pull up Exhibit 22 if you
10 want first.

11 MR. MACLEOD: ...(inaudible).

12 MS. JILESEN: Exhibit 22 of your affidavit is
13 the ATS order, not the Juan Guillermo order.

14 MR. MACLEOD: I was going to suggest we
15 introduce this as exhibit, and then make sure...
16 So Exhibit 3 would be...

17 MS. JILESEN: Oh, you want the order relating
18 to Juan Guillermo's devices to be Exhibit 3? That's
19 fine.

20 MR. MACLEOD: Yes. Sorry to interrupt.

21 MS. JILESEN: That's no problem.

22 -- EXHIBIT NO. 3: Order re Xela's devices

23 BY MS. JILESEN:

24 80 Q. Okay, if we could go to Exhibit 23 of
25 Mr. Gutierrez's affidavit. All right. So let's go to

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1 my email right -- exactly right there. On page 284 of
2 the PDF there's an email from me, sir, if you could just
3 pull it up. You'll see it's October 25, 2020. And I'm
4 writing to your counsel, and I say:

5 We don't know when, where or how
6 long...in Guatemala and have no
7 control over his return. When he
8 returns he would be required to be
9 quarantined for 14 days...

10 as you said, Mr. Gutierrez,

11 ...and won't be able to attend in
12 person to deal with this order.
13 Please provide us with a fixed date
14 in which the order can be complied
15 with.

16 And then it says:

17 There is no reason Juan's personal
18 presence is needed for this order -
19 you or other agents of Juan can be
20 in attendance if there's any
21 concern about the imaging.

22 And if you just pull up, you see your counsel's
23 response. At the time the view was your flight was
24 going to return on Monday. And your counsel writes:

25 He will be in quarantine and we

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1 will act as his agent and pick up
2 the devices and meet with D&P for
3 mirror imaging within the timeline.

4 And you understood at the time that that's what your
5 counsel had told us?

6 A. If you see the emails, I wasn't copied on
7 any of these emails. So I saw these emails as I was
8 preparing my affidavit at the time, and before the
9 imaging was done, I wasn't aware of this exchange.

10 81 Q. Okay. But you understand now that it was
11 the Receiver's position your attendance was not
12 necessary for the imaging, and you accept, I take it,
13 that we advised your counsel of that on October 25,
14 2020.

15 A. I can't accept anything. I don't know.
16 You're showing me here an email, but my point here is, I
17 wanted to be present at the moment, because I wanted to
18 make sure that my information was going to be handled
19 carefully.

20 If you look at the conspiracy case you brought
21 to my attention earlier this cross-examination, it is a
22 history, a long history. Let me just see later, you'll
23 find it's a long history of the counterparts of Xela, or
24 Lisa really, litigation all these years. The
25 counterpart has done extremely ways to get all of our

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1 personal information or any of the information they can
2 use. And that was my concern and still is my concern.

3 And when I see the firm Kroll Investigations
4 handling my information, it raised all my concerns
5 beyond anything. Because those is the same firm that
6 was heavily involved in the past in the surveillance on
7 behalf of my cousins, or the 'Nephews' as we referred to
8 them.

9 So I have legitimate reasons why to be
10 personally present. And I went there the date the
11 experts fixed the date. I couldn't go while in
12 quarantine. As soon as the quarantine was over I was
13 available to go any time, any moment. And I went the
14 date the two experts agreed on doing it.

15 82 Q. I'll just remind you, sir, that this email
16 that I've shown you is attached as an exhibit to your
17 affidavit. And so --

18 A. I already recognize that. If you go back
19 in this transcript, what I just said, I said I did not
20 know this emails until my affidavit was being prepared.
21 Before that I didn't read it. I didn't know about them
22 until my affidavit, which is way later, because the
23 imaging was done in early January, and the affidavit is
24 done in February. So --

25 83 Q. So before the speech you just gave,

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1 Mr. Gutierrez, the only thing I was asking you to accept
2 was that the Receiver communicated the information in
3 Exhibit 23 to your counsel on October 25, 2020, and I
4 think your answer was that you don't accept that. And
5 I'm asking you --

6 A. I didn't -- sorry, you're putting words in
7 my mouth. I didn't say that either. What I said is, I
8 can't accept or not accept something I wasn't part of.

9 84 Q. I'm only asking you to accept -- sorry. I
10 don't mean to interrupt, sir, but I'm only asking --

11 A. Yeah, you're interrupting me.

12 85 Q. Sorry.

13 A. I'm just saying, I'm not accepting or not
14 accepting anything. I'm just saying, I did not know
15 about this email until I saw it while my affidavit was
16 being prepared. Before that, I didn't know. So I acted
17 in the best way I could, and I've been doing all I can
18 to comply with all the orders, and I have complied with
19 all the orders since this Receivership first started a
20 year-and-a-half ago.

21 86 Q. All right. Let's go back to the order of
22 October 27th, 2020, which I think is now Exhibit 3. All
23 right. So paragraph 2 of the affidavit, if we just --
24 sorry, of the order, if we just scroll up.

25 So paragraph 2 requires you to swear an

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1 affidavit, and you did do that in January of 2020. And
2 we'll get back to that.

3 Paragraph 3 of the order. You'll see that
4 paragraph 3 of the order says that Duff & Phelps will be
5 authorized to make a single forensic image of each of
6 the devices. And that is what Duff & Phelps did. I
7 take it you, directly and through your counsel, asked
8 Duff & Phelps to make another image for you, but you'll
9 see here that Duff & Phelps was authorized to make a
10 single forensic image. You see that?

11 A. I can see that, yes.

12 87 Q. They were not directed or authorized to
13 make another image, right?

14 A. The reason we requested to make an image
15 -- a copy of the original image was because I am
16 required by the order from the Court to go -- and I
17 have, I forgot, 30 days, I believe, fix the time to go
18 through all the information with my counsel and advisers
19 to make sure or identify all the documents that are
20 discoverable according to this order, and to identify
21 any items that are personal or private nature or they
22 are protected by some privilege, attorney-client
23 privilege, whatever.

24 So all that research cannot be done unless we
25 can access the device. And to make it accurate, the

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1 adviser, the technical adviser, advised that we should
2 have a copy of the original device, which will remain in
3 the Receiver's hands through their agent, so we can -- I
4 can go with my counsel through all the documentation and
5 identify those items, as described before, based on the
6 indexing and identical indexing the original copy has.

7 I don't see what the damage it says. And the
8 fact that says here, a single forensic image, I don't
9 see anywhere that makes it -- prohibits from making a
10 copy for myself. But if that's the case, that's the
11 case.

12 88 Q. Mr. Gutierrez, we have a fundamental
13 disagreement about the interpretation of the order, and
14 we've already established that you're not a lawyer. So
15 I think perhaps we'll leave it to the Court to determine
16 the issues relating to how and when you have a right to
17 review for privilege. I'm not going to take you through
18 that.

19 At paragraph 4 of the order it says that Duff
20 & Phelps shall be permitted to employ whatever methods
21 it deems appropriate to image the devices without
22 interference by Juan Guillermo or his IT expert. But I
23 take it that you insisted that the image be password
24 protected, right?

25 A. Yes, because I found out that Duff &

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1 Phelps doesn't have the capabilities to do this. This
2 imaging was performed by another company, which is a
3 subsidiary I understand from Duff & Phelps which was not
4 discovered to us in advance, named Kroll Investigations.

5 And I know this because the individual from
6 Kroll who actually performed the job explained to me
7 that Duff & Phelps doesn't have any capabilities to do
8 this forensic work, and Kroll does it all the time. And
9 Kroll, as I explained before, has a history of
10 cooperating or working with the Nephews, and they've
11 been trying to gather our information. So I think it's
12 very legitimate to be concerned about my -- especially
13 my very private personal. I have photographs; I have
14 family videos; I have my memoirs; whatever is in my
15 personal devices.

16 And as I said before, I have very little, if
17 any, Xela-related information, especially information
18 that could be helpful for the Receivership. So anything
19 I have I will be providing. As a matter of fact, I have
20 provided it already. Because I have provided all of the
21 information available from Xela's point of view in the
22 past. So but I think you have to consider the
23 protections needed to my privacy, especially you already
24 quoted the conspiracy case. I think the conspiracy case
25 clearly explains why I'm so concerned.

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1 89 Q. Sir, before you attended for the imaging,
2 neither you nor your counsel raised with the Receiver
3 any issue about it being about Duff & Phelps or its
4 subsidiary doing the imaging, right?

5 A. I haven't had any possibility of
6 communication with the Receiver, because Mr. Kofman has
7 refused to meet me. I requested meetings with him on
8 many occasions since the Receivership started, and the
9 only two meetings from the very beginning, and then he's
10 rejected my meetings. So I haven't been able to
11 communicate with him. What my counsel communicates with
12 you, you know better than I do, because I'm not part of
13 those communications.

14 90 Q. So --

15 A. What I can say, though, I want to make it
16 clear. I didn't know Kroll's involvement until the time
17 that the appointment was made between the experts and I
18 realized that the experts are kroll.com, and that's when
19 -- before that I wasn't that concerned.

20 91 Q. Okay. So fine. I understand. Perfect.
21 That's my question, Mr. Gutierrez. But you raised the
22 issue of putting a password on the device before you
23 knew it was Kroll.

24 A. I asked the advisers, the technical
25 adviser, I wanted to protect the integrity of my

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1 privacy, which I think I'm entitled. I think every
2 citizen has a right for privacy. And considering the
3 contentious litigations been, not only the conspiracy
4 but all of the other litigation has been going for 20
5 years, I think I have the legitimate right to protect my
6 privacy.

7 And I asked my attorneys to, when they were
8 negotiating or talking to you, to safeguard that, and my
9 understanding is that the images were done in a
10 pre-agreed fashion between the experts. I didn't
11 personally talk to anybody or influence anything. I was
12 told there was an understanding how it was going to be
13 done. And that understanding included the password,
14 which I agreed on. And then --

15 92 Q. No, no, you insisted, Mr. Gutierrez. It
16 was you who insisted that there be a password, and you
17 understand that the Receiver objected to that. Right?
18 You do understand that.

19 A. I don't understand if he did or not, but I
20 did insist on that. As I said, the Receiver never
21 talked to me either. I insisted on the password for the
22 reasons I explained. Do you want me to explain them
23 again? I'll be happy to.

24 93 Q. No, I do not need that, sir.

25 A. But the fact is, I have legitimate reasons

1 to be concerned for the privacy of my personal
2 information and devices, which is the majority of it.
3 And that's what I was requesting. And it was agreed on
4 because the two experts operated under that
5 understanding. So I just went along with what was
6 agreed between the experts, and I thought that was the
7 proper way, so I did it.

8 94 Q. No, no, you did not just go along,
9 Mr. Gutierrez. You insisted that there be a password
10 before your devices were imaged. You agree with that,
11 right?

12 A. I requested it, and it was accepted.
13 Otherwise, it wouldn't happen. So I don't know what you
14 mean --

15 95 Q. We'll get back to the correspondence about
16 that.

17 A. You keep trying to put words in my mouth.
18 I don't understand what you're saying.

19 96 Q. You can agree with me or disagree with me,
20 sir. I'm not trying to put words in your mouth. If you
21 don't agree with me, don't agree with me.

22 Okay. I take it you have the password, that
23 is the password, as far as you know, was never provided
24 to the Receiver, and you are the only person with the
25 password for the devices?

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1 A. My understanding of the agreement that was
2 reached before the images were done is that they were
3 going to be under password, and I was going to hold the
4 password; that we were going to get access to the files
5 to be able to segregate the Xela-related documents from
6 the privacy, the private personal documents or anything
7 that would have any privilege protection and work that
8 was going to be doing with my legal advisers and my
9 counsel. And that's how it was done. And that was an
10 understanding. My understanding is that was agreed
11 between both parties. That's how it was done. Nobody
12 forced anything here.

13 97 Q. Mr. Gutierrez, my question is simple. Are
14 you the only person with the password?

15 A. Yes. That's how it was agreed. It was
16 agreed by both parties when we did it.

17 98 Q. It was not agreed, sir, but we'll get back
18 to that. You can't tell me what was agreed between your
19 counsel and the Receiver, right? Because you weren't
20 there? I just don't want you to be giving evidence
21 about things you don't know about, sir.

22 A. Please be respectful to me. I've been
23 respectful to you. Don't raise your voice, please. I
24 really appreciate it if you just ask me questions and
25 don't accuse me of something. I'm trying to cooperate

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1 with you, so make it possible. I'm trying to be very
2 cooperative, and I explain you the reasons why I
3 insisted on privacy. So I don't know what you talk to
4 the other lawyers. Just I can tell you my concern is
5 legitimate concern.

6 And if we have a dispute, I'll be happy to
7 have this brought to Justice McEwan and have him decide
8 who's right or wrong here. But let's try to work on
9 this cooperatively. That's what I've been asking
10 Mr. Kofman from the beginning. That's why I requested
11 meetings. Let's work on this in a cooperative way.
12 We're not -- Receivership is supposed to be helping me
13 to resolve on the satisfaction of a judgment, which
14 nobody in this world is more interested in paying my
15 sister and ending this situation. So let's not make it
16 more difficult. Let's work together on fixing it.

17 99 Q. Mr. Gutierrez, I'm trying to get through
18 this and ask you questions and have you answer the
19 questions. And I'm sorry to say it's not a discussion
20 about negotiating a resolution about this. So if we
21 could just leave it to I ask questions and you answer
22 them, we'll get through this a lot faster. Okay?

23 A. Yes. Just don't raise your voice and act
24 in a menacing way. Just ask your questions and I'll
25 answer them like I've been doing so far.

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1 100 Q. I don't think I'm particularly menacing,
2 Mr. Gutierrez, but among other things, you did ask me to
3 raise my voice earlier because you couldn't hear me. So
4 I am actually being louder than normal, that is fair.
5 But you did request that of me.

6 Okay, back to the order. I just want to be
7 sure I have the answer to this question: You are the
8 only person with a password to the devices that were
9 imaged, right?

10 A. I've already answered that question. Yes.

11 101 Q. Is the answer yes?

12 A. The answer is yes for the very legitimate
13 reasons I explained before. And as far as I know, that
14 was the understanding, and that's why the Kroll agent
15 who did the imaging, he himself helped me how doing it
16 properly, so --

17 102 Q. Mr. Gutierrez, I wasn't asking you for the
18 reasons. I wasn't asking you for the reasons. I was
19 just asking you for the fact. So the next one's just a
20 fact; not asking you for reasons; not accusing you of
21 anything. The paragraph 5 requires the devices to be
22 returned to you after they're imaged, and they were
23 returned to you. Is that right?

24 A. That's true.

25 103 Q. Okay. And paragraph 6 says that

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1 Duff & Phelps will make no additional copies or images
2 of the devices. And as we've discussed, they did only
3 make one image, right?

4 A. Yes.

5 104 Q. And you did have your own IT expert who
6 attended on that day?

7 A. Yes.

8 105 Q. And you have the images in your
9 possession, as you said, so --

10 A. I don't have the images. I have the --

11 106 Q. You have the devices. Correct.

12 A. ...(inaudible).

13 107 Q. Right, you have the devices. So your IT
14 expert has the expertise to make an image of your
15 devices if you wanted them to do that. Right?

16 A. Yes, but I'm not the technical guy. My
17 understanding, and what I was explained, is that it's
18 much better for accuracy in the process of analyzing the
19 data --

20 108 Q. Can I pause and just ask you if you're
21 telling me something your lawyer told you, or you're
22 telling me something your IT expert told you?

23 MR. MACLEOD: Counsel.

24 MS. JILESEN: No, I want to make sure he's not
25 telling me something you told him, Mr. MacLeod. I'm

1 interrupting him because I don't know if he's telling me
2 privileged information, which I'm not interested in
3 having.

4 THE DEPONENT: The adviser, the expert
5 adviser, the IT expert that helped me out with this,
6 explained to me something I didn't know before on how
7 the data in the hardware or the hard drive, say,
8 following some sort of an indexing that I don't
9 understand. So he said at the time of identifying
10 documents, it is done on the same copy or a copy of the
11 same image, it would be accurate. If not, it could be
12 references that could vary because the computers are
13 sort of like live. This process is going on in the
14 computer and the device. So every time you turn it on,
15 thinks that -- I don't know anything else than that.
16 That's that he explained to me. And he said you want to
17 do the job accurately, a copy would be advisable or
18 required. And that's what the expert told me.

19 BY MS. JILESEN:

20 109 Q. All right. But it remains the case that
21 you could make your own copy of your devices, right?

22 A. I guess so. But as I explained, the
23 adviser told me of doing so some of this indexing could
24 vary, and then it could create confusion at the time of
25 identifying and making references to the documents

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1 according to the indexing. I'm just repeating what I
2 understood what he told me. I'm not the computer
3 expert.

4 110 Q. Right. And you didn't retain a computer
5 -- you did not --

6 A. He strongly advised, but before going we
7 got a copy. That's why we requested it, and you're
8 denying it. So that's it.

9 111 Q. You didn't retain a computer expert before
10 the October 27th, 2020 order was made.

11 A. Before that I was not -- I didn't need
12 one.

13 112 Q. Well --

14 A. I needed a computer expert when -- in
15 order to be able to protect my information as it was
16 being imaged. I explained the reasons. I think my
17 reasons to be concerned about my privacy are very
18 legitimate.

19 113 Q. And you could have sought -- this was a
20 consent order, sir. And you could have sought whatever
21 protections you wanted with respect to your privacy when
22 negotiating this consent order, but you did not do that.
23 Right?

24 A. I don't know, because they did not
25 negotiate with me. I didn't talk to anybody about this

1 other than my attorneys. And my attorneys negotiated
2 the best they could. I did not know the content of
3 those discussions among yourselves. But I can tell you,
4 I was and expressed my concern about my information way
5 before the order was issued.

6 These concerns I have had for a long time,
7 because, as I explained to you, it's a long history of
8 attempts by the Nephews to access personal and private
9 information of us in the search of something they can
10 do. And when I see the Kroll name involved, the alarm
11 rate goes off the charts. Because they are the same
12 people that were surveilling us. I don't know if you're
13 aware, but the Kroll people were actually taking
14 photographs of my children 20 years ago.

15 114 Q. When you say you know I'm aware, how do
16 you know I'm aware of that, Mr. Gutierrez?

17 A. No, I said I don't know if you're aware.
18 I mentioned it before. I don't remember if you -- I
19 don't know if it's been mentioned to you or not. But --
20 because we never talked before. But the Kroll people,
21 they take video tape and photographs of my children when
22 they were still minors, the younger ones.

23 So people who do that, are you going to get
24 now all my personal private information without a
25 password? Is that not a reasonable concern on my part

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1 for my privacy and the safety of my information? That's
2 why I asked for the password.

3 115 Q. No, I think we're going to have to agree
4 to disagree on that, Mr. Gutierrez. You did not raise
5 the issue of the password. In my recollection, you
6 raised that before you raised an issue about Kroll.

7 A. I don't know what you guys were talking
8 among the attorneys on both sides, so I can't tell you
9 what you knew or not. All I can tell you is I was
10 concerned about the safety of my information all along.
11 And the concern was raised even higher at the time that
12 the Kroll got involved.

13 116 Q. Okay. Let's --

14 A. And by the way, Kroll was involved from
15 the beginning, from what I understand, because I was
16 told that the same people do the imaging of some
17 servers, and it never was disclosed to me, or anybody
18 else as far as I know on our side, that Kroll was the
19 party doing it. It was hidden from us, which it's
20 another reason for concern by the way.

21 117 Q. It was not hidden from you, sir, but I'm
22 going to move on. Paragraph 7 of this order talks about
23 -- oh, sorry. We were just there, yes. It provides
24 that Duff & Phelps will be authorized to conduct a
25 forensic analysis of the image to determine whether,

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1 when and how many files have been deleted from the
2 devices.

3 If we could just go to your affidavit at
4 paragraph 117. You say that we permitted Kroll to
5 conduct limited forensic analysis of the image drive,
6 the results of which produced a list of files that had
7 been deleted from my personal devices. And
8 Mr. Gutierrez, I'm going to suggest to you that that did
9 not occur, and that there is no such report.

10 A. Well, I don't know what the basis you're
11 suggesting that, because you weren't there. I was
12 there. That's when the -- now you're showing or
13 explaining one of the reasons why I wanted to be present
14 when it was done.

15 The two experts, the Kroll expert,
16 Mr. Johan -- I forget his last name, sorry -- and my
17 expert, both of them, after the images were completed
18 and before the drive was encrypted, they conducted, I
19 don't know, I'm not an expert so I can't tell you
20 exactly what it's called. But they conducted forensic
21 work to determine if there were any substantial or out
22 of normal deletions on the files. They spend a long
23 time doing so.

24 And when they finish, both of them took
25 photographs of the -- or screen shots of the computer

1 that was used for the imaging. And when both of them
2 were satisfied and they both agreed there was no
3 substantial -- nothing was deleted that was not out of
4 the ordinary or anything out of the ordinary was done to
5 the devices. Then at that point the drive was
6 encrypted. So what I say in my affidavit is totally
7 accurate.

8 118 Q. And you don't have a report, either from
9 your forensic expert, or from Kroll or Duff & Phelps.
10 Right? There's no report.

11 A. I did not get one. I suppose they -- I
12 didn't ask for one either.

13 119 Q. Okay.

14 A. I don't know if the expert sends any
15 report to my attorneys. I don't know that. But what I
16 can tell you is, I was there. I was there.

17 120 Q. But that's what I'm asking you, sir.

18 A. I saw it with my eyes -- let me tell you
19 this. I saw it with my eyes, and I heard it from my
20 ears, through my ears, when both of them were talking
21 about the process they were doing. And they both agreed
22 that the integrity of the data was very accurate, and
23 there was no, no issues.

24 And the only thing they didn't do -- well,
25 they did what they could do to determine if there was

1 any deletions. The only thing they didn't do is go into
2 the actual files, because that was the agreement that we
3 had -- I have the time to go through with my counsel to
4 determine what we can claim privilege or not. So I
5 disagree with you. The limited forensic required work
6 was done.

7 121 Q. I'm just trying to understand what you're
8 saying in your affidavit when you say that report
9 revealed what you're telling me is that you, who is not
10 an IT expert, overheard two IT experts talking, and
11 that's what you're recording in your affidavit.

12 A. I didn't overhear. I was sitting there.
13 I was listening to what they were talking. I was part
14 of that conversation. I'm not an expert, so I did not
15 opine. But I listened to them. I saw the screen. I
16 saw the reports on the screen. And I saw both of them
17 taking photographs with their telephones of the computer
18 screen.

19 And they both -- they both expressed that it
20 was totally accurate. The imaging had no problems at
21 all. And they both expressed that there was no
22 substantial deletions of any kind that would raise any
23 flags. And that was very clear, and it was agreed
24 between the two of them in my presence. So I didn't
25 overhear. I overheard -- I was there listening. So I

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1 was told as they were speaking.

2 122 Q. And you don't have the report referred to
3 in paragraph 117 of your affidavit.

4 A. The report was on the computer screen. I
5 don't have the computer. Okay? I just saw -- I'm
6 referring to a report I saw on the computer. And they
7 took pictures. So you should ask your expert for those
8 photographs.

9 123 Q. I'd like to take you to the affidavit that
10 you swore January 7th, 2021, in accordance with this
11 order. So I'll just go to that. And so if we just pull
12 down -- maybe pull down to the end so we can just show
13 it's January 7, 2021. Oh, it says "January 7, 2020",
14 but I believe it was actually 2021. If we could pull up
15 to the first paragraph.

16 So you introduce yourself, and then you say
17 the affidavit is given pursuant to paragraph 2 of the
18 court's order dated 27th October, 2020. So you actually
19 swore this January 7th, 2021. Is that fair, sir? Not
20 2020?

21 A. I'm sorry, I can't understand you. Can
22 you repeat?

23 124 Q. So at the bottom of the page -- I'll show
24 you again -- it shows that's your signature on the
25 right-hand side, right?

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1 A. Yes, I see that. Yes.

2 125 Q. And on the left-hand side it was sworn
3 before Ms. Kasozi, but it says "January 7th, 2020". And
4 I'm just suggesting to you that you did swear it on
5 January 7, 2021, this year, not last year.

6 A. Yes, I think that sounds possible, yes.

7 126 Q. That's the kind of mistake we make in
8 January.

9 A. M'hm.

10 127 Q. So because you say the affidavit is given
11 pursuant to paragraph 2 of the October 27th, 2020 order.

12 A. Yes.

13 MS. JILESEN: Mr. MacLeod, do we want to make
14 that the next exhibit? Is that --

15 MR. MACLEOD: Yes, please. So Exhibit 4?

16 MS. JILESEN: 4?

17 -- EXHIBIT NO. 4: January 7, 2021 affidavit

18 BY MS. JILESEN:

19 128 Q. And if we just pull down to the next page
20 of the affidavit. So paragraph 3 you say,
21 Mr. Gutierrez:

22 In accordance with paragraph 2 of
23 the order, I hereby affirm that the
24 devices are the only electronic
25 devices in my power, possession or

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1 control that contain or may contain
2 information or data belonging to
3 Xela and/or its current or former
4 subsidiaries and/or affiliates.

5 Can I just understand, do you have other devices that
6 you say, phones or iPads or laptops, that you say do not
7 contain information or data belonging to Xela?

8 A. I don't have any other iPads or iPhones.

9 129 Q. ...(inaudible).

10 A. Those two -- I'm a very simple person. I
11 only have one single email address. I only have one
12 cell phone. I have the same number; I never change
13 anything. I want to have -- I have one cell phone. I
14 had one iPad.

15 130 Q. Okay.

16 A. That's it.

17 131 Q. And on to let's talk about your emails
18 then, if we could go to paragraph 105 of the affidavit
19 on this motion, February 22nd, 2021. If we just go to
20 paragraph 105 of the affidavit. So you say, "My own
21 emails are maintained on ATS servers". So what is that
22 -- you say you have one email address. What is that
23 email address?

24 A. My email address is
25 jgutierrez@arturos.com. That's the current one. It

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1 used to be @xela.com, but it became @arturos.com when
2 Xela stopped operating.

3 132 Q. Sorry, and when did you stop having a
4 xela.com email address, do you say?

5 A. I don't remember the date. But it was at
6 the time that the Xela servers stopped operating and
7 were sold.

8 133 Q. So that was in 2017. Mr. Fabrini, who
9 used to work for Xela and now works for ATS, told us
10 that you continued to have a xela.com email address
11 right up until -- we asked him questions earlier, a
12 month or two ago.

13 A. Yes. I don't know the technical
14 background of this, how it works. But when Xela stop
15 operating, I needed to have an email address. So I
16 asked my son Andres if he could give me an email address
17 on the system, and he agreed. Then I asked if there was
18 a way that, if anybody was still emailing me to the old
19 address, could be address.

20 And then I spoke briefly with Mr. Fabrini at
21 the time. And he told me that the server was
22 discontinued, or decommissioned, whatever the
23 terminology is, and that they couldn't do that. But
24 then he did something -- I don't know what it is -- so
25 if anybody emails at the jgutierrez@xela.com, it will

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1 come into my @arturos.com address. But I cannot answer
2 from Xela. I only can answer as arturos.com.

3 And the reason I did that is because, as I
4 said before, I'm a very simple person, and I only have
5 one email address for years and years and years since
6 this email thing started. So I have used @xela.com for
7 logging into my electrical bill company, my cable
8 company. I use it for every other thing. So it become
9 a very problematic to change the address.

10 Also, I wanted to make sure that in any case
11 anybody in the past related to me in business or
12 personally wanted to reach me, they could still reach
13 me. So as I say, I don't know the technical --
14 technicalities of it, but if you email @xela.com, the
15 email will come into my @arturos.com. But that server
16 no longer exist. That's what I know.

17 134 Q. And what is your relationship with ATS?

18 A. I have no relationship other than my kids,
19 they operate that company. I have no participation
20 whatsoever in ATS, nor I have it from the beginning.

21 135 Q. Except that they host your emails.

22 A. That's all they do as a favour. They did
23 to me as well as they also held in their filing room
24 some of the historic files of Xela, the stuff that we
25 couldn't locate in the office in Barrie. So there was

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1 some old stuff in there. I understand that all that
2 information is now in the hands of the Receiver anyway.
3 But that's as far as I know.

4 And there's one other thing. I had to sell my
5 house as part of the paying my sister's judgment. My
6 wife and I had to sell our home. So it was done. And
7 we're renting now in a much smaller place. So we have a
8 few boxes with personal property that are being stored
9 in ATS's warehouse, because we had nowhere else to put
10 it. But that's the extent of my relationship with ATS.

11 136 Q. Who negotiated the agreement to sell the
12 servers from Xela to ATS?

13 A. I'm not totally sure who did it. It must
14 have been somebody in administration. I don't know,
15 Mr. Korol or somebody else in the accounting department
16 of Xela would have done that. I approved the sale,
17 because when it was brought to my attention, the price,
18 I think, if memory doesn't fail me, I think it was
19 around \$200,000, was a number that sound to me
20 reasonable for those servers, which in my recollection
21 were all muscled and kind of old.

22 137 Q. And --

23 A. Xela needed the money, because we needed
24 to close the office, pay the landlord and other things.

25 138 Q. But it wasn't just the servers that went

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1 over to ATS, was it? It was also the clients?

2 A. I don't know exactly what the clients --
3 we discontinue all our services, Xela. When I say 'we',
4 I'm referring to Xela. Xela discontinuing the services.
5 The clients are free to go anywhere they wanted. We
6 didn't have any ways to transfer, not transfer anybody.
7 It became ATS's business to provide some, and by the
8 way, not all of the services Xela provided are
9 transferred, because some of those services are no
10 longer provided by anybody.

11 139 Q. But you didn't just transfer the physical
12 servers to ATS. All of the data that was on the servers
13 was also transferred to ATS. Right?

14 A. I don't know that. I'm not a technical
15 guy, so I don't know the technicalities. I was
16 explained that there was going to be a transition
17 period, and eventually my email address end up working,
18 so I already explained about that before in prior
19 question. That's the extent of my knowledge. I know
20 that some of that information was -- some of the
21 information was useful for ATS, but I don't know what's
22 in the servers. I don't know what's in the servers.

23 140 Q. What was your position at Xela in 2017
24 when that agreement was made?

25 A. I've been the president of Xela all the

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1 time.

2 141 Q. Okay.

3 A. And that's why I didn't negotiate it,
4 because I know I did not negotiate a thing. But I did
5 approve the sale.

6 142 Q. And you signed the agreement.

7 A. I signed the agreement, yes. I thought it
8 was a fair deal.

9 143 Q. And you're telling me you didn't know, as
10 the president of Xela, that all of your clients'
11 information was being transferred along with the
12 physical servers.

13 A. Well, the clients -- it depends which
14 clients. I'm telling you, I don't know exactly what
15 information was on the servers. That's why I did not
16 get involved in the details of that transaction. And I
17 was -- the people who knew that were the administrators.

18 144 Q. And this --

19 A. IT people. I don't know those things.
20 All I know is that we -- Xela could no longer continue
21 operations. It was completely destroyed by this
22 application, by the way. And we had no means to
23 continue. We had -- we were going to be locked out of
24 our office. We had to negotiate with the landlord to be
25 able to terminate the lease that we had. We had to let

1 off or let go several employees that were, many of them,
2 long-standing. We had severances to pay. So we were
3 looking for things we could liquidate.

4 So we sold all of the servers to ATS in
5 exchange of money that was used for different purposes.
6 It paid rent and stuff like that. By the way, if my
7 memory doesn't fail me, more than half of the money that
8 was paid for those servers was sent to my sister as part
9 of the satisfaction of her judgment. There was money in
10 Xela's account, so it was taken out for her favour. So
11 she got probably half or more of that money anyway.

12 145 Q. Do you have any records of that, sir?

13 A. You have all the records. The Receiver
14 took everything that was in our storage room. And I
15 don't know, this is probably not the right time, but it
16 would be appreciated if we could -- if I could receive
17 some sort of index of everything was taken. Because the
18 people who came took all the files and left me with no
19 receipts, no confirmation. I don't have an index of
20 everything was taken. I have no records of anything
21 now. Anything you ask me I can't find, because you have
22 the files in your office. Or KSV does.

23 146 Q. I've seen that in your affidavit, sir.

24 Maybe we could take you to -- I'm going to take you to
25 -- you brought an application for Xela to get

1 C-C-double-A protection at the same time as this
2 application for the Receiver was made. Right?

3 A. That's correct. We file that under the
4 advice of our counsel at the time. We considered that
5 going through a C-C-double-A will be a more effective
6 and would facilitate the process than the Receivership.
7 But the Court decided on the Receivership, so all that
8 is history.

9 147 Q. Yes. But I did want to just take you to
10 something in there. It will just take me a moment.
11 Actually, why don't we take -- it's 11:22. Do you want
12 to take a 15-minute break now?

13 THE COURT REPORTER: That would be great.
14 -- upon recessing at 11:23 a.m.
15 -- brief recess
16 -- upon resuming at 11:40 a.m.

17 JUAN GUILLERMO GUTIERREZ; Resumed

18 CONTINUED CROSS-EXAMINATION BY MS. JILESEN:

19 148 Q. So this document, sir, is the application
20 record of Xela Enterprises, returnable July 4th, 2019.
21 And if we go to page 9 of the PDF, you will see that it
22 is an application for protection under the Companies'
23 Creditors Arrangement Act. And you instructed your
24 counsel at the time to bring this application on behalf
25 of Xela?

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1 A. Yes, it was counsel advice, and I thought
2 that was the most -- the most workable situation,
3 because since the idea here was to find a solution and a
4 source of satisfying the judgment and protect all the
5 creditors, I thought that would be the most easy way to
6 do it. And we -- that's why the application was done.

7 MS. JILESEN: Okay. If we could just mark
8 this document as the next exhibit. And is that
9 Exhibit 4?

10 THE COURT REPORTER: 5, I believe.

11 MS. JILESEN: 5, okay.

12 -- EXHIBIT NO. 5: Application Record returnable

13 July 4, 2019

14 BY MS. JILESEN:

15 149 Q. Now I'm going to take you, attached to one
16 of the exhibits to your affidavit in this proceeding, a
17 financial statement. So if we go first to page 152 of
18 the PDF, you'll see that what we're going to look at are
19 the Non-Consolidated Statements of Operations Year Ended
20 May 31, 2018. And by this time, 2018, Mr. Korol no
21 longer worked for Xela. Is that right?

22 A. That's correct.

23 150 Q. And so who was doing the financials for
24 the company at this point?

25 A. At that point Xela didn't have anybody

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1 working there. So I asked Mr. Korol to assist me doing,
2 and he did it. He helped me.

3 151 Q. So Mr. Korol, who worked for ATS --

4 A. Well, he was -- my understanding he was --
5 became a consultant when he left Xela. And I understand
6 he was doing some consulting to ATS. When I ask him if
7 he would help me, he agreed on helping me.

8 152 Q. Okay. And he was able to prepare the
9 financials from the records on the computers at ATS
10 then.

11 A. I don't know how he did it.

12 153 Q. Right.

13 A. Frankly, I don't know how he did it. He
14 was pulling out information. We had all of the physical
15 data also. In those days was still in Xela's
16 possession. I frankly don't know how he put it all
17 together. He was the expert. I'm not a financial guy
18 either. So he put it together for me, and we discuss it
19 a few times, and that's how it happened. I don't know
20 if he requested help from somebody else or he did it all
21 by himself. I cannot attest to that.

22 154 Q. Yeah, but at the time, after the year end
23 of May 31, 2018, there was no -- no data, no servers, no
24 computers of Xela, right?

25 A. By that date there was no -- Xela had just

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1 exists. It doesn't have anything.

2 155 Q. No, that's --

3 A. Since we closed the office at Sheppard,
4 there's no business going on. There's nothing. Xela is
5 just a shell that's still there, mostly because of this
6 judgment, the satisfaction on the judgment.

7 156 Q. And so what are the -- showing you
8 page 152 of the -- oh, PDF, which still shows the --
9 it's 2018. You'll see there in 2018 there's consulting
10 and professional fees of -- there's management revenue
11 of \$260,000. And what was the revenue?

12 A. The notice for this examination didn't
13 mention anything about the C-C-double-A, so I did not
14 prepare for it. I did not read any of this. I did not
15 research. So I frankly don't have a recollection on
16 details. I would have to go and study this to figure
17 out these numbers and explain it to you. At this
18 particular moment, I'm sorry, but I wasn't aware I was
19 supposed to be able to answer questions on this
20 application for the C-C-double-A.

21 157 Q. I guess I just thought, as the president
22 of Xela which had no operations in 2018, you might be
23 able to explain, generally speaking, the revenue and
24 expenses when you just told me, sir, that it had no
25 business. But that's fine. I'm going to ask you a

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1 different question.

2 If we could go to page 154 of the PDF we had
3 been -- and pull down to the heading "Investments" -- so
4 the heading is "Investments and Advances to Related
5 Parties". And we're just going to pull down a little
6 bit, and you'll see there at three from the bottom,
7 under "Subsidiaries held through subsidiaries", there's
8 "Arturo's Technical Services"? And we'll have to pull
9 up a little bit, Mr. Knoke, because I just want
10 Mr. Gutierrez to see that this is 2018. So you might
11 have to make it a bit smaller so he can see all of it.
12 Just a little bit smaller so he can see "Arturo's".
13 Yes.

14 So you'll see in 2018 there's an accounts
15 receivable from Arturo's Technical Services for
16 \$245,000. And you told me that ATS paid \$200,000, and I
17 understood the sale price was 200,000 plus GST, which is
18 \$226,000. Where is there an amount receivable from ATS
19 in 2018 of 245,000?

20 A. As I just mentioned, I don't know. I have
21 to go and find out. But the numbers are pretty much the
22 amounts related to the server sale. Remember that
23 there's no accounting personnel. There's nobody
24 handling the books at the time. Nobody was doing
25 general entries. So I don't know if, when these numbers

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1 were put together, what was reflected on the books. I
2 do know the payment was made, because Xela was very
3 short of funds, of cash. We were in a very cash flow
4 crisis or very tight cash situation. And then we did
5 receive the funds.

6 So that's what I can tell you. I don't
7 remember the exact details of this. If I would have
8 known that you wanted to know about this, I would have
9 tried to find out before coming. But at this point,
10 you're asking me something I really don't know.

11 158 Q. Mr. Korol's an experienced and talented
12 CFO. We can agree on that, right?

13 A. Yes.

14 159 Q. In 2018 he was doing consulting both for
15 ATS and for Xela, right?

16 A. Not for Xela. He stopped working for Xela
17 before.

18 160 Q. No, no, consulting. He did these
19 financial statements we're looking at right now.

20 A. He did -- I don't know if you can call it
21 consulting or a favour. Whatever you want to call it,
22 it's okay with me. But I was asked by the Torys firm to
23 put together the information they needed for the
24 application. I did not -- I could not do it by myself,
25 so I requested Mr. Korol's assistance, and he did help

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1 me. Because I say at that point Xela was not operating.
2 So we didn't have anybody keeping the accounting up to
3 date or anything like that.

4 So I really don't know the answer to your
5 question. But I do know the payment was made, because
6 the money was available, and I know also that some of
7 the money was disbursed or taken out from Xela's account
8 as part of the judgment satisfaction. So that's what I
9 can tell you about this. Otherwise, I would have to go
10 back and try to figure it out. But by the way, you have
11 all the records, so how can I do that now?

12 161 Q. You swore an affidavit in the C-C-double-A
13 proceeding which attached these financial statements
14 which show that ATS owed \$245,000 to Xela. Right? That
15 much we can agree on?

16 A. Yes, it's attached to the affidavit. But
17 as I said before, I cannot explain any of the accounting
18 at this point because I was not given advance notice.
19 So I didn't even read this before -- I'd forgotten about
20 it.

21 162 Q. But you don't have any reason to disagree
22 with the financial statements that you attached to your
23 very own affidavit. Right?

24 A. No, I'm not saying that. I'm not agreeing
25 or disagreeing. I'm just telling you, I don't know the

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1 answer. That's --

2 163 Q. I guess, while I'm here, sir, there looks
3 to be amounts receivable from other subsidiaries, looks
4 like Global Traders and Greenpack Guatemala, maybe
5 Greenpack Barbados. Why didn't Xela demand those monies
6 from its related -- through its subsidiaries, which, as
7 you've told me, or you've taken the position, are all
8 independent companies?

9 A. As I said before, I really have to go back
10 in the past. I don't know the -- I don't know any of
11 the details on this report. But I can tell you -- one
12 thing I can tell you, Global Traders is a Canadian
13 company that has been insolvent for a very long time.
14 But to answer your question, I needed to have a little
15 bit of advance notice so I can study this. I do not
16 remember any of this. So I can't answer the question.

17 164 Q. You'd agree with me to answer the
18 questions a person would need access to the financial
19 records of Xela. Right?

20 A. Yes.

21 165 Q. Right. Okay.

22 A. Which the Receiver has, by the way. He
23 has all the records.

24 166 Q. No, sir, that's not correct. It does not
25 have the electronic records, and Mr. Korol had

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1 electronic financial records. He did not keep
2 everything on paper, did he, Mr. Gutierrez?

3 A. I don't know that. I don't know that.
4 But the Receiver has all the records is requested from
5 us. We handed it to him over and over. And I don't
6 know why this insistence in saying we haven't responded.
7 We have provided everything he asked us for. And when
8 we had electronic, we provided it through the answers
9 that Torys was providing.

10 167 Q. No.

11 A. I don't know what else you want. I ask
12 Mr. Kofman once, by the way, or more than once, when we
13 were -- we talked two meetings we had at the very
14 beginning. Give me the list of the information you
15 need, and he says, 'I need it all'. So I gave him all.
16 Everything he asked has been given to him. I cannot
17 give you what I don't have.

18 168 Q. Mr. Gutierrez, you agree with me you can't
19 give me what is being held currently by ATS, but it
20 seems you are objecting to the Receiver getting the
21 electronic records from ATS. Is that your position?

22 A. I have not objected to anything. All I'm
23 telling you is, I don't know what -- I don't know if ATS
24 has anything in their possession or not. I don't know
25 what's in those files. I have no idea. So I'm not

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1 disagreeing or agreeing. I am not objecting. All I'm
2 telling you is, I cannot answer the question, because I
3 don't know the answer.

4 169 Q. Okay. That's fine.

5 A. So you keep asking me, but that doesn't
6 change the fact that I don't know the answer. I'm
7 sorry. I want to be helpful, but I only can be helpful
8 with what I know. What I don't know, I don't know.

9 170 Q. Mr. Gutierrez, I didn't ask you the
10 question again. We can move on. I did not repeat the
11 question.

12 One thing you do object to is that
13 notwithstanding the October 27th order, you object to
14 the Receiver reviewing the personal devices because of
15 the settlement offer by BDT. Right? You say because
16 the settlement offer was made by BTD, it's no longer
17 necessary for the Receiver to conduct its
18 investigations. Right?

19 A. On the top of my mind I do not remember
20 exactly how it was drafted. But what I meant is that I
21 don't understand. I don't see what is the need to get
22 into all my personal, private information, all the
23 possible privilege information on my devices, all kinds
24 of information has nothing to do with this Receivership
25 at all. What is the need to get into all that when the

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1 purpose of this Receivership was defined in the original
2 order to satisfy my sister's judgment?

3 And my understanding is that BDT has made an
4 offer that would achieve just that. That's the point I
5 made. So why are we spending so much time and so much
6 money, money that I'm going to have to pay, or Xela will
7 have to pay. And we don't need -- Xela or I have that
8 amount of money, when it's unnecessary if there is a
9 solution for this judgment satisfaction. That's the
10 point I was trying to make.

11 171 Q. You understand that the offer from BDT is
12 that the judgment will only be paid once the proceeds of
13 the Avacola litigation are -- once they have proceeds of
14 the Avacola litigation, right?

15 A. That's my understanding. And by the way,
16 I told the Receiver, Mr. Kofman and also Mr. Goldstein,
17 I told both of them in our first meeting, in our first
18 meeting in I think it was July or August, somewhere
19 around there of 2019, I told them, Xela has only one
20 source of resources to satisfy the judgment, and that's
21 the collection of the dividends withheld by the Avicola
22 Group, either by the Avicola companies or by the MOA.
23 And I tried to expand on that, but I was told not to
24 talk about it. So the fact is, that is the only source.
25 And if BDT is willing to provide that, my honest opinion

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1 is, it's a very, very logical and an easy way to achieve
2 it.

3 172 Q. But sir, sir, you raised this very issue
4 in the C-C-double-A application. If we go to page 12 of
5 the PDF, we'll see that you -- when you brought your
6 C-C-double-A application, the plan then was that BDT
7 would contribute \$6.3 million out of the Avicola
8 litigation as the restructuring plan. Right? This is
9 not a new idea.

10 A. No. I think I clearly explain in my last
11 answer, I mentioned to Mr. Kofman and Mr. Goldstein in
12 the very first meeting in 2019, which was shortly after
13 this affidavit that you're showing me here, that the
14 only source and the solution, and the only solution, the
15 most easy and affordable way to satisfy my sister's
16 judgment was pursuing the dividend collection from the
17 Avicolas. And that's been my position from day one.

18 173 Q. I understand that. And you put that
19 position forward in your C-C-double-A application.
20 Right?

21 A. Right.

22 174 Q. And it was not accepted by the Court.
23 Right?

24 A. I don't know if that's accurate. I wasn't
25 in the hearing. This hearing happened without my

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1 presence. So I'm in a huge disadvantage here. But the
2 point I can make here is that the decision going on the
3 Receivership, if I recollect correctly, I was told by
4 counsel that the Court suggested a joint or an agreed
5 order for Receivership, and that's the way it went. And
6 I conceded to that when the counsel for Xela asked if I
7 would go in favour of taking the Receivership, I didn't
8 object. I said sure.

9 And my position did not change after the
10 Receivership was in place, and I met Mr. Kofman and
11 Mr. Goldstein at the Torys office in 2019. And I
12 explained to them, this is the only way Xela will be
13 able to satisfy this judgment, is by getting hold of
14 those dividends. And it is commitment, I think, made
15 that commitment just told me so an offer on the table,
16 or it was on the table. I'm not sure the status of that
17 offer.

18 175 Q. Could you just go to your affidavit of
19 February 21, and I'd like to go to paragraph 108. So in
20 this paragraph I'm going to the second sentence that
21 says, "I understand that BDT has submitted materials to
22 the Court discussing the details of that proposal".
23 What are you referring to here? I can tell you BDT has
24 not submitted any materials to the Court. So what are
25 you referring to?

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1 A. Well, I said I understand; I didn't say I
2 know, by the way. I understand that BDT has submitted a
3 proposal of some sort. I don't know exactly what was --
4 I'm not part of BDT, so I don't know what's in the
5 proposal. But my understanding was, because I heard
6 about it, that there was some proposal, and just
7 confirmed to me in your prior questions that there was a
8 proposal. So you have to look at what they filed or not
9 or what they provided or not, I don't know that. I
10 wasn't present.

11 176 Q. So are you saying, sir, that I can't rely
12 on statements in your affidavit if you're -- like, you
13 say I understand that BDT has submitted materials to the
14 Court. And then you tell me that you don't know about
15 that because you're not with BDT. How am I supposed to
16 understand -- how am I supposed to read your
17 affidavit --

18 A. Okay. Okay. You're trying to confuse my
19 statement here.

20 177 Q. No, I'm trying to understand what you've
21 sworn as true in your affidavit. That's what I'm trying
22 to do.

23 A. If you let me answer, 'I understand' is
24 what my understanding is. 'What I know by fact' is what
25 I know by fact. I don't know by fact what was or not

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1 filed. You're asking me what was filed. I don't know
2 exactly what was submitted. My understanding was BDT
3 submitted materials providing a proposal.

4 178 Q. Can I stop you there?

5 A. And that's what it was.

6 179 Q. Where did you get that understanding, sir?

7 A. From conversations that I had with my
8 counsel, which my understanding was something was filed.

9 180 Q. Okay.

10 A. Some proposal was made. I heard about it.
11 And that's --

12 181 Q. And did you --

13 A. I was not part of that proposal. I didn't
14 make it. I don't even know what the proposal exactly
15 was.

16 182 Q. Did you hear from anyone other than your
17 counsel? I do not want to hear about conversations with
18 your counsel.

19 A. No.

20 183 Q. Okay. So just remembering when you
21 brought the C-C-double-A application in 2019 --
22 actually, if we could just go back to that paragraph
23 again, Mr. Knoke. So this, I believe, paragraph (k), I
24 believe, is in your affidavit.

25 And so you say there Xela intends to achieve

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1 the goal pursuant to a plan of compromise, and the plan
2 contemplated by the RSA provides for a contribution of
3 6.3 million by BDT. So I take it in 2019 you were
4 dealing with someone at BDT who had agreed to make that
5 contribution. Right?

6 A. Yes. We had consulted with the question
7 of BDT. And he -- he expressed that BDT would be
8 willing to consider that.

9 184 Q. Sorry, when you say 'we', so that was you
10 personally?

11 A. I said 'we'. Sorry, I said 'we', because
12 I don't remember for certain if I had the conversation
13 or it was somebody else in this conversation. Or it was
14 through the counsel. I don't really remember exactly
15 how it was. But it was clearly explained to me that BDT
16 was willing to do that.

17 185 Q. Mr. Gutierrez, there was no one who was
18 Xela in 2019 besides you, was there?

19 A. No.

20 186 Q. So and you're telling me --

21 A. We had counsel. And you told me you don't
22 want to know when I was talking to my counsel, so...

23 187 Q. I know, but you're telling me you don't
24 remember whether or not you had a conversation with BDT
25 directly?

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1 A. I haven't had any conversations with them
2 in a very, very long time. And when we were preparing,
3 this was all done through counsel. So my understanding
4 is I can't speak about what was discussed through
5 counsel. So then you're putting me a position it's hard
6 to answer.

7 188 Q. I don't want the advice --

8 A. But I --

9 189 Q. Sir, let me just explain.

10 A. There was discussions between Xela's
11 counsel and BDT. I can't tell you more on that.

12 190 Q. Okay. But who made the introduction
13 between BDT and Xela?

14 A. I don't understand your question.

15 191 Q. Well, Torys --

16 A. BDT and Xela knew each other for a long
17 time.

18 192 Q. -- didn't find BDT all by themselves,
19 right? Someone had to make the introduction. That was
20 you, right?

21 A. Yeah. Yes, but Torys was representing us,
22 and they were putting together this, as I explained
23 before. I had requested some advice or help from
24 Mr. Korol, who helped me put together some of the
25 information, the financial information required. And

1 that's it. The counsel for Xela was assisting me on
2 this. And I may have talked to Mr. Doig at BDT, but I
3 do not remember. That's about three years, two years
4 ago, three years ago, whatever it is, two years ago.

5 I do not remember exact details on how all
6 this happened, frankly. We were just trying to put
7 together a reasonable solution for the problem, and we
8 put it forward. And that's as far as this goes. I
9 don't know what else you want to know about this.

10 193 Q. And why not ask -- instead of BDT being
11 part of the plan at the end of the Avicola litigation,
12 why not just ask BDT to pay out the judgment and pursue
13 the conspiracy action that you think should be pursued?

14 A. I think it's two possible reasons for
15 that:

16 One reason is, I don't know if BDT had enough
17 money, which I doubt. The amount of money in there is
18 \$6.3 million. I don't think BDT ever had that amount of
19 money on hand. That would be one of the reasons why not
20 to.

21 And the other one is because BDT's an
22 independent party, and this is a judgment against Xela.
23 And the effects, the possible impacts of the case, are
24 the dividend collections. So it would make sense to do
25 it this way. If I was asked to do something like this,

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1 I'll tell you, I would only do it if I get the dividends
2 first. So to me, it's a very logical -- from the
3 business point of view, it's a very logical approach.
4 It's a very reasonable proposal.

5 194 Q. Okay. I'm going to take you now --

6 A. Any businessman would sign this.

7 195 Q. Are you finished now, sir?

8 A. Yes.

9 196 Q. Yes? Okay. I want to now take you to
10 paragraph 18 of your February 21 -- February 22, 2021
11 affidavit. Maybe this is not the right -- just give me
12 one second.

13 So paragraph 1 is just a long paragraph.
14 Right. So you see where it says -- "Villamorey" is
15 highlighted? So just under that it says:

16 But as explained further below, the
17 Receiver has already been offered
18 access to the complete case file by
19 BDT's Panamanian lawyers who are
20 suing Villamorey for Lisa's
21 dividends.

22 What is the source of that information? If you haven't
23 spoken to BDT in a very long time, where do you get the
24 information that the Receiver has been offered access to
25 a case file by BDT's Panamanian lawyers?

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1 A. I was told that by somebody from Lisa, I
2 believe was -- somebody from Lisa probably. I can't
3 remember exact source. But I was told that. And
4 sometime ago that Lisa was -- sorry, that BDT --

5 197 Q. So someone from Lisa, and you can't tell
6 me who it is from Lisa?

7 A. Well, I had conversations with a lawyer
8 once or more than once.

9 198 Q. Who's the lawyer?

10 A. I have talked to a lawyer -- to the lawyer
11 Andrew Durkovic, who is a lawyer for Lisa.

12 199 Q. And why are you talking to the lawyer for
13 Lisa?

14 A. He's been also my personal lawyer in the
15 past.

16 200 Q. Is he your personal lawyer now?

17 A. Yes.

18 201 Q. So the personal lawyer -- your personal
19 lawyer -- so he's a Panamanian lawyer?

20 A. No. He's American.

21 202 Q. So your American personal lawyer today is
22 also the lawyer for Lisa? Yes?

23 A. That's my understanding, yes.

24 203 Q. And why do you need an American lawyer?

25 MR. MACLEOD: I'm not sure, counsel, what

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1 lawyers he needs or had --

2 MS. JILESEN: That's fine. If he doesn't want
3 to answer, that's fine.

4 BY MS. JILESEN:

5 204 Q. So sorry, what was his name again, sir? I
6 just missed it.

7 A. Andrew Durkovic.

8 205 Q. Durkovic?

9 A. Durkovic.

10 206 Q. So Mr. Durkovic --

11 A. He's written letters to you. I know,
12 because I reviewed them when I was preparing my
13 affidavit. It's on the record.

14 207 Q. So Mr. Durkovic, who's the lawyer for
15 Lisa, reported to you information about what was
16 happening with Lisa and BDT? Related to Xela?

17 A. I don't remember exactly. I think you're
18 trying to put words in my mouth again.

19 MR. MACLEOD: Counsel, I'm happy that you ask
20 general questions. I haven't objected at all or barely.
21 But questions about conversations with his counsel, I
22 prefer we not --

23 MS. JILESEN: No, no, but he's told me just
24 now, Mr. MacLeod, this information, which is in his
25 affidavit, the Receiver has already been offered access

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1 to the complete case file by BDT's Panamanian lawyers.
2 I think he just told me he received that information
3 from Andrew Durkovic.

4 BY MS. JILESEN:

5 208 Q. So let's be clear, Mr. Gutierrez. To the
6 extent Mr. Durkovic was giving you personal legal
7 advice, I'm not interested in that information. To the
8 extent he's reporting to you as a lawyer for Lisa or
9 giving you information about the Avacola litigation,
10 then I am asking you those questions.

11 A. My conversations with him are on his
12 advice to me, so...

13 209 Q. His advice to you about the Avicola
14 litigation?

15 MR. MACLEOD: No. That's not what he just
16 said.

17 BY MS. JILESEN:

18 210 Q. Why is he telling you about what's
19 happening between BDT and the Receiver? What is the
20 context of that conversation?

21 A. You just told me that you don't want to
22 hear about my conversations with --

23 211 Q. No, this conversation I do want to hear
24 about.

25 A. Don't interrupt me, please. Let me answer

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1 my question. Your question. Basically here you're
2 trying to make a big house out of something. I had a
3 conversation with him. I do not remember the context.
4 He mentioned that there's been some overtures, some
5 whatever, record documents.

6 I also was present because I was invited to a
7 meeting where I was told the Receiver was going to be
8 present. That's in my affidavit also, I believe. I
9 don't remember exactly where. And I attended the
10 meeting. The Receiver didn't show up. He sent some
11 lawyer from Panama, I believe. And in that meeting the
12 counsel for BDT, or for Lisa, I don't know which of the
13 two companies, they provided this gentleman with a lot
14 of information. So I know there was a lot of
15 information being provided from public record documents.

16 MR. MACLEOD: And counsel, paragraph 18 he's
17 referring to the next sentence. Start from, "Receiver's
18 already been offered access...(inaudible)...and the
19 filings are also available from the public".

20 MS. JILESEN: I wasn't asking him about that,
21 Mr. MacLeod. I asked him where he got the information
22 that the Receiver had been offered access to the file by
23 BDT's Panamanian lawyers. Because he just told me
24 before, earlier today, that he hasn't spoken to BDT.
25 His answer was that he obtained that information from

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1 Lisa's lawyers, and that Lisa's lawyer is
2 Andrew Durkovic. So I'm going to go with that answer
3 for now.

4 BY MS. JILESEN:

5 212 Q. All right. I want to go now to Exhibit 4
6 to your affidavit, which is at page 156 of the PDF and
7 is a May 4, 2020 letter from Mr. MacLeod. And you say
8 in there -- I'll just have to pull down, I think it's
9 close to the end. Just scroll up a little bit,
10 Mr. Knoke? So it's this paragraph that starts "In
11 Canada". And it says, in the last sentence of that
12 paragraph:

13 Mr. Gutierrez does not presently
14 know the location of the Gabinvest
15 shares and certificates, but he
16 believes that they are likely
17 amongst the records in Barrie.

18 Did you ever, yourself, find the shares and certificates
19 that related to Gabinvest?

20 A. No, I have not. I have not found them.

21 213 Q. And you've not seen copies of them since
22 this letter was sent to the Receiver?

23 A. Not since this letter, no.

24 214 Q. Okay.

25 A. I haven't seen them in a very, very, very

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1 long time, probably from decades back.

2 215 Q. Okay. So just going now to paragraph --
3 well, in your affidavit -- I don't need to take you to
4 the paragraph; I can if you want. But you have
5 expressed in various places in your affidavit concern
6 that the board of Gabinvest and Lisa was changed by the
7 Receiver.

8 MR. MACLEOD: Counsel, could you take him to
9 the relevant paragraph, please?

10 MS. JILESEN: Sure.

11 BY MS. JILESEN:

12 216 Q. Paragraph 10 of your affidavit. So you
13 say at paragraph 10:

14 It is also significant that the
15 Receiver instructed Mr. Almengor to
16 change the board of the directors
17 of both Gabinvest and Lisa.

18 And so as I read that, it appears to me that you're
19 expressing a concern about the Receiver having done
20 that. Right?

21 A. I don't think that's accurate. I'm not
22 expressing a concern about the Receiver changing the
23 board of directors of the companies. What I am
24 expressing there is surprise and concern about the
25 procedure followed. I think the issue is not with the

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1 change, but on how it was done. Because it created a
2 humungous problem for him and for us.

3 217 Q. All right. But you were aware that the
4 Ontario Court ordered, in March of 2020, that the
5 resolution of the shareholder of Gabinvest was a proper
6 exercise of the power of the Receiver. Right?

7 A. I don't quite understand what your
8 question is.

9 218 Q. So I'll take you to it. There's an order
10 dated March 24, 2020.

11 A. M'hm.

12 219 Q. We'll just pull down, we'll go to
13 paragraph 3 of the order.

14 MR. MACLEOD: Counsel, is this an exhibit?

15 MS. JILESEN: No, it's an order. We can mark
16 it as an exhibit, but let me just -- I don't think
17 there's any issue, Mr. MacLeod. And Mr. MacLeod, we
18 delivered an orders and endorsements brief, and this
19 order is in that brief.

20 BY MS. JILESEN:

21 220 Q. So if we could just pull down to
22 paragraph 3.

23 The Court orders and declares that
24 the resolution of the shareholder
25 of Gabinvest, dated January 16,

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1 2020, replacing the directors of
2 Gabinvest, as described in section
3 3.0 of the second report, was a
4 proper exercise of the Receiver's
5 exclusive power and authority,
6 under paragraph 3 of the
7 appointment order, to exercise the
8 debtor's shareholder rights.

9 So you were aware of this order in March of 2020?

10 A. I'm not sure. I don't know what the --
11 where the question goes. I know the order exists. But
12 I don't know what you're trying to ask me about. I
13 don't understand what's going -- what you're going to.

14 221 Q. You knew that the Receiver had replaced
15 the directors of Gabinvest, and you knew that around
16 February of 2020. Right? Because the Receiver reported
17 on that. You didn't agree with the procedure, but you
18 knew they had done it.

19 A. I know the Receiver attempted to do it. I
20 learned about it sometime in the second part of
21 February.

22 222 Q. Right.

23 A. I learned that when I was invited to a
24 meeting where the Receiver was present and this issue
25 was being discussed. The procedures were wrong. I

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1 don't have any objection. I understand what the Court
2 order says, and I have done absolutely nothing to get in
3 the middle of this process.

4 In my affidavit I'm explaining why this became
5 a problem. It was -- the procedures followed did not
6 comply with law and caused a problem. But I'm not
7 opposing the change of board or anything. I wasn't even
8 aware. This happened in -- through my back kind of
9 thing, because I was never even informed or even before
10 or after, you know. So I learned this by second -- I
11 don't know how to say, but I learned this way after the
12 fact. Right?

13 223 Q. Well, I can take you to it, but it's set
14 out in the second report of the Receiver, and you told
15 me you read the Receiver's reports, right?

16 A. Yeah, and what date is that report?

17 224 Q. We can go to it. It's, as you said, in
18 February of 2020. I'm not suggesting --

19 A. The report of the Receiver is posterior to
20 the failed action he filed in Panama, which I had
21 nothing to do with.

22 225 Q. So Mr. Gutierrez, this will go easier -- I
23 really just have questions, and you'll give me answers.
24 And I'm not accusing you of anything at the moment. I'm
25 just saying, my question is simple. By February 18,

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1 2020, you knew that the Receiver had appointed new
2 directors to Gabinvest, right? You did know that.

3 A. That was around the time when I found out.

4 226 Q. Okay. Fine. That's my only question.

5 A. I didn't know that before.

6 227 Q. I'm not suggesting you did, sir. I'm not
7 suggesting --

8 A. The Receiver never shared with me or
9 consulted or advised me or nothing. I didn't even know
10 he did this. I learn it way after the fact.

11 228 Q. But you knew in February of 2020. That's
12 my only question, sir.

13 A. Towards the end of February 2020 is when I
14 found out. I do not remember the exact date, but it was
15 second half of February.

16 229 Q. Okay. And then if we go back to the order
17 of March 24, 2020.

18 A. M'hm.

19 230 Q. You knew in March of 2020 that the Ontario
20 Court declared that the resolution of Gabinvest,
21 replacing the directors of Gabinvest, was a proper
22 exercise of the Receiver's powers to exercise the
23 debtor's shareholder rights. You knew that this Court
24 approved the change in the directors. Right?

25 A. Yeah. I can read it there. I understand

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1 it, and I don't think I -- I ever said anything contrary
2 to this.

3 231 Q. The only question I'm asking is that you
4 knew that, and you said you have, so that's all we need.
5 That's all I need, sir.

6 So if we could go back to your affidavit. And
7 if we could go back to paragraph 10. So you say it is
8 significant, as you've said, that when they changed the
9 board they did it without any advance notice to you,
10 Lisa or Gabinvest. And then you next say:

11 As a result, when Lisa and
12 Gabinvest discovered Mr. Almengor's
13 filings, they believed that the
14 Nephews were perpetrating an
15 unlawful corporate attack on Lisa.

16 So tell me, where do you get that information, that --
17 about the belief of Lisa and Gabinvest?

18 A. Well, after it happened, I had a
19 conversation with the president of Lisa,
20 Mr. Johannessen, and he expressed to me his concern. I
21 asked him what happened. And he said at first we
22 thought it was an attack from the Nephews, which has
23 happened before by the way.

24 232 Q. And did you tell him -- can I just ask you
25 this, Mr. Gutierrez: Did you tell him no, it was the

1 Receiver who did it?

2 A. At the time when we had -- when I have the
3 conversation with him when he told me about that, I
4 didn't know the Receiver did it, because the Receiver
5 never informed me about it. I learned the Receiver did
6 it after the fact.

7 233 Q. And did you tell Mr. Johannessen, who I
8 believe is on the service list in this proceeding, but
9 at some point, Mr. Johannessen knew that it was the
10 Receiver who made the change, right?

11 A. I did tell him, and I also follow to the
12 letter of the law the order say issued by the Court
13 instructing him to change that. And he listened to me,
14 and that's it. He did what he did. I have no control
15 over him. I did express to him my views; he has his
16 own.

17 234 Q. All right. And so that's Lisa. What
18 about Gabinvest?

19 A. Is the same thing applies.

20 235 Q. So when you say, "when Lisa and Gabinvest
21 discovered Mr. Almengor's filings, they believed that
22 the Nephews were perpetrating an unlawful attack",
23 you're just talking about Mr. Johannessen.

24 A. That's what I first heard of it, yes.

25 236 Q. Is that the only person you're talking

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1 about? I'm trying to understand what you're saying in
2 your affidavit. And you're talking about companies, not
3 people. So I want to know what people believed and
4 where you got that information from.

5 A. Companies don't have opinions, people have
6 opinions and information, right? I first -- you asked
7 me who first told me, and I tell you, I first learned
8 through him, who advised me that an attack had been
9 perpetrated on the company, and he suspected it was the
10 Nephews. That was before I knew it was the Receiver.

11 Now, when you go -- you come forward in time
12 and you look back, you know a lot of stuff you didn't
13 know at the time. And that makes it very complicated to
14 determine exactly what you knew or not at the time.
15 What's relevant is not what I know today, it's what I
16 knew at the moment. And when he told me that that had
17 happened, I did not know the Receiver was behind this.
18 Because nobody told me that.

19 237 Q. Mr. Gutierrez, I'm just trying to
20 understand what you swore in your affidavit on
21 February 22, 2021. And so when you said "Lisa and
22 Gabinvest", are you talking about anybody other than
23 Mr. Johannessen?

24 A. I don't think so. I don't remember if
25 there was anybody else I talked about this with. But

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1 they -- he is the one who first informed me it was an
2 attack and, you know, where it's coming from, so...

3 238 Q. So now, sir, I want to talk to you about
4 the criminal complaint. So at paragraph 12 of your
5 affidavit, you say:

6 Separately, as this Court is now
7 aware, Mr. Johannessen filed a
8 criminal complaint in Panama
9 against Mr. Almengor, apparently
10 believing he was under a legal
11 obligation to do so.

12 So where do you get the information that Mr. Johannessen
13 believed he was under a legal obligation to do so?

14 A. I got an order from -- I got an order to
15 instruct him to back off from that, and he told me that.
16 Now, when -- let me tell you something. I --

17 239 Q. No, no, Mr. Gutierrez, I need you to
18 answer my question. I am interrupting you now.
19 Where --

20 A. ...(inaudible).

21 240 Q. Please just listen to my question and
22 answer my question, and then if you want to give an
23 explanation, fine. But start with answering my
24 question.

25 Where did you learn, and from whom did you

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1 learn, that Mr. Johannessen believed he was under a
2 legal obligation to file a criminal complaint? Did you
3 learn that from Mr. Johannessen?

4 A. Yes.

5 241 Q. When did you learn that from
6 Mr. Johannessen? When did he tell you that?

7 A. I do not remember exactly when, but it was
8 likely at the time when that was -- when I was asking
9 him to withdraw that.

10 242 Q. It was likely at the time when you were
11 asking. That was just a few --

12 A. I do not remember. I do not remember. I
13 don't even -- what affidavit are we talking about right
14 now? I forgot what dates we're talking about. Because
15 as I was trying to explain to you before, we need to
16 know -- we need to think the way or we need to know what
17 we knew at the time when this was written. Because
18 things changed over time. Because more stuff happens,
19 right? What date affidavit is this? Is this the
20 current one?

21 243 Q. This is your February 22nd, 2021
22 affidavit, just a few weeks ago.

23 A. Yes. Yeah, this was after I was ordered
24 to tell him to withdraw that.

25 244 Q. Okay. So when you swore your -- I won't

1 say 'swore'. The document you signed before the notary,
2 who asked you to sign that?

3 A. The notary came and brought the document.
4 And he asked me if I would -- after he asked me the
5 questions, because I was asked if I would answer those
6 questions, I say I'll answer those questions. And the
7 guy came and he said, 'Would you sign testimony that you
8 just told me that?' I said yes. That was the notary. I
9 don't remember his name.

10 245 Q. Before the notary came, how did the notary
11 appointment get set up? How did you know he was coming?
12 Was it Mr. Johannessen who set that up, I presume?

13 A. I think I already answered that question
14 earlier. He asked me if I was present at the meetings.
15 I told him I was not present at that meeting of
16 Gabinvest. And he said --

17 246 Q. So you --

18 A. He asked me if I would speak to the lawyer
19 of Lisa, and I said yes. And then I spoke to the guy.
20 And that's when I signed the testimony where, as I said
21 before, all I say is I was not present. I did not -- I
22 was not present at that meeting. I did not represent
23 Xela in that meeting. That's all I said.

24 247 Q. Okay, Mr. Gutierrez, I'm going to take you
25 to that document. I'm going to take you to that

1 document, and we're going to go through it line by line,
2 so you don't need to tell me what's in it at the moment.
3 I want to understand before you signed it, not what you
4 signed, before you signed it, I want to understand
5 exactly what your conversation was with Mr. Johannessen.
6 So when did Mr. Johannessen ask you to meet with a
7 notary?

8 A. We were having one of the family meetings
9 after my mother-in-law's passing. I do not remember
10 what date exactly it was. It was very hectic times and
11 highly emotional for all of us. She was a very dear
12 woman for me. And during that period he pulled me aside
13 for a moment and says -- he asked me, 'Were you by any
14 chance present in any -- in that board meeting?' I say,
15 'I told you before, I was not present.' So he said that
16 his lawyer, Lisa's lawyer, wanted to speak to me about
17 it if I was willing to do so. I said yes.

18 And then a few days -- couple days later, I
19 don't remember how timing -- timeframes in those days
20 are a little messed up in my mind, because we were very
21 emotional. And the guy asked me, 'Were you present?' I
22 said, 'No'. Then he said, 'Will you sign the
23 testimony?' I said, 'Yes, I wasn't there, so I'm not
24 saying anything to do anything wrong other than telling
25 the truth'. So --

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1 248 Q. And Mr. Hals explained to you, or
2 Mr. Johannessen explained to you, that he was going to
3 file a criminal complaint against Mr. Almengor?

4 A. Not at that time. I did not know he was
5 filing a criminal complaint. He was just asking me if I
6 was present, and I said no, I wasn't. I did not know he
7 was going to file a criminal complaint until well after
8 that.

9 249 Q. And when did you learn that?

10 A. I don't remember exactly, but it was this
11 year, early this year, I think.

12 250 Q. Was it before or after you met with the
13 notary?

14 A. Oh, after. After.

15 251 Q. And but before the order was made asking
16 you to withdraw it, you knew that your notarized
17 document was used for a criminal compliant.

18 A. I think it was when that was brought up to
19 the attention to the Court by the Receiver I think is
20 when I first learned of my testimony was used for that
21 purpose.

22 252 Q. Mr. Hals did not tell you at any time
23 before the Receiver brought it to your attention that
24 your -- that your notarized statement was being used for
25 a criminal complaint?

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1 A. Not that I recall. I don't think so.

2 253 Q. Okay. So let's go back to Mr. Hals takes
3 you aside during some family event and asks you the
4 question about whether you were in attendance at the
5 meeting. By this time, so this is -- your mother-in-law
6 died November 27th, 2020. Mr. Hals was well aware that
7 there was a Receivership in place, right?

8 A. Yes. Yeah, he was aware there was a
9 Receivership.

10 254 Q. And you'd agree with me he also knew,
11 because various complaints had been made about it, that
12 the Receiver had made the changes to the Gabinvest
13 board. Right?

14 A. I cannot speak to what he knows or he
15 doesn't know. You're putting me in a position of
16 speculation.

17 255 Q. Well, you speculate about what Mr. Hals
18 knows, or Mr. Johannessen knows or doesn't know in your
19 affidavit.

20 A. No, I actually -- I think you're mixing up
21 things here. So why don't we -- you ask me specific
22 questions rather than confusing one thing with the
23 other.

24 256 Q. I'm happy to do that, sir. I'm happy to
25 do that. Actually, can we just take a five-minute

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1 break? I need to fill up my water. Why don't we just
2 take five minutes.

3 -- upon recessing at 12:34 p.m.

4 -- brief recess

5 -- upon resuming at 12:43 p.m.

6 JUAN GUILLERMO GUTIERREZ; Resumed

7 CONTINUED CROSS-EXAMINATION BY MS. JILESEN:

8 257 Q. Thank you, everyone. I'm going to ask
9 Mr. Knoke to go back to the affidavit and go to
10 paragraph 93.

11 So it says, sir, you comment that the
12 Gabinvest minutes are silent as to who had authorized
13 Mr. Almengor to exercise Xela's shareholder rights. And
14 just stopping there, by the time that you made your
15 sworn statement, you knew who had authorized
16 Mr. Almengor to exercise Xela's shareholder rights,
17 right?

18 A. Yes, I was told Receiver did.

19 258 Q. Right, okay. So you say then in the next
20 sentence:

21 My sworn statement in December 2020
22 clarifies that the purported
23 authorization did not come from me
24 as president and shareholder of
25 Xela. Thus, in my view, my sworn

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1 statement merely eliminated one
2 possible but erroneous conclusion
3 that could arise from a reading of
4 the Gabinvest minutes.

5 My question is, what did you understand the purpose of
6 your sworn statement was at the time you swore it? Who
7 was it for? What was its purpose?

8 A. My understanding it was just stating -- I
9 didn't know the purpose exactly. But I know there was
10 an issue with the registry on these minutes, and I read
11 the minute. And the minute does not identify any person
12 representing the shareholder, doesn't even identify the
13 shareholder.

14 So then the question was asked of me was,
15 'Were you present in any capacity?' And I said, 'No, I
16 was not'. I didn't even know the meeting happened. So
17 I was not there as...(inaudible)...nor was I there as
18 president of Xela or representative of Xela as a
19 shareholder. If you read the minutes, the minutes do
20 not identify any persons. It --

21 259 Q. So I --

22 A. -- only says "shareholders present", but
23 it doesn't identify anybody. And that is why I said
24 it's significant and it should be noted this portion of
25 the minute is silent. Because it is a formal

1 requirement. I know. I've been a businessman for very
2 long time, and I have done many, many shareholder
3 meetings my life. And you cannot hold a shareholder
4 meeting without having the shareholders present and
5 without identifying them properly. That's what the
6 whole problem with this process was.

7 260 Q. You could have clarified everything,
8 Mr. Gutierrez, and explained that it was the Receiver.

9 A. Clarify that to whom and when?

10 261 Q. In your sworn statement.

11 A. No, because I didn't write the sworn
12 statement. I was asked if I was present. That's all I
13 was asked.

14 262 Q. Okay, I'll --

15 A. I wasn't asked anything else. I wasn't
16 asked anything else.

17 263 Q. Mr. --

18 A. That's all I was asked.

19 264 Q. Mr. Gutierrez, what did you understand
20 your sworn statement was going to be used for?

21 A. My understanding is that there was a
22 dispute on those shareholder meetings, and they were
23 trying to resolve them. That's my -- I don't know --

24 265 Q. A dispute between --

25 A. Because Lisa doesn't talk to me anymore.

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1 266 Q. A dispute between who and who?

2 A. Well, I think it's clearly expressed in my
3 affidavit.

4 267 Q. No, Mr. Gutierrez, just answer my
5 question. You said you understood that there was a
6 dispute about the shareholdings. Who did you understand
7 the dispute was between? It's a very simple question.
8 Don't refer me back to your affidavit.

9 A. If you allow me to answer, then I can
10 answer, okay?

11 268 Q. I want you to answer my question, sir.

12 A. That's what I'm trying to do, but you keep
13 interrupting me. So please let me answer. And as I say
14 clearly in my affidavit, the minutes of these, of this
15 assembly or shareholder meeting had some flaws. And
16 that's why it was unresolved. So it's not clear who
17 instructed it in any of the legal documents. So that's
18 what the dispute is.

19 And I mention in my affidavit also that
20 Mr. Johannessen mentioned that they thought it was an
21 attack by the cousins, or the Nephews, as they are
22 referred in this case. So that's all I know. I wasn't
23 party there. I wasn't present there.

24 269 Q. By December --

25 A. That's why --

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1 270 Q. Mr. Gutierrez, you're not answering my
2 question. What was the purpose of your sworn statement
3 when you made it? What did you believe the purpose to
4 be?

5 A. I was just clarifying that me, Juan
6 Gutierrez, was not present at that shareholder --

7 271 Q. That's not my question. What did you
8 think the document was for? Why was Mr. Johannessen
9 asking you to prepare that document?

10 A. I already answered that question. I was
11 asked if I was in the meeting. I was not told anything
12 about any criminal complaint, because I know that's
13 where you're going. All I was asked, Was I at that
14 meeting? And I said, 'No, I was not'. 'Were you
15 representing Xela?' I said, 'No, I did not'. And they
16 said, 'Would you be willing to sign -- say that in
17 writing?' I said, 'Yes', because I wasn't there. I
18 wasn't lying, and I'm not accusing anybody of anything.
19 I simply answered a question, and I stay by my answer,
20 because I didn't know that meeting was happening. I was
21 not invited or was not informed, and much less was I
22 present.

23 272 Q. What was the purpose of the document, to
24 your understanding, when you swore it? What was it
25 going to be used for?

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1 A. It was simply clarifying the fact that I
2 was not present. What else do you want me to say?

3 273 Q. Different question. It was clarifying it,
4 that you've told me what you think it says. But what
5 was it going to be used for? What dispute was it going
6 to be used for? What was the paper going to be used
7 for?

8 A. I don't know. The company right now has a
9 situation. My understanding is they have situation at
10 the public registry in Panama where there's an attempt
11 to change the board that did not go through because of
12 errors in the minutes and because the way it was done.
13 And I was asked if I was present. That's all I can
14 answer. You can keep asking me the question; I'm sorry,
15 the answer is simple. I don't know what it was going to
16 be used. I was just asked if I was present; I said,
17 'No, I wasn't', and they asked me if I was willing to
18 say that in writing, and I said, 'Yes'.

19 274 Q. When you say 'they' --

20 A. Because I wasn't there.

21 275 Q. Can you be specific when you say 'they'?

22 A. I'm talking about the notary public who
23 was representing Lisa at the moment.

24 276 Q. But ultimately it was Mr. Johannessen who
25 asked you, right?

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1 A. He asked me the question, and he asked me
2 to speak to his lawyer. And the guy who asked me to
3 sign it was the lawyer who notarized these documents.

4 277 Q. All right. So while we're in
5 paragraph 93, you say at the end:

6 In any event, I provided no input
7 whatsoever in the decision to file
8 the criminal complaint. That
9 decision was made solely by
10 Mr. Johannessen in consultation
11 with legal counsel.

12 So did Mr. Johannessen tell you about his consultation
13 with legal counsel?

14 A. He didn't tell me what he consulted. But
15 I was ordered by this Court to tell him to withdraw the
16 thing, and I did. I asked him --

17 278 Q. Mr. Gutierrez, I'm interrupting you,
18 because I have not asked you that question, and it's not
19 responsive to my question, which was: Did
20 Mr. Johannessen tell you about his discussions with
21 legal counsel? And I believe your answer was no, right?

22 A. If you allow me to answer.

23 279 Q. My only question is -- I'm not asking you
24 about the withdrawal. You've told me multiple times
25 that you have delivered the withdrawal. I'm only asking

1 you about the decision about this sentence in your
2 affidavit, which is, you say that decision was made
3 solely by Mr. Johannessen in consultation with legal
4 counsel, and I'm only asking you whether Mr. Johannessen
5 told you anything about his discussions with legal
6 counsel.

7 A. That's what I was answering to you. He
8 did not tell me anything he was discussing with his
9 counsel.

10 280 Q. And he told --

11 A. I answered that question before.

12 281 Q. I know, but then you kept on talking, sir.

13 A. Okay, sorry. It's not my intention to be
14 difficult, but if you -- raising your voice and talking
15 to me in that way, if you ask me without interrupting
16 me, I think we can be more productive. But I'll keep
17 answering your questions, because I'm here to do that.

18 282 Q. All right. Mr. Gutierrez, we can be more
19 productive if you listen to my question and then answer
20 the question I've asked. And if I'm speaking too
21 loudly, you let me know. All right. Why don't we --
22 well, let's go to paragraph 100 first, stick in this
23 document for the moment. So about halfway through, it
24 says:

25 In any case, I have followed to the

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1 letter the Court's requirements to
2 withdraw my sworn statement and to
3 direct Mr. Johannessen and
4 Mr. Alcides de Leon to withdraw the
5 criminal complaint.

6 And then you say:

7 While I understand that both
8 Mr. Johannessen and Mr. Alcides de
9 Leon have responded negatively to
10 that direction...

11 So I can tell you that the Receiver has received
12 something from Mr. Johannessen in writing. Did
13 Mr. Alcides de Leon respond to you in writing?

14 A. I don't remember seeing anything from him
15 in writing. I'm not sure. I have to check if they send
16 anything. But I don't -- I'm not sure. I don't know.

17 283 Q. So when you say you understand that
18 Mr. Alcides de Leon has responded negatively to that
19 direction, where did you get that understanding from?

20 A. I insisted to Mr. Johannessen to follow my
21 instructions, and he told me that neither him or his
22 lawyer would do that. And I ask him to do it twice or
23 three times, and his answer was the same.

24 284 Q. So that this sentence you're just
25 referring to, your discussions with Mr. Johannessen.

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1 Yes?

2 A. My understanding is that his lawyer was
3 not going to be responsive to me at all, because he
4 doesn't -- I'm not his client. That's what I was told.

5 285 Q. And you wrote to Mr. Johannessen once, but
6 I think you said you asked him two or three times. Did
7 you ask him two or three times in writing?

8 A. No, I sent -- I was told to do it in
9 writing, and I did.

10 286 Q. Yes.

11 A. And then when he answered negatively, I
12 call him and ask him to reconsider, and he simply told
13 me no.

14 287 Q. So tell me everything about that
15 discussion you had with him. What did you say?

16 A. I already told you. I asked him to
17 reconsider, and he told me no. And that's all it was.

18 288 Q. And then you had another -- you said you
19 spoke to him two or three times.

20 A. Well, that's just a saying. I don't know
21 if I spoke to him more than once. I ask him to withdraw
22 it in writing, as I was told. He responded negatively.
23 I got concerned about it. I made a phone call to him,
24 and he told me no. That's all -- that's what it is.
25 Once in writing, one verbally.

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1 289 Q. All right. Did you ask him not to rely on
2 your sworn statement because you have withdrawn your
3 statement?

4 A. That was clearly stated in the letter I
5 sent you, which you have a copy.

6 290 Q. In your telephone call.

7 A. Telephone call was very short. I just
8 asked him to reconsider, and he told me no.

9 291 Q. All right. Let's go now to your
10 statement. So I'm going to have to -- I don't speak
11 Spanish, sir, so I will have to go to the translation.
12 You've received this sworn translation we provided of
13 your sworn statement?

14 A. I'm not sure. I presume so, but I can't
15 remember if I read the translation or I only read it in
16 Spanish.

17 292 Q. Well, we'll go through it and you'll let
18 me know if you have any concerns. So it says "Notarized
19 affidavit in the City of Guatemala on the 3rd day of
20 December, 2020, at 9 a.m." And then the notary is
21 Mr. Castillo, and it provides his address. And then it
22 says:

23 At the request of Mr. Juan
24 Guillermo Gutierrez Strauss, who
25 states that his 64 years of age

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1 married executive Guatemalan
2 residing in the Republic of Canada.

3 So that's you, right?

4 A. Yes. Yes.

5 293 Q. And it says --

6 A. I have one comment though.

7 294 Q. Yes.

8 A. I think the word "Notarized affidavit" is
9 not the proper translation. Because this -- an
10 affidavit is something I am testifying or I'm writing
11 on. And this is the notary's testimony.

12 295 Q. Okay.

13 A. The notary's document. I don't know, in
14 Spanish it's called acta notarial, which is not the
15 same.

16 296 Q. Okay. You've explained that, and I
17 understand. And then it refers to your personal
18 identification number. And then it says, after the
19 words "Notarized Affidavit", and you've explained that
20 to me, it says: He declares as follows:

21 Mr. Juan Guillermo Gutierrez
22 Strauss aware of the penalties
23 related to the crime...

24 If we could just pull it down, Mr. Knoke, so we're --
25 ...of perjury under solemn oath in

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1 accordance with the law.

2 And then you took an oath before the notary, did you,
3 sir?

4 A. No, I did not take an oath. That's why I
5 tell you, it's a different procedures over there. And I
6 don't have the Spanish version in front of me to compare
7 the situation.

8 297 Q. Okay, well, let's --

9 A. Compare the translation. But the one
10 who's testifying of what was said is him. He asked me
11 if I did this or not; I said no. And then he is writing
12 it, I signed it, and he notarized it. So he's the one
13 who's attesting the truthfulness of the statement. It's
14 a different, completely different system, legal system,
15 than here. It works very different.

16 298 Q. All right. If we go to page 38 of 43 of
17 the PDF? And this is the Spanish version. Just pull
18 down? So you see there in bold -- pull down a little
19 bit more? It says "Primero". So that's where we were
20 in the English translation, right? It says, and I don't
21 speak Spanish at all, Mr. Gutierrez, so you will have to
22 -- I apologize for not speaking your language properly.
23 But it says, "El señor Juan Guillermo Gutiérrez
24 Strauss", and then it says "enterado de las penas
25 relativas al delito de perjurio". So that's under the

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1 pain of perjury, right? Under risk of perjury, right?

2 A. Yes. And I stand by what I said. We
3 don't need to make a big thing out of this.

4 299 Q. No, no, so let me --

5 A. Let me finish, please. The system just
6 works different. You asked me if he took an oath. No,
7 he did not take an oath. But I'm not walking away from
8 this. This is the truth, okay? So let's -- let's focus
9 on what's important, not on that little detail.

10 300 Q. Mr. Gutierrez, Mr. Gutierrez, I do get to
11 ask the questions, and you've said that there's an issue
12 with the translation. And we will get through this if
13 you let me ask the questions. You don't get to tell me
14 to focus on something else. That's not appropriate,
15 okay? So let's take our time and get this done. I want
16 to be done as much as you do, I promise.

17 So it then says, after what I just read, then
18 it starts with the word b-a-j-o, and it -- then it says,
19 in all caps "Declara". And so --

20 A. I don't see that. Where are you?

21 301 Q. So right there.

22 A. Oh, "Declara", okay. M'hm?

23 302 Q. So that's the sentence there from "bajo"
24 to "Declara" which, in the English translation, says --
25 in the English translation it says, "under solemn oath

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1 in accordance with the law declares as follows". So
2 what is your understanding in English of what that
3 phrase says?

4 A. What that phrase basically says is that I
5 declare the following, saying it's the truth. That's
6 what basically says. It's no difference.

7 303 Q. Okay. That's okay, fine. So let's go
8 back to page 17 in English, because that will be easier.

9 A. Okay.

10 304 Q. So a) says that "he acts in his capacity
11 as director, president of the company Xela Enterprises".
12 And it gives the -- it gives the business identification
13 number. So are you telling me -- explain to me -- I
14 know you feel like you've done it a lot, but did this --
15 can I ask you this: Was the document already drafted
16 before he came to see you?

17 A. We spoke first. Then he drafted the
18 document. Then he came back and then we sign.

19 305 Q. So, sir, were you -- all on the same day?

20 A. Yes.

21 306 Q. And the document he came back with, did
22 you make any changes to it?

23 A. No.

24 307 Q. So you spoke. You had a conversation with
25 him. He took notes. He left, and he came back and

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1 asked you to sign a document.

2 A. Yes, yes.

3 308 Q. And then this is the document. So that
4 actually sounds an awful lot to me, sir, like what we do
5 in Canada. But so you understood that you were
6 declaring that you were acting in your capacity -- like,
7 this is not that -- sorry, let me step back. You
8 understood that you were declaring that you were acting
9 in your capacity as director and president of Xela.
10 Right?

11 A. I think you're -- this is potentially a
12 misunderstanding here. I'll tell you, because, again,
13 language, I have experience dealing with international
14 business. Language is a big issue when you translate.
15 What it says there in the Spanish version is that I am
16 currently -- it doesn't use that exact word, but says I
17 am the acting president of Lisa -- of Xela, sorry, of
18 Xela, which is true. As far as I know I have not been
19 removed. I don't have the powers, but I'm still the
20 president. So the Receivership did not replace me as
21 president, even though it took my authority away. So
22 what it says in there, it just positions myself that I
23 am officially raise (ph.) president of Xela. You go to
24 the Ontario registry, I am president of company.

25 309 Q. So I'm not questioning that.

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1 A. That's an absolute truth.

2 310 Q. I'm not questioning that you're the
3 president of Xela. What I understood from this,
4 Mr. Gutierrez, was that you were providing this
5 declaration, this sworn statement, as the president of
6 Xela. You agree with that.

7 A. That's not right. You understood that,
8 but that's what I'm telling you, it's a
9 misunderstanding. That's not what it means. It is lost
10 in translation, as I said. When you translate things,
11 you have to also take care of the meaning, not just of
12 the wording. So what this means is, I am the acting
13 president. That doesn't mean I'm taking this action on
14 behalf of Xela. It doesn't say that.

15 311 Q. All right. Let's go to paragraph b: "So
16 that his client is the sole shareholder of the company
17 Gabinvest". I wondered about the use of the word
18 "client". Is that a proper translation?

19 A. I don't think so. I don't think it said
20 that.

21 312 Q. Okay. Could we go to page 38 again? And
22 you can tell me in Spanish. So --

23 A. "que su representada", that means the
24 company, the company I represent, in other words, Xela.
25 That's what it refers to.

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J. Gutierrez

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1 313 Q. So that not that the client is --

2 A. Is not a client. I'm the president of the
3 company, and the company I'm president of. That's what
4 it means.

5 314 Q. Sorry, I meant -- I just want to make sure
6 we're in the same place. I meant b), so it's --

7 A. I know.

8 315 Q. Okay?

9 A. What it says there is refers not to the
10 client, but when it says "representada", it means Xela.
11 Because as president of Xela -- I'm president of Xela,
12 so I know that Xela is the owner of Gabinvest. That's
13 what it says there.

14 316 Q. No, but I just want to make sure -- you're
15 explaining what it means, but -- and I understand you
16 want a meaning, but 'representada', that would mean
17 'represents'?

18 A. In this particular case it refers to the
19 company I'm president of.

20 317 Q. No, I know what it refers to, but how --

21 A. ...(inaudible).

22 318 Q. -- would you translate the word?
23 Mr. Gutierrez, how would you translate the word?

24 A. The word means 'represented'.

25 319 Q. Okay.

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J. Gutierrez

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1 A. Okay? But this is the way people talk,
2 right? People communicate. It should say there that
3 Xela Enterprises Ltd., but instead of that they put the
4 'representada', because I am president of the company.
5 So it's just identifying the person, the company. It's
6 not saying I'm acting on representation of the company.
7 It's just saying -- instead of writing the name, they
8 put that line, which, when I read it, I didn't even pay
9 attention to it, because it's the way it's done. But it
10 doesn't mean 'client'. The translation is incorrect.

11 320 Q. Okay. Let's go back to page 17, the
12 English version. So it says, "This company", now
13 referring to Gabinvest, "was incorporated in accordance
14 with the laws of the Republic of Panama". And that's
15 correct, right?

16 A. Correct.

17 321 Q. "Registered in the public register of
18 Panama". And then it says the page. And it says, "Said
19 shareholding is supported by share certificate", and
20 then it sets out the numbers. How did you get that
21 information?

22 A. I didn't get that information. Gabinvest
23 provided that information, I presume. I don't know. I
24 didn't have that information.

25 322 Q. No, no, but you --

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1 A. It's in the public registry in Panama
2 anyway. So I presume the lawyers got it from there.

3 323 Q. But how could you attest to it, sir, if
4 you didn't know whether it was those numbers, if you
5 didn't see the share certificates?

6 A. I'm not attesting to that. The one
7 attesting to those numbers is the notary. That's why I
8 tell you this is not an affidavit in the way affidavits
9 are done in Canada.

10 324 Q. No, no, no, but I--

11 A. I don't know those numbers. I know
12 Gabinvest and the lawyers -- the notary is the one
13 identifying the company under those numbers. I have no
14 knowledge of those numbers.

15 325 Q. Could we just go to page 40, at the bottom
16 of the page. Is that your signature on that page, sir?

17 A. Yes, it is.

18 326 Q. Okay. So it's you signed a document, back
19 to page 17, which said that the share certificates, and
20 you did so under penalty of perjury, as I read both the
21 English and Spanish versions, that the share
22 certificates were numbered what is set out on this page,
23 right?

24 A. I'm not identifying the company. What I'm
25 saying in this document, that's why I'm insisting is a

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J. Gutierrez

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1 completely different system. You have to look at it
2 from how it works down there, not the way you like it or
3 you do it here in North America. I'm not the one saying
4 that those numbers belong to that company. All I --
5 what I am testifying, the only thing I'm giving
6 testimony here is way down in this document, where I say
7 I was not on the shareholder meetings. This is stuff
8 the lawyer puts on it. I have no reason to believe that
9 those numbers are incorrect. But I don't know they're
10 correct either. And it's not my responsibility to
11 attest for that. That's the notary. That's why the
12 notary signed below me. You just showed me the
13 signature.

14 327 Q. Well, that's also what we do in Canada,
15 sir, but anyways, okay. So let's go to page 18. And
16 then under sub-paragraph c), "Therefore I declare", and
17 it says "my client" here.

18 A. That's incorrect again.

19 328 Q. Yeah. So we can go to page 39 if you
20 want, but it again says -- let's just go there. My
21 Spanish will be unacceptable. It says -- can you just
22 move it for one second, Mr. Knoke? There's a weird
23 white spot on it. There, perfect. So he's highlighted
24 c). So it again says, "Declaro que mi representada".
25 So that's a declaration that you represent Xela, right?

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J. Gutierrez

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1 A. Right.

2 329 Q. Yes, okay. So let's go back to page 18.

3 So you declare that Xela was not notified to participate
4 in the shareholders meeting of Gabinvest.

5 A. It wasn't notified, at least I was not
6 notified.

7 330 Q. No.

8 A. That's what I'm saying.

9 331 Q. No, no, not --

10 A. I'm not attesting is that I'm not
11 notified, and the company wasn't notified as far as I
12 know.

13 332 Q. Okay. So you --

14 A. At the time that that happened, we're not
15 talking today. We're talking about at the time that
16 that happened. Right?

17 333 Q. So you agreed, Mr. Gutierrez, that you
18 declared that the company, Xela, was not notified of the
19 shareholders meeting. Right?

20 A. At the time that that happened, I didn't
21 know the contrary. So I'm saying that it was -- I was
22 not informed.

23 334 Q. But sir, Mr. Gutierrez, we can agree that
24 you were not informed of the meeting. There's no debate
25 about that. You've told me that; I agree with you.

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J. Gutierrez

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1 There's no debate that.

2 A. As far as I know, the company was not
3 notified.

4 335 Q. But the company -- the Receiver, as you
5 know, in July of 2019, has the authority to exercise the
6 shareholder rights, and in March of 2020, the Court
7 approved the exercise of that shareholders rights. And
8 so the Receiver for the -- you understand that the
9 Receiver exercises the company's rights, and the
10 Receiver was aware of the shareholders meetings. Right?

11 A. You have to put this in context of time.
12 I'm not talking about -- I'm not referring there when I
13 say that the company was not notified, I wasn't
14 referring to December or November 2020. I'm talking at
15 the moment when the shareholder meeting happened in
16 January I wasn't notified. And as far as I know, nobody
17 was. The Receiver never informed me.

18 This is why I've been asking Mr. Kofman,
19 respectfully asking Mr. Kofman many times, that we
20 should be having regular communications. He's
21 completely ignore me, and he just writes reports without
22 any input from myself. He never confirms with me if
23 there is any inaccuracies. There's a lot of
24 inaccuracies that we could have resolved in a very
25 friendly way if he would meet with me, or at least have

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1 phone calls with me or Zoom calls with me. But he's
2 refused for a long, long time.

3 So as far as I knew, at the time when the
4 shareholders meetings, Xela was not involved. I didn't
5 even know the meeting was happening. That was what the
6 question was. Not --

7 336 Q. But Mr. Gutierrez --

8 A. ...(inaudible). But I know today. I
9 didn't know then.

10 337 Q. But Mr. Gutierrez, in December of 2020 you
11 knew that it was the Receiver that had called the
12 meeting. In December of 2020 you knew that that's what
13 had happened in January. Right?

14 A. On December 2020, yes, but --

15 338 Q. Okay.

16 A. -- that wasn't the question I was
17 answering.

18 339 Q. But there's no question, sir, written in
19 this document.

20 A. Ms. Jilesen, I ask you respectfully,
21 please don't raise your voice and don't interrupt. I'm
22 trying to answer your questions as best I can. Okay?

23 At the time the question I was asked is, at
24 the time of shareholder meeting I did not know that Xela
25 would have been informed. And that's why I said

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1 respectfully, say again, it would be much more efficient
2 and productive if the Receiver will have a regular
3 communication with me, so I know what's going on.
4 Otherwise, these things are done on my back and then I
5 ask questions and they make mistakes. What can I say
6 about it?

7 340 Q. There was no mistake, in December of 2020,
8 about what you knew about the Receiver's actions, was
9 there, Mr. Gutierrez?

10 A. I was not asked what I knew in December.
11 I was asked if, at the time of the shareholder meeting
12 in January. And in January, as far as I knew, no
13 notification. No notification at that time.

14 341 Q. But Mr. Gutierrez --

15 A. I didn't know anything about this.

16 342 Q. Mr. Gutierrez, you didn't sign a document
17 that had questions and answers. You signed a document
18 that says, "I declare that my client Xela was not
19 notified or summonsed in way to participate in the
20 shareholders meeting". And that was not true.

21 A. Now you're accusing me of saying something
22 it's not true.

23 343 Q. I am.

24 A. You're wrong. And respectfully I tell you
25 you're wrong on that. You're trying to reach a

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J. Gutierrez

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1 conclusion for whatever reason. But what this document
2 was, is the summary of me answering some questions, and
3 it doesn't have questions and answers. That's not how
4 it works. All I was asked is if I was present; if I was
5 part of it; if I was notified. And the answer at the
6 time of the shareholder meeting was no. And that's what
7 it says in there very clearly.

8 Now, you can get lost in translation and, like
9 every reading document, you can take any different
10 interpretation you want. What counts is what actually
11 happened. And what actually happened is, I was asked if
12 I was present, if I was notified, if I knew of Xela. I
13 said no. Xela, as far as I know, was not notified.

14 There was no written -- to start with, you
15 should start by following what the law and what the
16 prerequisites for shareholder meetings are. It should
17 have been [Spanish]. It should have been a letter of
18 invitation to the shareholders for the meeting. That
19 letter usually, normally, unless there is a Court order
20 of some sort, is issued by either the president or the
21 secretary of the board who calls the shareholders for
22 the meeting. All those are procedures that every
23 corporation follows.

24 I've done shareholder meetings around the
25 different countries over my lifetime. And I know

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J. Gutierrez

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1 exactly how it does. I'll tell you, this shareholder
2 meeting was done in a very anonymous way, and that's
3 what created all this problem. And I was asked if I was
4 there, and I have testified that I wasn't. I wasn't
5 aware of it. I wasn't part of it at all. So that's
6 what I said.

7 And you can read it any way you like, but
8 that's what this document says, clearly says, I wasn't
9 there. You know? I didn't approve this. I wasn't
10 there. The same way as I'm telling you I did not
11 approve or was party in any shape -- way, shape or form
12 of any criminal complaint against anyone in this case.
13 Nothing. I've just answered questions, that's all.
14 Like I'm trying to do right now.

15 344 Q. You didn't just answer questions, you
16 signed this document. Right?

17 A. I signed this document because I answered
18 the question, and I'm certifying that my answers were
19 right and true, and they are.

20 345 Q. If we go down just before d), it says:
21 "These persons are not known to my
22 client, nor do they have the
23 authority to represent the company
24 Gabinvest since they are not
25 members of the board of directors

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J. Gutierrez

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1 proposed and elected by the
2 shareholders of the aforementioned
3 company.

4 And so in December 2020, you knew that these persons
5 were proposed by the Receiver to sit on the board of
6 directors of Gabinvest and were approved by the Ontario
7 Superior Court of Justice in March of 2020. Right? you
8 knew that.

9 A. March of 2020. I'm talking -- what this
10 document is referring to is prior to that. It was in
11 January of 2020. In January 2020, the name Hatstone
12 didn't even exist in my vocabulary. I never heard of
13 them before. Now I know --

14 346 Q. Mr. Gutierrez --

15 A. -- and that's why I'm testifying. I'm
16 answering I declare that either me or Xela, as far as I
17 know, at the time that the shareholder meeting happened
18 in January, these people involved were totally unknowns
19 to us.

20 347 Q. Okay, Mr. Gutierrez, I'm going to take you
21 -- I'm going to take you, because the English
22 translation says "these persons are not known to my
23 client". It doesn't say anything about January. So you
24 take -- no, no, no, I'm going to ask you a question.
25 You're going to let me ask the question. I am going to

1 raise my voice with you if you don't let me ask the
2 questions. So we'll go to page 39. And I'm asking you,
3 where it says, under section c), that these persons are
4 not known to my -- or were not known to my client in
5 January, it does not say that, does it?

6 A. No, it doesn't say that. But I tried to
7 -- I'm trying to answer your question explaining you the
8 context of this document. In the translation you have
9 some lost in there too. But the fact here is, my
10 understanding, and when I was signing the document, I
11 was just referring to what I knew at the time when that
12 happened. The document doesn't have a reference to that
13 date. That doesn't make it different. That's what I
14 understood when I signed the document. Otherwise, I
15 wouldn't sign it that way.

16 But we were just talking. At the time of
17 January 2020, when the shareholder meetings happened,
18 nobody, as far as I'm concerned, or I know, knew who
19 these people were. And I already explained to you that
20 the Nephews have attempted to take over our information
21 and our companies all over the last 20 years, trying to
22 avoid paying the dividends that they withheld illegally.
23 And that is what we should be focusing, by the way.

24 But all I'm saying here is, I'm trying to
25 answer your question. No, I did not know, nor as far as

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J. Gutierrez

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1 I know anybody in the organization that is around Xela,
2 knew who these people were when this shareholder meeting
3 was done, and they didn't bring any representation. You
4 read the minutes. We should be reading the minutes.

5 In the minutes doesn't say that a Receiver
6 instructed them either. The name of the Receiver,
7 Mr. Kofman or Mr. Goldstein, or anybody else around KSV
8 or the word 'Receiver' appears in those representation.
9 If you read the minutes, nobody is identified as
10 representing the shares of Gabinvest. It's just like a
11 theft, identity theft case would look like. Nobody's
12 identified as a shareholder, which is a violation of
13 procedures and forms and traditions and laws. The
14 shareholder has to be identified.

15 If they would have identified the Receiver
16 there, would have been different. But they didn't.
17 There's no way you can know that these guys at Hatstone
18 were representing the Receiver. And now we know that,
19 but we didn't know that in 20 -- in January 2020 or in
20 February 2020, early February.

21 The Receiver never informed us; nor the
22 Receiver appears in the minutes; nor the Receiver showed
23 up himself; nor any of the individuals representing the
24 Receiver. And Mr. -- I forget his name -- Almengor, I
25 think? He doesn't state in the minutes of the company

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J. Gutierrez

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1 that he's representing the Receiver, does he? Or that
2 he has a power of attorney. He doesn't. So that is
3 where the abnormality is, not in this document. I
4 didn't do anything improper. I simply confirmed that I
5 wasn't there present, nor Xela was there represented by
6 me.

7 348 Q. Mr. Gutierrez --

8 A. I didn't know anything about it. That's
9 all.

10 349 Q. Mr. Gutierrez, do you even know what
11 question I last asked you? Do you know what question
12 you're answering?

13 A. I'm answering the question you asked me
14 about what I said in this document.

15 350 Q. No, you're not, actually, sir. I didn't
16 ask you about the minutes. So please listen to my
17 question very clearly now. I am looking just above
18 little sub d), the word -- the sentence starts with -- I
19 can't pronounce it; I'm very sorry about that -- "Dichas
20 personas no son del", that sentence? Do you see that
21 one?

22 A. M'hm.

23 351 Q. Okay.

24 A. "Dichas personas no son del
25 conocimiento --

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J. Gutierrez

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1 352 Q. Yes. Okay.

2 A. ...(inaudible).

3 353 Q. No, no, no, I haven't asked a question.

4 Mr. Gutierrez, I just asked you if you found the
5 sentence. That was --

6 A. Okay.

7 354 Q. So --

8 A. Can I respectfully ask, please don't yell
9 at me. I am an older person and I am very respectful to
10 you. I am trying to answer your questions. I would
11 really appreciate if you didn't yell at me. Because
12 it's not proper; it's not respectful either. So let's
13 keep it calm, because otherwise, it's not going to work.
14 I am trying to answer your questions, so ask me
15 questions, don't yell at me. And don't interrupt me
16 when I'm answering.

17 355 Q. But you'll have to actually wait, sir, for
18 me to ask my question and not anticipate a question you
19 think I'm going to ask. So I just wanted to make sure
20 we were in the same place. So just stop there. You
21 know what sentence I'm referring to now, right?
22 Starting with "dichas personas"? Do you have that
23 sentence?

24 A. Yes.

25 356 Q. Yes, okay. You'd agree with me that that

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J. Gutierrez

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1 sentence is in the present tense, that these people are
2 not known to Xela. Right?

3 A. M'hm. Yeah.

4 357 Q. It's in the present tense. It's not the
5 past tense. It doesn't say "in January". It says these
6 persons are not known.

7 A. M'hm.

8 358 Q. Currently, right?

9 A. Yes, I agree. That's what it says.

10 That's correct.

11 359 Q. Okay.

12 A. But I need to put the context to my
13 answer. Because it is correct, but I was not answering
14 -- this document was not referring to the present time.
15 It was referring to the time when those assembly or
16 shareholder meetings happened. It might -- if I knew
17 different, I would have probably requested change the
18 tense in the words, but honestly, when I read it, it
19 just -- I did not realize that particular issue that it
20 was present term or past term. But the fact is, I was
21 answering the question regarding to the time when the
22 shareholder meeting happened.

23 360 Q. That's not what it says, is it, sir?

24 A. That's what it is.

25 361 Q. But it doesn't say that, does it, sir? It

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J. Gutierrez

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1 says that these persons are not known to Xela, and they
2 were -- they are known to Xela, right?

3 A. The way you're putting it is right. It
4 isn't present time. I'm just trying to put you in the
5 context. If I would have noticed that, I would have
6 corrected. I did not notice that particular detail as I
7 read the document I signed it. At all times it was
8 being referred to the January 2020 shareholder meeting.
9 And I apologize if this is a mistake. I did not mean to
10 miss this past terms issue. I'm sorry, I'm not -- I
11 didn't realize it at the time. But that doesn't change
12 the fact that what we were doing, or I was doing, is
13 answering a question regarding the shareholder meeting,
14 not regarding 2021.

15 MS. JILESEN: I won't be much longer, but it's
16 1:30. So why don't we take a half an hour break, and
17 we'll come back at 2:00, if that's okay with everybody.
18 -- upon recessing at 1:29 p.m.
19 -- luncheon recess
20 -- upon resuming at 2:02 p.m.

21 JUAN GUILLERMO GUTIERREZ, Resumed

22 CONTINUED CROSS-EXAMINATION BY MS. JILESEN:

23 362 Q. I'm going to start with something that
24 goes back a little bit, Mr. Gutierrez. My colleague
25 Mr. Knoke is going to pull up an email exchange between

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J. Gutierrez

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1 me and Mr. MacLeod from -- relating to the devices. Oh,
2 no, a different one, Mr. Knoke. I'll pull it up.

3 So there's an email from Mr. MacLeod that
4 starts in the chain from January 4th, 2021, at 4:44 p.m.
5 And Mr. MacLeod reports that:

6 Our respective computer experts
7 have conferred and that, with the
8 exception of a single issue
9 discussed below, we're in alignment
10 on the process for tomorrow's
11 imaging.

12 And then you will see that I respond and I say, "The
13 Receiver does not agree with the proposal set out in
14 your email below". And we refer to the order.

15 And you will see -- sorry about this. Just
16 give me a second. Paragraph 3 of Mr. MacLeod's note
17 says:

18 The resulting hard drive will be
19 locked by our team using a 'Bit
20 Locker', and we alone will retain
21 the pass code.

22 So that was your position on January 4th. But you will
23 see that we did not -- that we did not agree.

24 And then Mr. MacLeod doesn't agree with me on
25 the same day. And then again I don't agree with

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1 Mr. MacLeod. And then Mr. MacLeod finally writes back
2 on this chain that "we can deal with the image after the
3 file is created, so let's not lose that opportunity".

4 So Mr. Gutierrez, you had said to me, I think,
5 earlier in this examination, that we were all agreed on
6 the procedure that was going to happen with the imaging
7 of the devices. And I'm showing you this to refresh
8 your memory that we were not agreed, but in fact counsel
9 for you and counsel for the Receiver had agreed to
10 disagree on certain aspects of the imaging process.
11 Does that help refresh your memory?

12 A. I wasn't copied on these emails so... so I
13 guess you and Mr. MacLeod had any agreement or
14 disagreement, that's out of my knowledge.

15 363 Q. Right. It is out of your knowledge, isn't
16 it, Mr. Gutierrez? I think what you had told me earlier
17 -- and we'd have to go back to the transcript, it was
18 some time ago -- but I believe you spoke relatively
19 confidently that it was all an agreed process. But you
20 don't know one way or the other what was agreed between
21 counsel, do you?

22 A. My understanding is that we were
23 proceeding as an agreed. I'm not part of the
24 conversations you have or not. But my understanding was
25 I was acting on an agreed way. So I comply with my part

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1 according to my understanding.

2 364 Q. But you'd agree with me it doesn't look
3 like we agreed, does it?

4 A. Well, in hindsight everyone has got 20/20
5 vision. I read these, so obviously you have some
6 disagreements. That doesn't change what was -- what it
7 was at the time when we did the -- in the context when
8 we did the work and both -- actually, both experts were
9 sitting around the table and they did it according to
10 what they had agreed. I wasn't party on any of these
11 discussions.

12 365 Q. But that's my point --

13 A. That's what my understandings was.

14 366 Q. Mr. Gutierrez, I'm actually really only
15 interested in your understanding if you actually know it
16 to be true. And you agree with me you don't know
17 whether there was agreement or not between counsel, do
18 you?

19 A. I wasn't told that there was any
20 disagreement as far as I remember. I acted on my
21 knowledge. I complied with the order the best I could,
22 according to the context of the moment and what I knew.
23 That's all I can say.

24 MS. JILESEN: All right. I'd like to mark
25 this email exchange as the next exhibit. I believe it's

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J. Gutierrez

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1 6.

2 -- EXHIBIT NO. 6: January 2021 email chain between

3 Mr. MacLeod and Ms. Jilesen

4 BY MS. JILESEN:

5 367 Q. All right. And then the next thing I want

6 to take you to, and I'll just do it since it's the last

7 So this is Exhibit 20 to your affidavit. I'll show you.

8 You see it's Exhibit 20 to your affidavit February 22nd,

9 2021. I'm just going to go to the bottom of the email

10 chain. It's an email from Mr. O'Shea at Hatstone to

11 Mr. Johannessen. And it appears, actually, that this

12 whole email exchange, as far as I can tell, you're not

13 copied on.

14 A. No.

15 368 Q. How did you --

16 A. I wasn't part of that.

17 369 Q. So how is it you have the document to

18 attach to your affidavit?

19 A. I think it was provided by Mr. Johannessen

20 in one of these communications. I do not remember

21 exactly how it end up in my possession. But...

22 370 Q. I'd like a copy of Mr. Johannessen's

23 communication to you providing this email.

24 A. I do not remember who gave it to me,

25 actually.

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1 371 Q. I would like a copy of the communication
2 in which this is provided to you.

3 MR. MACLEOD: We'll take that under
4 advisement.

5 U/A

6 BY MS. JILESEN:

7 372 Q. How often do you talk to Mr. Johannessen
8 about these proceedings?

9 A. About these proceedings? Never, except
10 when I was asking him to reconsider when he denied my
11 request.

12 373 Q. But did you ask him to provide you
13 documents to support this affidavit?

14 A. No.

15 374 Q. Did you direct your counsel to ask him to
16 provide you documents to support this affidavit?

17 MR. MACLEOD: Counsel, what communications
18 he's had with his counsel to prepare an affidavit, I
19 don't think --

20 MS. JILESEN: I guess my question is, did he
21 ask Mr. Johannessen through his counsel? If you object
22 to that, you let me know.

23 MR. MACLEOD: I'll take it under advisement.

24 U/A

25

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1 BY MS. JILESEN:

2 375 Q. All right. So this is an email from
3 Mr. O'Shea at Hatstone, and you understand him to be
4 counsel for the Receiver in Panama? Right?

5 A. That's my understanding now, yes.

6 376 Q. Okay. And he reports on a meeting on
7 February 21 in Bogota. And were you at that meeting?

8 A. I was invited to attend that meeting, yes.

9 377 Q. And you'll see Mr. O'Shea reports that:
10 During the meeting we discussed the
11 role and authority of the Receiver.

12 Sorry, I don't know if this is big enough for you.

13 As part of its role, the Receiver
14 is responsible for understanding
15 and securing the assets of Xela for
16 the benefit of all of its
17 stakeholders. The Receiver has
18 been trying to do this but so far
19 has been prevented from doing so in
20 relation to the two Panama
21 companies, Gabinvest and Lisa.

22 And he writes:

23 The Receiver has advised me that
24 prior to the 28 February meeting
25 taking place to accept the

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J. Gutierrez

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1 Receiver's changes to the boards of
2 each of these companies, namely the
3 board of Gabinvest is replaced
4 entirely by the Receiver's
5 representatives, and three
6 representatives are added to the
7 board of Lisa, making it a mixed
8 board.

9 And it goes on to say:

10 Of course, should a full and final
11 settlement be concluded, then the
12 board can be changed as you wish.

13 And you understood that -- well, you'd agree with me,
14 seeing as it's an email to Mr. Johannessen, that
15 Mr. Johannessen understood, in February of 2020, that
16 the Receiver was asking Mr. Johannessen to accept the
17 Receiver's changes to the board.

18 A. Are you asking me what Mr. Johannessen
19 knew, understood, or thought? I really can't tell you
20 that. Because I don't know what he thought or he
21 understood.

22 378 Q. Well, you know he received this email,
23 don't you?

24 A. I've seen it now. I've seen it now.

25 379 Q. You saw it before today. It's attached to

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1 your affidavit.

2 A. You're asking me what Mr. Johannessen
3 thought or understood. I don't know what he understood.
4 I know what he read, because I'm reading it. But that
5 doesn't mean that I know what he understood. I'm sorry,
6 but I'm not going to speculate.

7 380 Q. And then Mr. Johannessen writes back on
8 February 24th in Spanish, and I know you can read the
9 language. I take it he doesn't agree to accepting the
10 changes to the board of the companies. Right?

11 A. I would have to read it. If you give me
12 time to read it, I can comment. Otherwise, I would
13 be --

14 381 Q. Take your time.

15 A. I read what's on the screen. I think
16 there's more to the document.

17 382 Q. Yes.

18 A. And I don't know the beginning either.
19 Could you move the cursor, because it's blocking part of
20 the --

21 383 Q. Sorry.

22 A. Is there anything else below the last
23 paragraph, or --

24 384 Q. Sorry, I just lost my cursor. There we
25 go. No.

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1 A. Can I see the beginning? Because we
2 started -- okay.

3 385 Q. That's the beginning.

4 A. Okay, yeah.

5 386 Q. Okay.

6 A. All right. I read it. What are your
7 questions?

8 387 Q. Mr. Johannessen did not agree to accepting
9 the changes to the boards of the companies.

10 A. I don't think that's what this letter
11 says. I read the whole letter. And he talks a lot of
12 many different issues. So it would be complicated for
13 me to comment on the whole letter in one statement. But
14 in one moment there it says he disagrees with the
15 changes. He's just as I see the necessary steps that
16 have to be done, and it's my understanding that some of
17 the key steps were not followed. That's my
18 interpretation of the letter. If you want, we can
19 translate paragraph by paragraph. That would be easy.

20 388 Q. He complained about the steps not being
21 taken and, as a result, wasn't prepared to accept the
22 changes. Right?

23 A. If you read at the bottom, it's actually
24 offering to continue discussion. If you look at the
25 very last paragraph, it says no matter of the above, all

1 the parties continue with the conciliatory intention as
2 long as the Hatstone firm counsel has in its possession
3 the necessary power of attorney or mandate properly
4 constituted under the laws of the Republic of Panama.

5 The whole letter is about procedures that were
6 bypassed by Hatstone, which is what caused all this
7 issue. There's a legal formalities that need to be
8 followed that weren't. And so people -- this individual
9 from Hatstone was assuming representation he can prove
10 with the power of attorney. That's what the letter
11 says.

12 And what he -- Mr. Johannessen says in this
13 letter, get the proper powers and let's continue talking
14 and let's enter into an agreement of some sort. I find
15 this is a conciliatory letter in my opinion. That's how
16 it ends. But he establishes clearly there were
17 procedures that need to be followed, and I think in
18 every country these procedures need to be followed. The
19 law is the law.

20 389 Q. And then Mr. O'Shea responds to
21 Mr. Johannessen on February 26 providing him with a
22 power of attorney and saying to him, again, that if the
23 meeting is to proceed on Friday, it is a requirement
24 from the Receiver that its changes to the boards of
25 Gabinvest and Lisa are accepted. And you know that

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1 Mr. Johannessen never accepted the changes to the board.
2 Right?

3 A. I don't think that's accurate. Because
4 that meeting in February 21st, I was there as a guest.
5 I did not participate actively. I sat there and
6 listened. And then the big issue was the lack of
7 representation. The two gentlemen from Hatstone showed
8 up without proper representation, and Lisa's lawyers
9 objected to it. Even though they didn't have the
10 presentation, they shared with them information and let
11 them read documentation. They didn't give them a copy.
12 That's what I remember from the meeting. And then it
13 was agreed to follow up another meeting, but under the
14 condition that Hatstone was going to have the proper
15 power of attorney.

16 So the next day it was, I believe, or a week
17 after, the meeting was to be held in Panama for
18 facilitated for Hatstone, who are based there. But my
19 understanding, because I was also invited to the
20 meeting, my understanding is that the Receiver called it
21 off and the meeting never happened. So I don't know
22 more than that.

23 390 Q. And in that email you see that -- my
24 question, sir, was, that Mr. Johannessen never -- has
25 never, to this day, accepted the changes to the board of

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1 Gabinvest and Lisa. Right? He doesn't accept it. He
2 filed a criminal complaint about it. He has never
3 accepted these changes.

4 A. I don't know the answer. You're asking me
5 to answer for him.

6 391 Q. No, I'm not. I'm asking you what your
7 knowledge is, and you'd agree --

8 A. I already told you my knowledge. You
9 asked me to read the letter between them. Obviously
10 it's been a lot of communication between Lisa and the
11 Receiver through Hatstone. I haven't been part of any
12 of those communications. I don't have copies or never
13 was copied in any of those emails you showed me. So you
14 ask me to comment and to give you answers on something I
15 don't know.

16 392 Q. But Mr. Gutierrez, I'm asking you
17 questions about documents attached to your affidavit. I
18 didn't go find them. They're attached to your
19 affidavit.

20 A. I have --

21 393 Q. Now you're telling me --

22 A. You're asking me if Mr. Johannessen has
23 agreed on something. I don't know if he agreed or
24 disagreed on something. The document doesn't say what
25 you're saying though.

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1 394 Q. No, no, I'm not asking about the document
2 anymore, Mr. Gutierrez. Just step away in your mind
3 from the document for a moment. Mr. Johannessen filed a
4 criminal complaint about the changes to the board of
5 Gabinvest, so I take it you'd agree with me that that is
6 not a man who accepts that the board changes are
7 acceptable.

8 A. I don't know what he knows or what he
9 thinks. But from what was discussed in that meeting
10 that I sat is the only exposure I had to this was in
11 February 21st last year. And it was clearly stated that
12 the problem was not that changes were made. It's how
13 the changes were made and that the procedures weren't
14 followed. And they were supposed to follow up in other
15 meetings that I know didn't happen. That's all I know.
16 I can't tell you more than that.

17 395 Q. You attach as Exhibit 21 to your affidavit
18 an email, again to Mr. Johannessen and Mr. Almengor.
19 This is the language from the Receiver in English. It
20 says:

21 I'm not prepared to meet with Juan
22 in the absence of their agreement
23 to our Board changes. We will be
24 asking for contempt order. You can
25 tell them that.

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J. Gutierrez

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1 And did Mr. Johannessen provide you with this
2 information that the Receiver wanted to be assured of
3 the changes to the board of Gabinvest and Lisa before
4 they met with you?

5 A. I do not remember how this email got to
6 me. I don't remember who gave it to me under what
7 circumstance. What it is clear to me here is that even
8 though I haven't been party of any of this, I was being
9 threatened to a contempt order by the Receiver, and Hal
10 was asked to tell me that. That's what I can read from
11 this email. Other than that, I don't know -- I don't
12 know how to answer your question. Because this -- a lot
13 of things happening that I don't know. Because the
14 Receiver doesn't speak to me, nor Johannessen speaks to
15 me. So you're asking me to answer things that nobody
16 shared with me.

17 396 Q. But someone did share that email with you,
18 sir. It's attached to your affidavit.

19 A. I don't know how it got to me. But this
20 was a letter written by Mr. Johannessen in response to
21 the Receiver also. And it might have been attached to
22 one of those. I don't know. I don't know.

23 397 Q. And Mr. Gutierrez, I take it you've
24 included in your affidavit any record you have of
25 requesting any meetings with the Receiver?

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1 A. I requested meetings with the Receiver in
2 a couple phone calls, and since the Receiver never
3 communicated with me, all my requests have been to
4 counsel, so I don't have any records. But I have asked
5 for those meetings. I went to this meeting in February
6 last year because I was invited to attend and was told
7 that the Receiver was going to be there. I didn't know
8 that the gentleman from Hatstone was going to show up
9 instead of the Receiver himself. So I went there hoping
10 to be able to speak to Mr. Kofman, since he hasn't
11 allowed me to do so here. That's as far as I can tell
12 you.

13 398 Q. You haven't requested any meetings with
14 the Receiver since February of 2020, have you?

15 A. I have attempted to meet with him several
16 times, and I don't know how the messages have gone or
17 not. But I can tell you that he -- as a matter of fact,
18 in the email you just show me, not only he rejected it,
19 he threatened me in the email. So even though the email
20 wasn't sent to me.

21 399 Q. Mr. Gutierrez, you haven't requested any
22 meetings. Since February of 2020, when you went to that
23 meeting with representatives of the Receiver, you
24 haven't requested any meeting with the Receiver, have
25 you?

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J. Gutierrez

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1 A. I have requested meetings with the
2 Receiver many times in the last two years, even
3 afterwards. I don't have a way to communicate with
4 Mr. Kofman because he's closed all doors to me. So I
5 haven't addressed him directly. I always tried --
6 attempted to do it through counsel. And I think you can
7 see in that letter, Receiver is denying one of my
8 requests. So I have -- I had requested those meetings.
9 I don't have any written stuff that proves it, but I
10 have -- I have done it.

11 400 Q. So you're saying your counsel may have --
12 you asked your counsel to request a meeting, but you
13 yourself haven't requested a meeting. And I'm not
14 suggesting you should have. I'm just trying to
15 understand, you don't have a record, you've just said,
16 of requesting any meetings after February, and any
17 meetings after February you would have requested through
18 counsel. Is that fair?

19 A. Very respectfully I put to you the fact
20 that I have requested those, but Mr. Kofman has refused
21 to talk to me. Let me finish, please. Don't interrupt
22 me. He has denied me, denied my request over -- every
23 time I request him. And I don't have a way to
24 communicate with him directly. So I've been
25 marginalized completely by Mr. Kofman. And that's why I

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J. Gutierrez

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1 wrote that clearly in my affidavit. So --

2 401 Q. But Mr. Gutierrez, I just have --

3 A. And I request again now, please let your
4 client know that I will very much like to have a meeting
5 with him to discuss. Nobody's more interested in
6 resolving the situation, having the reason of the
7 Receivership to the satisfaction of the judgment of my
8 sister's judgment. Nobody is more interested in
9 resolving that than myself. But I've been pushed on the
10 corner, and I've been ignored, and I have not been
11 allowed to meet with him. So what can I tell you? I
12 have requested him. And he has denied those meetings.

13 402 Q. I'm just trying to understand the timing,
14 Mr. Gutierrez. And in the last year you haven't made
15 that request, right?

16 A. I have done it several times over the last
17 year.

18 403 Q. Always through your counsel.

19 A. Let me put it again clearly. I don't have
20 any ways to communicate with Mr. Kofman, because he
21 closed the doors to me. And we had one conversation I
22 forgot when in 2019, where he said do not call. Okay?
23 So he told me clearly, in one call that we had, which
24 was the only other time other than the two first
25 meetings, he told me, do not call him. We'll call you.

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1 That's what he said to me. Okay? So my only option is
2 to request that through counsel.

3 404 Q. Give me one moment, I just want to show
4 you one last document and mark it as an exhibit, and
5 then I will let you go. Go back to the imaging issue
6 but I missed the document. I know you're not copied on
7 this, sir. I just want it to be on the record. It's an
8 email from Mr. MacLeod to Mr. Knoke and myself on
9 January 3rd, 2021. And it's a long email, but it's
10 somewhere in this email. Just trying to find the
11 reference. There we go.

12 Mr. MacLeod references requesting a bit locker
13 lock on the order. So this was sent to us on the 3rd of
14 January, 2021. And you will see that we agreed on some
15 issues but not others. And you've seen the other
16 comments. So nowhere in this correspondence is there
17 any reference to Kroll or any issue about that. So I
18 just want to suggest to you again that you asked or
19 directed your counsel to ask for the hard drive to be
20 locked before you raised any issue about Kroll doing the
21 imaging.

22 A. I couldn't read any of the emails, you
23 were passing through so quickly. I don't know what
24 exactly all those texts say. So I don't know what they
25 say or not. But the presence of Kroll is one of the --

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J. Gutierrez

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1 is the main concern, but there were other concerns
2 already before, as I stated to you in prior answers.

3 My personal devices do not belong to Xela, nor
4 are Xela devices nor were used for conducting any Xela
5 business. I may have the odd document, copy of
6 documents that I probably obtained while we were
7 drafting my affidavits or from the public record, but
8 nothing that the Receiver doesn't have. And but my
9 devices contain a lot of personal, very personal and
10 private information and communications with counsel, who
11 are privileged. And that's why I've been concerned
12 about the possibility of materials becoming public.

13 And you referred originally to that complaint,
14 and that the complaint, as you can see, we already had
15 the problem that a lot of personal and private
16 information or confidential, even privileged information
17 was put up by my sisters into the public record and
18 caused severe problems for Xela. So it's a legitimate
19 request to have that protection. And I acted according
20 to my understanding of the order. And I think -- I
21 personally think we complied with the order completely.
22 If there is a disagreement, I guess probably Justice
23 McEwan will be able to sort it out.

24 405 Q. Exactly. Okay, I just want to mark this
25 email exchange, which ends with a January 4, 2021 email

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J. Gutierrez

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1 from Mr. Knoke to Mr. MacLeod, at 12:41, January 4th.
2 If we could mark that as the next exhibit. Which is 6
3 or 7.

4 MR. MACLEOD: I believe it's Exhibit 7.

5 MS. JILESEN: 7.

6 -- EXHIBIT NO. 7: January 2021 email chain

7 MS. JILESEN: Then those are my questions,
8 Mr. Gutierrez.

9

10 -- whereupon the Examination is concluded at 2:34 p.m.

11

12 I hereby certify that this is the
13 Cross-Examination of JUAN GUILLERMO
14 GUTIERREZ, taken before me, to the
15 best of my skill and ability, on
16 the 5th day of March, 2021.

17

18

19

20

21 MARY BRAIS, CSR
22 Court Reporter

23

24

25 Reproductions of this transcript are in direct
violation of O.R. 587/91 Administration of Justice Act
January 1, 1990 and are not certified without the
original signature of the Court Reporter

This is Exhibit "G" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

MARGARITA CASTILLO

Applicant

and

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

Respondents

AND IN THE MATTER OF THE RECEIVERSHIP OF XELA ENTERPRISES
LTD.

NOTICE OF MOTION
(Contempt)

KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all the assets, undertakings and properties (collectively, the “**Property**”) of Xela Enterprises Ltd. (the “**Company**”), will make a motion to the Honourable Justice McEwen of the Commercial List as soon as it can be heard by judicial videoconference via Zoom or at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

1. **THE MOTION IS FOR** an order:

- (a) Abridging and validating (if necessary) the times for service and filing of this Notice of Motion, this Motion Record and any other materials, and validating service thereof;
- (b) directing Juan Guillermo Gutierrez (“**Juan Guillermo**”) to withdraw his declaration, sworn December 3, 2020 in Guatemala, in support of a criminal complaint against the Receiver in Panama (the “**Declaration**”) by no later than February 19, 2021;
- (c) directing Juan Guillermo and Harald Johannessen Hals (“**Hals**”) to withdraw the criminal complaint filed against the Receiver’s agents in Panama (the “**Criminal Complaint**”) by no later than February 19, 2021;
- (d) declaring Juan Guillermo in contempt of Court;
- (e) declaring that Juan Guillermo breached the Order of McEwen J. dated March 24, 2020 and the Order of McEwen J. dated July 5, 2019 (the “**Appointment Order**”);
- (f) that Juan Guillermo be imprisoned for such period and on such terms as this Honourable Court deems just;
- (g) seeking the aid and recognition of foreign courts, as may be necessary, to give effect to the Orders requested herein; and
- (h) such further and other relief as this Honourable Court may deem just.

2. THE GROUNDS FOR THE MOTION ARE:

Overview

- (a) The Criminal Complaint and Declaration must immediately be withdrawn in order to:
 - (i) maintain the integrity of this Court's processes;
 - (ii) protect the Receiver's representatives in Panama from suffering any criminal jeopardy and any limits on their personal freedom;
 - (iii) permit the Receiver's representatives to fulfill their mandate as Directors of the Company's subsidiary; and
 - (iv) permit the Receiver to fulfill its mandate as authorized and directed by this Honourable Court.
- (b) Juan Guillermo has breached the Orders of this Court and has acted in contempt of this Court, by:
 - (i) purporting to act on behalf of the Company in Panama with respect to the Company's shareholder rights, when he had no power to do so (contrary to paragraph 3 of the Appointment Order);
 - (ii) executing a document with respect to the Company's shareholder rights, when he had no power to do so (contrary to paragraph 3 of the Appointment Order);

- (iii) swearing a false declaration to initiate a criminal proceeding in Panama against the representatives of the Receiver (contrary to paragraph 3 of the Appointment Order and paragraph 3 of this Court's March 24, 2020 Order);
- (iv) telling the Receiver that he did not know where to find the Company's property (being its share certificates in its wholly-owned subsidiary) when he was in possession and/or control of those share certificates (contrary to paragraph 5 of the Appointment Order);
- (v) commencing or participating in the commencement of proceedings against the Receiver when he was prohibited from doing so (contrary to paragraph 9 of the Appointment Order); and
- (vi) seeking financial reparations or participating in proceedings seeking financial reparations from the Receiver when he was prohibited from doing so (contrary to paragraph 17 of the Appointment Order);

The Company

- (c) The Company is a private, family-owned holding company for assets throughout Central and South America;
- (d) The Company's President and shareholder is Juan Guillermo;
- (e) The Company wholly owns Gabinvest S.A. ("**Gabinvest**", a Panamanian company), which wholly owns Lisa S.A. ("**Lisa**", another Panamanian Company);

Scope of the Appointment Order

- (f) On July 5, 2019, the Receiver was appointed by the Appointment Order. The Appointment Order:
- (i) grants the Receiver exclusive powers with respect to the Company's Property, including exercising the Company's shareholder rights (paragraph 3);
 - (ii) prohibits others from executing documents in relation of the Company's Property (paragraph 3)
 - (iii) requires persons to deliver the Company's property to the Receiver, including the share certificates owned by the Company (paragraph 5);
 - (iv) prohibits the commencement of proceedings against the Receiver without leave of this Court (paragraph 9); and
 - (v) prohibits the imposition of liability against the Receiver as a result of its appointment or carrying out the provisions of the Appointment Order (paragraph 17);

Receiver Acts Based on Court Orders

- (g) The Receiver passed a resolution in January 2020 to replace the directors of Gabinvest with the Receiver's representatives at Hatstone Abogados ("**Hatstone**") in Panama (the new Hatstone directors being, the "**Directors**");
- (h) On March 24, 2020, McEwen J. ordered that the replacement of Gabinvest's directors by the Receiver "was a proper exercise of the Receiver's exclusive power and authority, under paragraph 3 of the Appointment Order, to exercise the [Company's] shareholder rights";

Criminal Complaint against the Receiver's Representatives

- (i) On January 20, 2021, two days after the Receiver gave notice of a motion to gain access to the Company's records and expand its investigative powers, Hals filed the Criminal Complaint against the Receiver's representatives in Panama;
- (j) As a result of the Criminal Complaint, the Receiver's representatives may face interim limitations on their ability to travel, prison sentences of up to eight years and financial reparations of USD\$2 million;
- (k) The Criminal Complaint alleges that the Receiver-appointed and Court-approved Directors were not authorized to hold a shareholder meeting and sign minutes on behalf of the Company;
- (l) The sole evidence filed on the Criminal Complaint is Juan Guillermo's Declaration;

(m) Juan Guillermo:

- (i) has no authority to swear a declaration on behalf of the Company without the consent of the Receiver;
- (ii) was not authorized by the Receiver to swear a declaration on behalf of the Company; and
- (iii) provided no notice to the Receiver that he intended to act on behalf of the Company;

(n) Juan Guillermo declared, among other things that:

- (i) he is making the Declaration in his capacity as Director – President of the Company;
- (ii) he was acting as a representative of the sole shareholder of Gabinvest;
- (iii) the Company was not notified of the January 2020 shareholder’s meeting of Gabinvest;
- (iv) the Directors are not known to the Company nor do they have the authorization or mandate to represent Gabinvest; and
- (v) the replacement of Gabinvest’s Board (and changes to Lisa’s Board) as well as any actions thereafter were the “product of falsehood.”

- (o) Each of these statements is false:
- (i) as a result of the Appointment Order, Juan Guillermo has no authority to act on behalf of the Company to exercise any rights of the Company granted to the Receiver, let alone the shareholder rights of the Company;
 - (ii) the Company, through the Receiver, was notified of the Gabinvest shareholders' meetings;
 - (iii) the Directors are known to the Company through the Receiver;
 - (iv) the Receiver has exclusive authority to exercise the rights of the Company as shareholder of Gabinvest pursuant to the Appointment Order; and
 - (v) the Directors were appointed pursuant to the Receiver's powers in the Appointment Order and were duly approved by this Honourable Court pursuant to the March 24th Order respecting the replacement of Gabinvest's Board.
- (p) Juan Guillermo further:
- (i) confirms that the Company is the sole shareholder of Gabinvest;
 - (ii) confirms that he has possession and/or control of Gabinvest's share certificates, contrary to his May 4, 2020 statement that he did not know their location (in response to the Receiver's request for these certificates); and
 - (iii) signs the Declaration as the authorized representative of the Company, contrary to paragraph 3 of the Appointment Order.

- (q) The Receiver's representatives in Panama will shortly be served with the Criminal Complaint and will be interviewed by the public prosecutor. It is imperative that the false declaration be withdrawn immediately;

Juan Guillermo Knowingly and Intentionally Breached the Orders

- (r) Juan Guillermo had knowledge of the Appointment Order and the March 24th Order. He:
 - (i) he has actively participated in these proceedings;
 - (ii) has been represented by counsel throughout these proceedings;
 - (iii) is aware of the Receiver's attempts to obtain information about and exercise control over the Company's wholly-owned subsidiaries;
 - (iv) swore evidence (prior to the March 24th Order) that the replacement of Gabinvest's directors was not permitted;
 - (v) did not appeal the March 24th Order, despite being served with it; and
 - (vi) told the Receiver that he did not know where to find the Company's share certificates in Gabinvest notwithstanding the Declaration in support of the Criminal Complaint demonstrates he is clearly in control and/or possession of them;

Conclusion

- (s) The Receiver is unable to fulfill its mandate because of the complete disregard for the Court's Orders by those subject to this Court's jurisdiction;
- (t) The Receiver's representatives are at risk of criminal sanction, and their personal freedom is at risk, notwithstanding the fact that they are fulfilling their duties as authorized by this Court and acting pursuant to this Court's Orders;
- (u) The declarations sought on this motion must be granted in order for the Receiver to continue its mandate;
- (v) The Receiver and its representatives will suffer irreparable harm if the declarations are not granted;
- (w) The balance of convenience favours granting the declarations;
- (a) Juan Guillermo must be brought to account for lack of cooperation and contempt of these proceedings. His deliberate failure to obey this Court's Orders strikes at the very heart of the administration of justice;
- (a) The intentional violation of the Court's Orders is an aggravating factor that warrants a severe sanction;
- (b) Rule 40, 60.11 and 60.12 *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (c) Section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43; and
- (d) Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

1. The Second Supplement to the Receiver's Fourth Report, dated February 8, 2021;
2. The pleadings and proceedings herein including:
 - (a) The Supplemental Brief to the Second Supplement of the Receiver's Fourth Report, dated February 8, 2021;
 - (b) The Receiver's Fourth Report, dated January 18, 2021;
 - (c) The Brief of Orders and Endorsement dated January 18, 2021;
 - (d) The Brief of Reports of the Receiver dated January 18, 2021;
 - (e) The Brief of Documents to the Receiver's Fourth Report, dated January 18, 2021;
and
3. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 9, 2021

**LENCZNER SLAGHT ROYCE
SMITH GRIFFIN LLP**

Barristers
Suite 2600
130 Adelaide Street West
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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**NOTICE OF MOTION
(Contempt)**

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Lawyers for the Receiver, KSV Restructuring Inc.

This is Exhibit "H" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', written over a horizontal line.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

NOTICE OF MOTION

The Respondent Juan Guillermo Gutierrez (“**Mr. Gutierrez**”), will make a Motion to the Honourable Justice McEwen presiding over the Commercial List on a date to be scheduled by judicial videoconference via Zoom or at 330 University, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard orally.

THE MOTION IS FOR:

- a) An Order varying the Order dated July 3, 2019 (**the “Appointment Order”**) substituting KSV Restructuring Inc. (“**KSV**”) as receiver, with a Receiver to be determined;
- b) an Order directing KSV in its capacity as court-appointed receiver (**the “Receiver”**) of the assets, undertakings and properties of Xela Enterprises Inc. (**the “Company”**) to return, or direct its agents to return, to Arturo’s Technical Services (“**ATS**”) the hard-drive images (*i.e.*,

-2-

copies) of the Xela servers previous provided to KSV's agents, and ordering that no person other than ATS may access the data thereon, until further Order after the conclusion of BDT's Motion for Full or Partial Discharge of the Receiver (**the "BDT Motion"**);

c) an Order that no person, including without limitation, the Receiver and/or its agents, shall access the data contained on hard-drive images of Mr. Gutierrez's personal electronic devices until further Order after the conclusion of the BDT Motion;

d) an Order directing Duff & Phelps ("**D&P**") to provide Mr. Gutierrez with copies of the hard-drive images of his personal electronic devices;

e) an Order suspending the deadlines set out in the Court's Order dated October 27, 2020, until further Order after the conclusion of the BDT Motion;

f) an Order compelling the Receiver to substitute D&P with a new IT consultant, to be named on or before the return of this Motion;

g) an Order compelling KSV to disclose to Mr. Gutierrez: (a) particulars in respect of the funds received for the conduct of this receivership, including sources, dates and amounts; (b) copies of all communications between the KSV and/or its counsel, on the one hand, and the "Cousins" and/or their counsel, on the other hand; and

h) such further and other Relief as to this Honourable Court may seem just.

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THE GROUNDS FOR THE MOTION ARE:

- i) KSV's conduct in the receivership has been such that it has become, as a practical matter, impossible under KSV's authority to achieve the objective of the receivership, which is to satisfy the judgment of Margarita Castillo (**the "Castillo Judgment"**);
- j) KSV's conduct throughout the course of the receivership has been antagonistic and hostile toward Mr. Gutierrez;
- k) Contrary to what KSV has both asserted and implied – Mr. Gutierrez has fully cooperated with the Receiver;
- l) The only reasonable source of monies to satisfy the Castillo Judgment is litigation in Panama (**the "Panama Litigation"**) to collect tens of millions of U.S. dollars in unpaid dividends owed to LISA, S.A., a Panama corporation and an indirect subsidiary of Xela (**"LISA"**), by Villamorey, S.A., a Panama corporation (**"Villamorey"**), in which LISA holds a 1/3 stake;
- m) The Panama Litigation is being prosecuted by BDT Investments Inc., a Barbados corporation (**"BDT"**), which owns the rights to collect LISA's unpaid dividends by virtue of a settlement agreement that resolves substantial unpaid debt previously owed by LISA to BDT, dating to 2005;
- n) The Panama Litigation includes an order requiring Villamorey to pay all of LISA's unpaid dividends, regardless of where in the world they may be held, and that said order is full and final, and in its collection phase;

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- o) The Panama Litigation includes a separate action by LISA for damages against Villamorey, including damages stemming from non-payment of dividends, and a default judgment has been entered in LISA's favor in those proceedings;
- p) Villamorey's corporate agent in Panama has admitted to Panamanian prosecutors that Villamorey maintains its official books and records in Guatemala, not in Panama as required by Panama law;
- q) Villamorey and its majority shareholders are under criminal investigation in Panama in connection with Villamorey's non-payment of dividends owed to LISA and their failure to maintain accurate financial records with its corporate agent in Panama;
- r) In the 18 months since its appointment, the Receiver has taken no meaningful steps to pursue the Panama Litigation, or to secure a commitment from BDT regarding the proceeds of the Panama Litigation;
- s) LISA secured a loan commitment in December 2019 sufficient to satisfy the Castillo Judgement in its entirety, along with all receivership expenses;
- t) LISA informed the Receiver in December 2019 about the loan commitment, and requested a payout amount from the Receiver;
- u) Upon learning of the LISA loan commitment that would have resulted in a discharge of the receivership, the Receiver improperly inserted itself into the loan transaction by attempting to reconstitute LISA's board of directors in Panama without taking any steps to cause the Order dated July 3, 2019 (**the "Appointment Order"**) to be recognized in Panama;

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- v) the Receiver retained counsel in Panama, without seeking any recognition orders, and instructed it to file documents with the Panama Public Registry to the effect that LISA's board of directors had been properly reconstituted in accordance with Panama law, which was false and misleading;
- w) the Receiver instructed its counsel in Panama to file documents with the Panama Public Registry without first giving its agents a proper power of attorney signed by a person duly authorized and recognized by the Panama courts;
- x) Conduct by the Receiver's agents in Panama has been reported to the criminal authorities in Panama by LISA;
- y) the Receiver has demanded that LISA's president withdraw LISA's criminal complaint against KSV's agents in Panama, which itself calls for LISA to commit a criminal act in Panama in that LISA is under a legal duty to report criminal activity that bears on the administration of governmental matters in Panama;
- z) The conduct of the Receiver's agents in Panama resulted in a refusal by the Panama Public Registry to certify that LISA's board of directors had been reconstituted;
- aa) When the Receiver learned that its agents in Panama had not succeeded in taking control of LISA's board of directors, the Receiver attempted to secure the same outcome by conditioning meetings with Mr. Gutierrez – which Mr. Gutierrez had been requesting – upon LISA's voluntary accession to the Receiver's demands, despite the fact that Mr. Gutierrez was divested of authority to act on Xela's behalf by virtue of the receivership;

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- bb) After failing to reconstitute LISA's board, the Receiver brought a motion for contempt against Mr. Gutierrez for ostensible failure to cooperate with the Receiver, erroneously implying that the Receiver's conduct had been proper and/or that Mr. Gutierrez had improperly instructed LISA not to accede to the Receiver's demands regarding the LISA board;
- cc) The so-called "reviewable transactions" under investigation by the Receiver for the past 18 months have yielding nothing of value and have little promise of leading to collection of any funds that could satisfy the Castillo Judgment, yet those investigations have generated legal and other professional fees of approximately \$1 million, which presumably will be charged to Xela;
- dd) None of the Receiver's reports to this Court contain any mention of the [status of?] Panama Litigation;
- ee) the Receiver's reports to this Court contain numerous inaccuracies and are incomplete, and the Receiver has failed to correct its reports after being informed of their flaws via sworn affidavits;
- ff) the Receiver's investigative strategy in the receivership is consistent with the strategy of the majority shareholders of Villamorey (**the "Cousins"**) to deplete LISA's resources in order to avoid ever paying the dividends rightfully owed to LISA;
- gg) the Receiver has taken no interest in the loan transaction given to Ms. Castillo by a Guatemala Bank friendly to the Cousins (**the "GT Loan"**), which appears to have been secured by LISA unpaid dividends and repaid by foreclosure of the collateral rather than repayment by Ms. Castillo, such that, if true, the Castillo Judgment has long since been satisfied;

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hh) the Receiver has never requested a copy of the GT Loan documents from Ms. Castillo, despite repeated requests by Mr. Gutierrez, nor has it mentioned the GT Loan in its reports to this Court;

ii) The Receiver has taken no steps to collect against a promissory note signed by Ms. Castillo's husband, Roberto Castillo, [who is an Ontario resident,?] in favor of Xela, nor has it mentioned said promissory note in its reports to this Court;

jj) The Receiver has taken no steps to pursue the pending litigation by Xela in Toronto, alleging damages caused by Ms. Castillo, who is an Ontario resident, in an amount that would more than offset the Castillo Judgment, nor has it mentioned said pending litigation in its reports to this Court;

kk) the Receiver's investigation into the so-called "reviewable transactions" includes recent discovery requests targeting computer servers previously owned by Xela, currently maintained by Arturos Technical Services ("ATS"), which contain emails and other sensitive data that would be useful to the Cousins in their improper efforts to avoid payment of dividends owed to LISA, both in Panama and in Guatemala;

ll) the Receiver's investigation into the so-called "reviewable transactions" also includes recent discovery requests to review Mr. Gutierrez's personal electronic devices for potential documents belonging to Xela – to which Mr. Gutierrez consented in an effort to cooperate with the Receiver – but which necessarily implicates potential exposure of personal, privileged and/or non-Xela documents to which the Receiver is not entitled, and which are sensitive and potentially useful to the Cousins;

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mm) the Receiver engaged Duff & Phelps (“D&P”) to copy (*i.e.*, “image”) and to supervise the review of Mr. Gutierrez’s personal devices, as well as the Xela servers now owned by ATS, without disclosing that the work would actually be performed by Kroll, a subsidiary of D&P;

nn) A conflict of interest exists in that Kroll has a long history of working for the Cousins, including conducting investigative surveillance of Mr. Gutierrez and his family, including his children;

oo) the Receiver failed to disclose the relationship between D&P and Kroll;

pp) All data on Xela’s computer servers was previously stolen by a former Xela employee and provided to the Cousins, who improperly used some of the stolen documents to attempt to exclude LISA from Villamorey and from the related poultry group in Guatemala in which LISA also holds a 1/3 stake (**the “Avicolas”**);

qq) Prior to the discovery of D&P’s relationship with Kroll, ATS provided Xela’s servers to Kroll for imaging without any security measures that would prevent Kroll from reviewing or copying the data, despite the fact that neither Kroll nor D&P nor any other person is entitled to access the data at this stage;

rr) Mr. Gutierrez provided images of his personal electronic devices to Kroll on a locked hard drive to which Kroll does not have the passcode;

ss) Mr. Gutierrez has requested duplicates of the images of his personal devices from the Receiver in order to conduct his preliminary review pursuant to the Order dated October 27, 2020 without exposing the data to Kroll, which is not entitled to review the data at this stage;

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tt) The Receiver has refused Mr. Gutierrez's request for duplicates of the images of his own personal devices;

uu) Aside from an emergency trip to Guatemala beginning on October 26, 2020 – forced by unexpected cancer surgery and resulting complications with his mother-in-law, who subsequently passed away as a consequence, Mr. Gutierrez has complied with the requirements of the Court's Order dated October 27, 2020;

vv) The data contained on Mr. Gutierrez's personal devices and on the Xela servers maintained by ATS is extensive and requires substantial review and translation prior to any analysis by the Court concerning its discoverability by the Receiver;

ww) The BDT Motion would moot the need for any further investigation by the Receiver into the so-called "reviewable transactions" or any other transaction, including without limitation any pending discovery sought by the Receiver; and

xx) Mr. Gutierrez's counsel has requested on multiple occasions copies of all communications between the Receiver and/or its counsel, on the one hand, and the Cousins and/or their counsel, on the other hand;

yy) the Receiver's counsel has not denied that the Receiver has been communicating with the Cousins, but instead flatly refused to acknowledge any duty to disclose communications or provide copies.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

(a) Affidavit of Juan Guillermo Gutierrez to be sworn

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- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

February 9, 2021

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MARGARITA CASTILLO
Applicant

-and- XELA ENTERPRISES LTD. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT
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NOTICE OF MOTION

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This is Exhibit "I" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', with a stylized, overlapping loop structure.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

Court File No.

CV-21-00674498-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

(Court Seal)

XELA ENTERPRISES LTD. and KSV RESTRUCTURING INC. in its capacity
 as court-appointed receiver of XELA ENTERPRISES LTD.

Plaintiffs

and

JUAN GUILLERMO GUTIERREZ, CARMEN S. GUTIERREZ in her capacity
 as Estate Trustee of the Estate of JUAN ARTURO GUTIERREZ, CARMEN S.
 GUTIERREZ in her personal capacity, WENCKE GUTIERREZ, ANDRES
 GUTIERREZ, THOMAS GUTIERREZ, LISA GUTIERREZ COSTANTINI,
 ASTRID GUTIERREZ, ARTURO'S TECHNICAL SERVICES LTD., the
 ARTCARM TRUST, ALEXANDRIA TRUST CORPORATION in its capacity
 as Trustee of the ARTCARM Trust and EMPRESAS ARTURO
 INTERNATIONAL LIMITED

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

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Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

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

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

Date Dec 30, 2021

Issued by


Local Registrar

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Christ Church, Barbados

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CLAIM

1. The Plaintiffs, Xela Enterprises Ltd. ("**Xela**") and KSV Restructuring Inc. solely in its capacity as court-appointed receiver of Xela (the "**Receiver**"), claim as against:

- (a) Juan Guillermo Gutierrez ("**Juan Guillermo**") and Carmen Gutierrez in her capacity as Estate Trustee for the Estate of Juan Arturo Gutierrez (the "**Estate**" and the "**Deceased**", respectively) for breach of trust, breach of statutory and fiduciary duties, conspiracy and oppression. Contrary to their duties to Xela, Juan Guillermo and the Deceased caused Xela's indirect subsidiaries to be encumbered, sold, conveyed, transferred, assigned or placed in the ARTCARM Trust (the "**Trust**") for the benefit of Wencke Gutierrez, Carmen Gutierrez, Andres Gutierrez ("**Andres**"), Thomas Gutierrez ("**Thomas**"), Lisa Gutierrez Costantini ("**Lisa Gutierrez**") Astrid Gutierrez, and indirectly Juan Guillermo (collectively, the "**Beneficiaries**"), and to the detriment of Xela and its reasonable expectations;
- (b) Andres in his capacity as director of each of Empresas Arturo International Limited ("**EAI**"), Corporacion Arven Limited ("**Arven**") and BDT Investments Inc. ("**BDT**") for conspiracy and oppression in the management, use and/or misappropriation of Xela's assets and Xela's indirect subsidiaries, BDT and Arven, to the prejudice of Xela and its reasonable expectations. Andres participated in and conspired with Juan Guillermo and the Deceased to encumber, sell, convey, transfer, assign or place in trust Xela's assets and to manage Xela's indirect subsidiaries for the benefit of the Beneficiaries and Arturo's Technical Services Ltd. ("**ATS**");

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- (c) EAI for oppression and conspiracy. EAI participated in and conspired with Juan Guillermo and the Deceased to encumber, sell, convey, transfer, assign or place in trust Xela's indirect subsidiaries (BDT and Arven) contrary to reasonable expectations and bests interests of Xela;
- (d) Andres and Thomas for oppression and conspiracy. Andres and Thomas participated in and conspired with Juan Guillermo and the Deceased to encumber, sell, convey, transfer, assign or place in trust Xela's assets and to manage Xela's indirect subsidiaries for the benefit of the Beneficiaries;
- (e) ATS, Andres and Thomas authorized, participated in and conspired with Juan Guillermo to undertake the ATS Transfer (as defined below) and to manage Xela's indirect subsidiaries for the benefit of the Beneficiaries;
- (f) The Deceased, Juan Guillermo and EAI for fraudulent conveyance under the *Fraudulent Conveyances Act*, R.S.O. 1990, c. F. 29; and
- (g) The Defendants for civil conspiracy, knowing receipt, knowing assistance and unjust enrichment.

2. Xela claims as against all Defendants:

- (a) A declaration that the assets in and distributions from the Trust are assets of Xela;
- (b) An Order tracing the assets and funds to which Xela has an entitlement, whether directly or indirectly (including through Xela's direct and indirect subsidiaries),

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including any assets or funds that have been misappropriated or converted into the property of any of the Defendants;

- (c) A declaration that the Beneficiaries, ATS and the Trust hold any assets derived from Xela including all personal property and real property as a constructive trustee for the benefit of Xela;
- (d) An Order directing the Defendants to cause the Trust to be unwound or wound up and to transfer the assets to Xela;
- (e) An Order declaring that Xela possesses an equitable interest in the assets of the Trust and any other such property traced to Xela (including shares or other securities) on the basis of a constructive trust or other trust;
- (f) An Order for an accounting and disgorgement of profits from the Defendants as a result of the wrongful conduct described herein;
- (g) In the alternative, damages or equitable compensation from the Defendants in an amount equivalent to the value of the assets encumbered, sold, conveyed, transferred, assigned or placed in trust for the benefit of the Beneficiaries and ATS and an accounting and disgorgement of profits for gains wrongfully obtained by the Defendants;
- (h) Punitive, exemplary and aggravated damages of \$1,000,000;

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- (i) An Order effecting service against the Defendants outside of Ontario without leave of this Court, pursuant to rr. 17.02 and 17.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
- (j) To the extent necessary, judicial assistance from the courts of Barbados, Panama and Guatemala to give effect to the relief sought in this action and any resulting orders of the Ontario Superior Court of Justice;
- (k) Pre-judgment interest in accordance with s. 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- (l) Post-judgment interest in accordance with s. 129 of the *Courts of Justice Act*;
- (m) The costs of this proceeding, on a substantial indemnity or other appropriate scale, plus all applicable taxes; and
- (n) Such further and other Relief as to this Honourable Court may deem just.

The Parties

3. Xela was incorporated under the *Business Corporations Act*, R.S.O. 1990, c. B.16 ("*OBCA*") on June 13, 1984. Xela was and is a holding company for several wholly-owned, direct and indirect subsidiaries in North America, Central America and South America.

4. The Deceased was the founder, director and officer of Xela. He passed away on June 24, 2016. He was the father of Juan Guillermo.

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5. Juan Guillermo is a director, officer and, prior to the order appointing the Receiver, was the controlling mind of Xela. He has had effective control over Xela and each of its direct and indirect subsidiaries.
6. Carmen Gutierrez is the surviving spouse of the Deceased, mother of Juan Guillermo, a beneficiary of the Trust and the Estate Trustee for her late-husband's Estate.
7. Wencke Gutierrez is the wife of Juan Guillermo and is a beneficiary of the Trust.
8. Andres is the son of Juan Guillermo and Wencke Gutierrez, and he is a beneficiary of the Trust. Andres is a former employee of Xela and a director and officer of ATS. He is a director of EAI, Arven and BDT. Prior to or at the time that he assumed these roles, Andres was an employee at Xela.
9. Thomas is the son of Juan Guillermo and Wencke Gutierrez and is a beneficiary of the Trust. He is a former employee of Xela and is a director and officer of ATS.
10. Lisa Gutierrez is the daughter of Juan Guillermo and Wencke Gutierrez and is a beneficiary of the Trust.
11. Astrid Gutierrez is the daughter of Juan Guillermo and Wencke Gutierrez and is a beneficiary of the Trust.
12. ATS is federally incorporated under the *Canada Business Corporations Act*, R.S.C., 1985, c. C-44 ("*CBCA*"). It is owned by BDT and Arven, which were (prior to the transactions discussed below) indirect subsidiaries of Xela.

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13. Alexandria Trust Corporation (the “**Alexandria Trust**”) is licensed in Barbados and regulated by the Central Bank of Barbados. It provides specialized trustee and corporate administration services to private clients and companies. It is the Trustee of the Trust.

14. The Trust is a Barbados trust. As a result of the Reviewable Transactions (discussed below), the Trust holds all of Xela’s assets of value—including BDT, Arven and substantially all of the economic interest in LISA S.A. (“**LISA**”), among others.

Background

Avicola Group

15. In approximately the mid-1900s, Juan Bautista, the father of the Deceased, developed the Avicola Group in the Republic of Guatemala (“**Avicola Group**”). It became a vertically integrated chicken business, which is now estimated to be worth approximately \$1 billion.

16. In 1978, Juan Bautista conveyed the Avicola Group to the benefit of his three children equally—the Deceased, Dionisio Gutierrez Sr. and Isabel Gutierrez (the children and grandchildren of Dionisio Gutierrez Sr. and Isabel Gutierrez being the “**Cousins**”).

17. In 1984, the Deceased moved from Guatemala to Canada with his wife, Carmen and three children: Juan Guillermo, Margarita Castillo and Luis Gutierrez.

18. In 1984, the Deceased incorporated Xela in Ontario. Xela’s subsidiaries includes Gabinvest S.A. (“**Gabinvest**”), a Panamanian company, which owns LISA (a Panamanian company). LISA directly and indirectly holds Xela’s one-third interest in the Avicola Group (the “**Avicola Interest**”).

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Xela and its Subsidiaries

19. EAI is a wholly-owned, direct subsidiary of Xela. BDT (incorporated in 2001 in Barbados) and Arven (incorporated in 2002 in Barbados) were wholly-owned, direct subsidiaries of EAI, prior to the EAI Transaction (described below).

20. Arven is the holding company for certain companies that operate the Arturo's Restaurant chain in Venezuela, which includes Preparados Alimenticios Internacionales, CA ("**PAICA**") and Inversiones 22460 ("**Inversiones**").

21. BDT owns the intellectual property rights (for which it receives royalties) of the Arturo's Restaurant chain. PAICA pays royalties and service fees to BDT.

22. As of March 2021, ATS was owned 50% by BDT and 50% by Arven.

The Judgment Debt

23. On January 18, 2011, Margarita commenced an application for oppression in the Superior Court of Justice against Xela, Juan Guillermo and the Deceased.

24. On October 28, 2015, the Court granted judgment in favour of Margarita in the amount of \$4,250,000 (the "**Judgment Debt**"), plus costs. The Court found as a fact that Juan Guillermo was the controlling mind of Xela's direct and indirect subsidiaries.

The Unlawful Transactions

(a) The EAI Transaction

25. In April 2016, two months before the Deceased's death, the shares of BDT and Arven were purportedly transferred, first, from EAI to the Deceased for consideration of US\$6.5 million (paid

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in the form of the reduction of a purported debt owed to the Deceased by EAI), and second, from the Deceased to the Trust ("**EAI Transaction**").

26. At the time of the EAI Transaction, Juan Guillermo was a Director of EAI and its President.

27. The Deceased and Juan Guillermo agreed and conspired to complete the EAI Transaction to avoid the consequences of the Judgment Debt on Xela, to the detriment of its stakeholders. The EAI Transaction resulted in BDT, Arven and their subsidiaries being transferred to the Trust for the sole benefit of the Beneficiaries.

28. Juan Guillermo and the Deceased directly or indirectly directed that the EAI Transaction should and would occur.

29. There was no genuine business purpose for the EAI Transaction, and there is no reasonable financial support for the terms of the transaction.

30. The EAI Transaction was contrary to the best interests of Xela and contrary to its reasonable expectations.

31. On June 24, 2016, the Deceased passed away.

32. On December 30, 2016, Juan Guillermo and Xela's appeal of the Judgment Debt was dismissed by the Divisional Court. Three months later, the Court of Appeal for Ontario denied Juan Guillermo and Xela's motion for leave to appeal.

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33. On July 6, 2017, McEwen J. dismissed Juan Guillermo's motion for a stay of execution of the Judgment Debt pending a resolution of Juan Guillermo's \$400 million conspiracy claim in Ontario against his sister, Margarita, and others.

(b) The Assignment Transaction

34. In January 2018, while Margarita was pursuing enforcement of the Judgment Debt against Juan Guillermo and Xela, LISA, an indirect subsidiary of Xela, assigned 30% of the net proceeds (after deducting costs owed to BDT) from a \$400 million claim against the Cousins about the payment of dividends arising from the Avicola Interest (the "**Avicola Litigation**") to BDT (the "**Assignment Transaction**") and, therefore, to the Trust for the benefit of the Beneficiaries. The consideration paid was below fair market value.

35. At the time of the Assignment Transaction, Juan Guillermo was the President of Xela. Juan Guillermo directly or indirectly directed that that Assignment Transaction should and would occur, to avoid the consequences of the Judgment Debt and to benefit the Beneficiaries.

36. There was no commercially reasonable basis for the Assignment Transaction, and the alleged consideration was inadequate.

37. The Assignment Transaction was contrary to the best interests of Xela and contrary to its reasonable expectations.

(c) The ATS Transfer

38. In November 2016, ATS was incorporated in Canada as a subsidiary of BDT (50%) and Arven (50%) with Andres and Thomas as the directors.

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39. In 2017, at the direction of Juan Guillermo, Xela's business was transferred to ATS (the "**ATS Transfer**"). There was no legitimate business purpose for the ATS Transfer other than seeking to avoid the consequences of the litigation with Margarita. As a result of the ATS Transfer:

- (a) Xela's servers were sold to ATS;
- (b) Xela's electronic data was transferred to ATS;
- (c) Xela's executives and employees transferred to ATS;
- (d) Xela's executives and employees were given ATS' email addresses;
- (e) Xela's executives and employees retained the same electronic devices; and
- (f) Xela's customers became ATS' customers.

40. The ATS Transfer was contrary to the best interests of Xela and contrary to its reasonable expectations.

41. Andres and Thomas authorized, participated in and conspired with Juan Guillermo and Carmen Gutierrez to encumber, sell, convey, transfer, assign or place in trust Xela's assets. Andres and Thomas run the ATS business in Ontario with Juan Guillermo's direction and oversight. ATS, Andres and Thomas authorized, participated in and conspired with Juan Guillermo to manage Xela's indirect subsidiaries for the benefit of the Beneficiaries.

(d) The LISA Transfer

42. In February 2020, during the pendency of Xela's receivership proceedings (described below), LISA purported to transfer the Avicola Interest to BDT along with the ability to direct the Avicola Litigation (the "**LISA Transfer**").

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43. At the time of the LISA Transfer, Juan Guillermo directly or indirectly was the controlling mind of LISA. Juan Guillermo directly or indirectly directed that the LISA Transfer should and would occur, to avoid the consequences of the Judgment Debt and to benefit the Beneficiaries.

44. There was no commercially reasonable basis for the LISA Transfer.

45. The LISA Transfer was made in breach of the order that appointed the Receiver (defined below as the Appointment Order), was contrary to the best interest of Xela and contrary to its reasonable expectations.

46. The EAI Transaction, Assignment Transaction and the LISA Transfer are collectively the “Reviewable Transactions”.

The Appointment of the Receiver

47. In January 2019, Margarita commenced an application to appoint a receiver.

48. In March 2019, Juan Guillermo caused his brother-in-law (Wencke Gutierrez’s brother), Harald Johannessen Hals (“Hals”), to be registered as the President of LISA. The appointment of Hals as President of LISA was done to purport to demonstrate a separation between LISA and Juan Guillermo. There was and is no such separation. Juan Guillermo directly or indirectly controlled LISA during the relevant period.

49. On July 5, 2019, the Receiver was appointed pursuant to the Appointment Order (the “Appointment Order”). The Appointment Order granted the Receiver the exclusive authority to exercise Xela’s shareholder rights and to initiate any proceedings with respect to Xela. However,

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as a term of the Appointment Order, the Receiver's right to direct the Avicola Litigation and to sell or market the shares of LISA or Gabinvest was suspended until December 31, 2019.

50. As of 2021, the economic interest of Arven, PAICA, Inversiones, BDT and ATS are in the Trust to the benefit of the Beneficiaries. Additionally, as a result of the Reviewable Transactions, the economic interest of Xela's Avicola Interest, which is held indirectly through LISA, has been conveyed to the Trust for inadequate or no consideration.

Oppression

51. For decades, Xela was a holding company that oversaw the operations of all its direct and indirect subsidiaries in various jurisdictions. Xela and its stakeholders had a reasonable expectation that the revenue generated by BDT, Arven and their subsidiaries would continue to be available to Xela to fund its business. Xela and its stakeholders also had a reasonable expectation that the value of the Avicola Litigation and/or the Avicola Interest would be available to Xela. Furthermore, ATS is a subsidiary of Xela as defined by the *OBCA*. As such, Xela is a proper complainant as against ATS and their respective directors and officers.

52. Xela and its stakeholders had rights to continue to benefit from the revenue generated by Xela's direct and indirect subsidiaries and to enjoy the benefits of the Avicola Interest. They also had a reasonable expectation that:

- (a) The business of Xela (including, but not limited to, EAI, BDT, Arven and ATS) would be conducted in the normal course having regard to past practice, contractual obligations, the fiduciary and statutory duties of Xela's directors and the duties of

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the directors of Xela's direct and indirect subsidiaries (including, but not limited to, the directors of EAI, BDT, Arven and ATS);

- (b) The Avicola Litigation would be conducted for the benefit of Xela; and
- (c) The Avicola Interest would continue to be an indirect asset of Xela (and, in fact, its most significant asset).

53. The Reviewable Transactions and ATS Transfer had the effect of depriving Xela and its stakeholders of assets, payments and funds that they were legally owed or reasonably expected to receive. The Reviewable Transactions and ATS Transfer unfairly disregarded the interests of Xela.

54. Any assets, disbursements, securities, beneficial interests or funds deriving from Xela or any of Xela's direct or indirect subsidiaries are impressed with a constructive and/or other trust in favour of Xela. An order should be made to trace those assets, disbursements, securities, beneficial interests or funds of any kind into the hands of the Defendants. The Defendants are liable for damages, equitable compensation and an accounting and disgorgement of profits.

Breach of Statutory Duties, Breach of Fiduciary Duties and Breach of Trust

55. The Deceased, as director of Xela, breached his statutory and fiduciary duties to Xela by completing the EAI Transaction.

56. Juan Guillermo, as director of Xela and EAI, breached his statutory and fiduciary duties to both by directing and otherwise participating in the EAI Transaction.

57. By undertaking the EAI Transaction, the Deceased placed his own self-interest above the interests of Xela and breached his duty of loyalty.

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58. By undertaking the EAI Transaction at a price well below fair market value, the Deceased and Juan Guillermo failed to meet the standard of care of a director.

59. The Deceased and Juan Guillermo did not act honestly and in good faith or with a view to the best interests of Xela when they caused the Reviewable Transactions and ATS Transfer to take place contrary to the best interest of Xela and for the benefit of the Beneficiaries and ATS.

60. Any assets, disbursements, securities, beneficial interests or funds deriving from Xela or any of Xela's direct or indirect subsidiaries are impressed with a constructive and/or other trust in favour of Xela. An order should be made to trace those assets, disbursements, securities, beneficial interests or funds of any kind into the hands of the Defendants. The Defendants are liable for damages, equitable compensation and an accounting and disgorgement of profits.

Fraudulent Conveyances

61. The Deceased, Juan Guillermo and EAI completed the EAI Transaction or caused it to be completed. The two steps in the EAI Transaction—being a transfer by EAI of the shares of BDT and Arven to the Deceased and then from the Deceased to the Trust—were each a fraudulent conveyance under the *Fraudulent Conveyances Act*. As such, each of the steps taken by the Deceased, Juan Guillermo and/or EAI in completing the EAI Transaction are void. BDT and Arven continue to be direct subsidiaries of EAI and indirect subsidiaries of Xela.

62. Any assets, disbursements, securities, beneficial interests or funds deriving from BDT, Arven and their respective subsidiaries and assets should be impressed with a constructive and/or other trust in favour of Xela. An order should be made to trace those assets, disbursements, securities, beneficial interests or funds of any kind into the hands of the Defendants. The

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Defendants are liable for damages, equitable compensation and an accounting and disgorgement of profits.

Conspiracy

63. The Deceased and Juan Guillermo agreed (or had a shared intention) with Andres, Thomas and all the Defendants to encumber, sell, convey, transfer, assign or place in trust Xela's direct and indirect subsidiaries or assets to the benefit of the Beneficiaries and ATS for the predominant purpose of prejudicing Xela and its stakeholders. Xela and its stakeholders have suffered a corresponding loss.

64. In this case, the Deceased and Juan Guillermo agreed (or had a shared intention) with Andres, Thomas and all the Defendants to encumber, sell, convey, transfer, assign or place in trust Xela's direct and indirect subsidiaries or assets to the benefit of the Beneficiaries and ATS, and they did so by unlawful means (breach of duties and/or oppression). The parties knew or ought to have known that Xela would suffer an economic loss.

65. Any assets, disbursements, securities, beneficial interests or funds deriving from Xela or any of Xela's direct or indirect subsidiaries are impressed with a constructive and/or other trust in favour of Xela. An order should be made to trace those assets, disbursements, securities, beneficial interests or funds of any kind into the hands of the Defendants. The Defendants are liable for damages, equitable compensation and an accounting and disgorgement of profits.

Knowing Receipt, Knowing Assistance and Unjust Enrichment

66. The Defendants are liable for knowing receipt, knowing assistance and unjust enrichment.

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67. Knowing Receipt. Juan Guillermo, the Deceased, Thomas and Andres breached trust and their statutory and fiduciary duties by causing, participating in and/or authorizing the Reviewable Transactions and the ATS Transfer.

68. The Beneficiaries and ATS received property, for their own benefit or in their personal capacity, that was subject to a duty of trust and fiduciary duties including, but not limited to, a beneficial interest in the assets involved in the Reviewable Transactions, Xela's assets as result of the ATS Transfer and disbursements from the Trust.

69. The Beneficiaries and ATS received the property with actual or constructive knowledge that the property was being misapplied.

70. Knowing Assistance. Juan Guillermo, the Deceased, Thomas and Andres breached trust and their statutory and fiduciary duties fraudulently and dishonestly by causing, participating in and/or authorizing the Reviewable Transactions and the ATS Transfer.

71. The Beneficiaries, ATS, and Alexandria Trust had actual knowledge of both the fiduciary relationships and the fiduciaries' fraudulent and dishonest conduct, and the Beneficiaries and ATS participated in or assisted the fiduciaries' fraudulent and dishonest conduct.

72. Unjust Enrichment. In addition or in the alternative, the Defendants are liable to Xela under the doctrine of unjust enrichment. The Defendants received (or received the beneficial interest in) Xela's assets (being, among other things, Xela's direct and indirect subsidiaries) and disbursements from the Trust, which represented an enrichment and a corresponding deprivation to Xela and its stakeholders. There was no juristic reason for the enrichment; the Defendants had no entitlement to Xela's assets to the prejudice of Xela and its securityholders.

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73. Any assets, disbursements, securities, beneficial interests or funds deriving from Xela or any of Xela's direct or indirect subsidiaries are impressed with a constructive and/or other trust in favour of Xela. An order should be made to trace those assets, disbursements, securities, beneficial interests or funds of any kind into the hands of the Defendants. The Defendants are liable for damages, equitable compensation and an accounting and disgorgement of profits.

74. The Plaintiffs propose that this action be tried in the City of Toronto.

December 30, 2021

LENCZNER SLAGHT LLP

Barristers

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Plaintiffs

-and-

JUAN ARTURO GUTIERREZ et al.
Defendants

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Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT TORONTO

STATEMENT OF CLAIM

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Lawyers for the Plaintiffs

This is Exhibit "J" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

March 25, 2022

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

1. The Court's Orders call for Mr. Gutierrez to permit the data on his personal devices to be uploaded to a Relativity platform hosted by Epiq, the IT consultant engaged by the Receiver. The data is to be reviewed on that platform solely by Mr. Gutierrez and his counsel, and any production issues are to be resolved by this Court in advance of any disclosure to the Receiver. Once uploaded to the Relativity platform, the Court will have the ability to resolve any disputes and, where appropriate, order Epiq to provide disclosure to the Receiver without any further digital locking mechanism in place. However, no additional copies of the data on the hard drive are permitted pursuant to the Order.

2. The Receiver is refusing to permit the hard drive containing the image of Mr. Gutierrez's personal devices to be secured after the data are uploaded to Relativity, thereby subjecting the data remaining on the hard drive – which is highly sensitive – to an unwarranted security risk, without

any justification. There is no rational basis to refuse a request to re-lock the hard drive after the data is uploaded to the Relativity platform and under Epiq's control.

3. Promptly after the last case conference on March 17, 2022, Teel Tech Canada (“TTC”) – Mr. Gutierrez’s IT consultant – engaged with Epiq to suggest a protocol for Mr. Gutierrez to unlock the hard drive to permit the data to be uploaded to Epiq’s Relativity platform under TTC’s supervision, whereafter Mr. Gutierrez would re-lock the hard drive to safeguard the data while the hard drive remained in Epiq’s possession. Once uploaded to Relativity, any data from Mr. Gutierrez’s personal devices determined by this Court to be subject to disclosure would be fully accessible by Epiq for delivery to the Receiver. The *only* new assurance requested by TTC was that the sensitive personal data remaining on the hard drive after the upload process was complete would not be exposed to risk of loss or compromise, either: (a) by allowing Mr. Gutierrez to re-lock the hard drive, leaving it with Epiq; or (b) by allowing Mr. Gutierrez to take the hard drive with him. A complete copy of the imaged data, however, would remain under Epiq’s control in the Relativity database. Copies of the relevant email communications are attached collectively at Tab 1. A copy of TTC’s proposal for ensuring the security of the data remaining on the hard drive after the upload is attached at Tab 2.

4. Before providing a response to TTC’s proposal, and without any attempt to discuss the substance of the TTC proposal, or even to acknowledge the legitimacy of Mr. Gutierrez’s privacy concerns, the Receiver’s counsel followed its now-familiar pattern of complaining to the Court. Subsequently, at 7:13pm on March 23, 2022 – well after the Receiver’s counsel reported Mr. Gutierrez’ purported non-compliance – Epiq rejected the TTC proposal on the grounds that COVID concerns precluded Mr. Gutierrez from appearing physically to unlock the hard drive,

supervise the upload to Relativity, and re-lock the hard drive. No counter-proposal was made to address Mr. Gutierrez's security concerns. A copy of the Epiq response is attached as Tab 3.

5. The Receiver has employed similarly heavy-handed tactics with ATS. Mid-morning on Wednesday, March 23, 2022, counsel for ATS met with the Receiver's counsel, as they had agreed in advance. Counsel for Mr. Gutierrez was not present. During that meeting, they discussed a suitable protocol for the transfer of the @xela.com and @arturos.com emails on the ATS servers to Epiq, for upload to Epiq's Relativity platform. Because the emails are subject Mr. Gutierrez' privilege claims, ATS promptly notified Mr. Gutierrez's counsel of Epiq's proposed methodology for the transfer. Mr. MacLeod did not receive that communication until the end of the business day on Wednesday, owing to attendance at a funeral. Before he could even discuss the issue with Mr. Gutierrez, the Receiver's counsel reported to the Court that ATS was non-compliant with the production Order. All of the foregoing occurred within the span of a single day.

6. The manner in which the Receiver reported these events to the Court brings into focus the Receiver's continuous pattern of biased reporting of the facts to this Court in order to cast Mr. Gutierrez as non-cooperative. The Receiver supplied none of the foregoing context to this Court, which should give rise to serious questions about this Receiver's objectivity and suitability for the role.

7. The Receiver's cavalier attitude toward Mr. Gutierrez's privacy rights, as described herein, is cause for grave concern that his digital data might be compromised for illicit purposes, and that no protocol calling for them to be maintained on a platform fully accessible to the Receiver's agent is adequate to protect them. Those concerns have been exacerbated this week by advancements in the criminal proceedings against the Majority Shareholders in Panama relating to the alleged theft

of the unpaid dividends, such that Mr. Gutierrez is submitting concurrently herewith a motion for interlocutory injunction to temporarily suspend the Receiver's discovery efforts in order to safeguard Mr. Gutierrez's data while the third-party loan from Mr. Volgemut clears the international banking system.

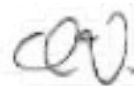
8. In light of these recent developments, Mr. Gutierrez believes it important to highlight for the Court that following the Receiver's posting of a copy of the SWIFT confirmation of the most recent wire transfer of funds sufficient to pay out substantially all amounts owing, the third-party lender was subject to lengthy questioning and compliance checks resulting in the present delay to the flow of funds. There is no reason for the Receiver to have posted this detailed banking information on its website, particularly when the identity of the lender had been made public when an affidavit had been filed to demonstrate the good faith efforts being made by Mr. Gutierrez to pay the Judgment which the Receiver is appointed to enforce.

9. Perhaps the clearest example of misrepresentation is the manner in which the Receiver reported Mr. Gutierrez's sworn statement to the Prosecutor in Panama. While Mr. Gutierrez's affirmation that he had not authorized a Gabinvest shareholder meeting might have inadvertently run afoul of the Receiver's Appointment Order, the Receiver completely omitted the relevant context, which is that the Receiver had authorized counsel in Panama to engage in conduct that resulted in the submitting of inaccurate information to the Public Registry, while knowing that the Receiver's appointment and authority had not been recognized in Panama. Neither should it be forgotten that the instruction had the effect of preventing a third-party loan commitment from funding, which would have satisfied the Castillo judgment and all authorized receivership costs in January 2020. Far from engaging in activities to collect funds to satisfy the judgment herein, the Receiver's strategy is seemingly to prevent the receivership from being discharged.

10. Similarly, the Receiver's reports have failed to acknowledge the influence in these proceedings of the decades-long multi-jurisdictional dispute over the non-payment of hundreds of millions of U.S. dollars in dividends owed to LISA. Neither has the Receiver acknowledged the relationship between Ms. Castillo – who instructs the Receiver – and the majority shareholders who have improperly withheld those dividends (the “**Majority Shareholders**”), or the role Ms. Castillo has played in helping the Majority Shareholders avoid payment. Indeed, Ms. Castillo herself supplied stolen documents from Xela's computer servers to the Majority Shareholders some ten years ago by attaching them wholesale to the complaint that led to this judgment, which documents were then used by the Majority Shareholders as a foundation for baseless, fig-leaf lawsuits in Guatemala to delay the payment of the dividends, which lawsuits have only recently been resolved. Billing records submitted by the Receiver reflect ongoing strategic discussions between the Receiver's counsel and lawyers for those same Majority Shareholders, but the Receiver has made no effort to provide this Court with any rational basis for such coordination.

11. In all of the circumstances, Mr. Gutierrez submits that no data should be uploaded to Relativity pending a determination of his motion for urgent injunctive relief.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of March, 2022.



Chris MacLeod

March 25, 2022

CAMBRIDGE LLP

333 Adelaide Street West
4th Floor
Toronto, Ontario
M5V 1R5

Christopher MacLeod (LSO# 45723M)

Tel: 647.346.6696 (Direct Line)
cmacleod@cambridgellp.com

N. Joan Kasozi (LSO# 70332Q)

jkasozi@cambridgellp.com

Tel: 416.477.7007

Fax: 289.812.7385

Lawyers for the Respondent
Juan Guillermo Gutierrez

TO: **BENNETT JONES LLP**

Barristers and Solicitors
1 First Canadian Place
Suite 3400
P.O. Box 130
Toronto, Ontario
M5X 1A4

Jason Woycheshyn
woycheshynJ@bennettjones.com
Jeffrey Leon
LeonJ@bennettjones.com

Tel: 416.863.1200

Fax: 416.863.1716

Lawyers for the Applicant
Margarita Castillo

AND TO: Lenczner Slaght Royce Smith Griffin LLP
2600 -130 Adelaide Street West
Toronto, Ontario
M5H 3P5

Monique Jilesen (LSO 43092W)
mjilesen@litigate.com

Derek Knoke (LSO 75555E)
jknoke@litigate.com

Lawyers for the Receiver

TAB 1

From: [Derek Knoke](#)
To: [Chris Macleod](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Bobby Kofman \(bkofman@ksvadvisory.com\)](mailto:Bobby.Kofman@ksvadvisory.com); [Noah Goldstein \(ngoldstein@ksvadvisory.com\)](mailto:Noah.Goldstein@ksvadvisory.com); [Monique Jilesen](#); [Sarah Millar](#); [Grygier, David](#); [Burt-Gerrans, Harold](#)
Subject: RE: Passwords [DM-LSDOCS.FID727411]
Date: March 21, 2022 3:34:51 PM
Attachments: [image001.png](#)
[Re Margarita Castillo v. Xela Enterprises Ltd. et al - file # 31421 LS-LSDOCS.FID635496.msg](#)

Chris and Brian,

Please see the attached email where you confirmed that Mr. Greenspan has the passwords. Please provide David (at Epiq) with the passwords.

Furthermore, we note that Bob Elder (your IT person) called David (at Epiq) to suggest that your client (Mr. Gutierrez) and Dave Burton (another one of your IT people) attend at Epiq's office. You do not need physical access to the Phantom Hard-Drive to provide Epiq with the passwords. David (at Epiq) is willing to setup a Teams' videoconference call for Mr. Greenspan or Mr. Gutierrez to provide the passwords, but no parties are to attend at Epiq's office.

If Epiq does not have the passwords by 9 am tomorrow, we will contact the court to request an urgent appearance.

Derek

From: bob.elder@teeltechcanada.com <bob.elder@teeltechcanada.com>
Sent: Monday, March 21, 2022 1:54 PM
To: 'Chris Macleod' <cmacleod@cambridgellp.com>; Derek Knoke <dknoke@litigate.com>; 'Joan Kasozi' <jkasoz@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; 'Bobby Kofman' <bkofman@ksvadvisory.com>; 'Noah Goldstein' <ngoldstein@ksvadvisory.com>; 'Grygier, David' <David.Grygier@epiqglobal.ca>; 'Burt-Gerrans, Harold' <Harold.Burt-Gerrans@epiqglobal.ca>; Dave Burton <dave.burton@teeltechcanada.com>; Frank Corkery <frank.corkery@teeltechcanada.com>
Subject: RE: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Hi All, sorry for the delay in getting back to everyone, combination of West Coast time zone and a busy Monday start after the weekend.

I made contact with Dave Burton who was out boots on the ground during the imaging and securing of the hard drive in question, and in looking back at our instructions for this process, no one from Teel Tech Canada has the password to this locked drive, the only person that has the password for this drive is Juan himself, he is the one that input the password to secure it and Dave was not privy to the password.

Let me now if you have any questions on this, I am around for the rest of the day/week to assist further.

Sincerely,

Bob

Bob Elder

CEO

Teel Technologies Canada

bob.elder@teeltechcanada.com

www.teeltechcanada.com

<https://groups.google.com/group/physical-mobile-forensics>

Partner

Sanderson Forensics

<https://sqliteforensictoolkit.com/>

bob.elder@sandersonforensics.ca

<https://groups.google.com/d/forum/sanderson-forensics>

Office: 250-893-6125

Special Constable (WSE) - Saanich Police Department/Central Saanich Police/Victoria Police
Department

Detective Constable (Retired) - Victoria Police Department

From: Chris Macleod <cmacleod@cambridgellp.com>

Sent: Monday, March 21, 2022 4:28 AM

To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasoz@cambridgellp.com>;
bgreenspan@15bedford.com

Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com)
<bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com)
<ngoldstein@ksvadvisory.com>; Grygier, David <David.Grygier@epiqglobal.ca>; Burt-Gerrans,
Harold <Harold.Burt-Gerrans@epiqglobal.ca>; bob.elder@teeltechcanada.com

Subject: Re: Passwords [DM-LSDOCS.FID727411]

Thank you. I will introduce Bob Elder at Teel Tech Canada under separate cover to David and Harald to coordinate. I will include Derek by cc.

Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Friday, March 18, 2022 at 3:30 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com" <bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>, "Grygier, David" <David.Grygier@epiqglobal.ca>, "Burt-Gerrans, Harold" <Harold.Burt-Gerrans@epiqglobal.ca>
Subject: RE: Passwords [DM-LSDOCS.FID727411]

Hi Chris,

Please contact David Grygier at Epiq. I have cc'd him and his colleague, Harald Burt-Gerrans, here. They are ready to speak with you as soon as possible.

Derek

From: Chris MacLeod <cmacleod@cambridgellp.com>
Sent: Friday, March 18, 2022 9:39 AM
To: Derek Knoke <dknoke@litigate.com>; Joan Kasozi <jkasozi@cambridgellp.com>; bgreenspan@15bedford.com
Cc: Monique Jilesen <mjilesen@litigate.com>; Bobby Kofman (bkofman@ksvadvisory.com) <bkofman@ksvadvisory.com>; Noah Goldstein (ngoldstein@ksvadvisory.com) <ngoldstein@ksvadvisory.com>
Subject: Re: Passwords [DM-LSDOCS.FID727411]

EXTERNAL MESSAGE

Derek-

Please send us the Epiq contact information and we will coordinate directly.

Regards,
 Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Thursday, March 17, 2022 at 5:38 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadvisory.com"

<bkofman@ksvadvisory.com>, "ngoldstein@ksvadvisory.com" <ngoldstein@ksvadvisory.com>

Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
dknoke@litigate.com

130 Adelaide St W
Suite 2600
Toronto, ON
Canada M5H 3P5
www.litigate.com

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

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From: [Chris Macleod](#)
To: [Derek Knoke](#); [Joan Kasozi](#); bgreenspan@15bedford.com
Cc: [Monique Jilesen](#); [Bobby Kofman \(bkofman@ksvadisory.com\)](mailto:bkofman@ksvadisory.com); [Noah Goldstein \(ngoldstein@ksvadisory.com\)](mailto:ngoldstein@ksvadisory.com)
Subject: Re: Passwords [DM-LSDOCS.FID727411]
Date: March 18, 2022 9:38:34 AM
Attachments: [image001.png](#)

Derek-

Please send us the Epiq contact information and we will coordinate directly.

Regards,
Chris

From: Derek Knoke <dknoke@litigate.com>
Date: Thursday, March 17, 2022 at 5:38 PM
To: Chris MacLeod <cmacleod@cambridgellp.com>, Joan Kasozi <jkasozi@cambridgellp.com>, "bgreenspan@15bedford.com" <bgreenspan@15bedford.com>
Cc: Monique Jilesen <mjilesen@litigate.com>, "bkofman@ksvadisory.com" <bkofman@ksvadisory.com>, "ngoldstein@ksvadisory.com" <ngoldstein@ksvadisory.com>
Subject: Passwords [DM-LSDOCS.FID727411]

Chris,

Please provide us today with the passwords necessary to unlock and access the data on the DataShield Fantom Drive.

Derek



Derek Knoke*

T 416-865-3018
M 647-272-0714
F 416-865-2876
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Canada M5H 3P5
www.litigate.com

This e-mail may contain legally privileged or confidential information. This message is intended only for the recipient(s) named in the message. If you are not an intended recipient and this e-mail was received in error, please notify us by reply e-mail and delete the original message immediately. Thank you. Lenczner Slaght LLP.

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TAB 2

From: [Chris Macleod](#)
To: [Derek Knoke](#); [Monique Jilesen](#); [Brian Greenspan](#); [Philip Cho](#); [Joan Kasozi](#)
Subject: Letter
Date: March 22, 2022 8:21:18 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[TTC Secured Drives.pdf](#)

Monique and Derek-

Please see attached letter from our IT expert on how best to upload to relativity and begin the protocol set out in the October 27, 2020 Order. We will have Bob Elder and Dave Burton at Teel Tech Canada communicate this as they are already in touch with Epiq.

Regards,
Chris

Chris Macleod

Partner, Cross-Border Litigation & Business Litigation Groups



333 Adelaide Street West, 4th Floor
Toronto, ON, M5V 1R5

Phone: [\(416\) 477 7007 Ext. 303](tel:(416)477-7007)

Direct: [\(647\) 346 6696](tel:(647)346-6696)

Email: cmacleod@cambridgellp.com

Website: www.cambridgellp.com





Teel Technologies Canada
B1-759 Vanalman Ave.
Victoria, BC V8Z 7E7
Canada

250.213.1637
www.teeltechcanada.com
bob.eder@teeltechcanada.com

To Whom it may concern:

March 21, 2022

RE: Recommendations for uploading secure data to Relativity:

The goal of this event is to be able to upload the data contained on a secured Phantom hard drive where the password is only known to one person, Juan Gutierrez. The security of the data on this Phantom hard drive must be maintained before and after the event to ensure that it cannot be misplaced, lost, unknowingly provided to another party, accessed in any way by any person and/or used for any other purpose.

The request is to have the data on this secured drive uploaded to the Relativity tool in order to be processed and once the data is uploaded to this source, no password is required at any time to review the data. This secured Phantom Hard drive is currently located at the Epiq office in Toronto.

In order to ensure that the data remaining on the Phantom hard drive is secured, we strongly recommend that either it is returned to Juan Gutierrez after upload to Relativity, or if it is to remain in the possession of Epiq, that it is password protected again by Juan Gutierrez as it was in the first place. To ensure that this is done in a manner that provides Juan Gutierrez confidence that his data will not be shared in any way, we at Teel Technologies Canada are requesting the following process take place:


- Juan Gutierrez is to attend the Epiq location with Dave Burton of Teel Technologies Canada who will provide oversight and answer any questions Juan Gutierrez may have during the process.
- That Juan Gutierrez will privately unlock the secured Phantom drive allowing access to the data for the Epiq representative to upload the data from the Devices to the Relativity tool.

- Once the data is all uploaded, Juan Gutierrez and Dave Burton will ensure that the Phantom hard drive is either returned to Juan Gutierrez, or if remaining in the possession of Epiq, re-secured with the existing password or a new one.
- The data that was uploaded to the Relativity platform will not be password protected allowing full access to the team at Epiq to administer and maintain this data on the Relativity Platform, provided that such access is only for the purposes of administration and maintenance but not for review by any person, except in accordance with the Order.
- This process is consistent with the previous process used to forensically image and store the data from Juan Gutierrez's devices.

We feel that this process would be in the best interest of both parties as it will ensure that the data stored on the secured Phantom will remain secured and not accessible to anyone but Juan Gutierrez but at the same time, the data will be on the Relativity platform to be dealt with in accordance with the Order.

Please do not hesitate to contact us if you have any questions or concerns,

Sincerely Yours,

A handwritten signature in blue ink, appearing to read 'Bob Elder', with a horizontal line extending from the end of the signature.

Bob Elder – CEO

Teel Technologies Canada

TAB 3

From: [Joan Kasozi](#)
To: [Joan Kasozi](#)
Subject: FW: Transfer of data to Epiq from Mr. Juan Gutierrez
Date: March 24, 2022 10:21:12 PM
Attachments: [image001.png](#)

From: dave.burton@teeltechcanada.com
Date: March 23, 2022 at 7:36:44 PM EDT
To: Chris Macleod <cmacleod@cambridgellp.com>
Subject: Fwd: Transfer of data to Epiq from Mr. Juan Gutierrez

Hi Chris,

I just received this from David Grygier from Epiq.

It appears that they have no intention of allowing us to attend their offices at this time.

Regards,

Dave Burton

dave.burton@teeltechcanada.com



Begin forwarded message:

From: "Grygier, David" <David.Grygier@epiglobal.ca>
Subject: RE: Transfer of data to Epiq from Mr. Juan Gutierrez
Date: March 23, 2022 at 7:13:17 PM EDT
To: "dave.burton@teeltechcanada.com"
 <dave.burton@teeltechcanada.com>
Cc: DL-LNZ0005 <LNZ0005@epiglobal.com>

Hi Mr. Burton,

It is Epiq's position and the position of the Receiver that the passwords can be provided to Epiq via videoconferencing call as initially suggested to your client. A physical attendance at Epiq's office is neither recommended nor available at this time for a number of reasons. The Receiver has advised the judge of those reasons, and the judge has directed counsel to attend tomorrow at 1:30, where we expect to receive further direction.

If a further response from me is necessary following the court attendance

tomorrow, I will reach out to you then.

Thank you,

David Grygier, CEDS • RCU
Project Manager, Client Services
Epiq | eDiscovery

Cell : 416-705-6071
David.grygier@epiqglobal.com

People. Partnership. Performance.
www.epiqglobal.com

From: dave.burton@teeltechcanada.com <dave.burton@teeltechcanada.com>

Sent: March 23, 2022 5:43 PM

To: Grygier, David <David.Grygier@epiqglobal.ca>

Subject: Transfer of data to Epiq from Mr. Juan Gutierrez

CAUTION: This email originated from outside of Epiq. Do not click links or open attachments unless you recognize the sender and know the content is safe. Report phishing by using the "Phish Alert Report" button above.

Hi Mr. Grygier,

I just wanted to follow up with you about Mr. Gutierrez and myself attending Epiq offices to facilitate the transfer of data. As I stated in my email on the 22nd March, I have previously arranged commitments both tomorrow and Friday and will be unavailable. Perhaps we can speak on Monday to arrange something for possibly Tuesday or Wednesday of next week? Unfortunately I leave Thursday morning for a short trip not returning until the weekend, so if next week does not accommodate your schedule we can look toward the future.

Please let me know the best way to reach you so we can speak Monday, if this is convenient.

Regards,

Dave Burton
dave.burton@teeltechcanada.com



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open attachments unless you recognize the sender and know the content is safe.

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This is Exhibit "K" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', is centered on the page.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

June 27, 2022

Derek Knoke
Direct line: 416-865-3018
Direct fax: 416-865-2876
Email: dknoke@litigate.com

Via Email

Christopher MacLeod and Joan Kasozi
Cambridge LLP
333 Adelaide St. West, Suite 400
Toronto, ON M5V 1R5

Dear Counsel:

RE: Statement of Claim
Our File No.: 52463
Court File No.: CV-21-674498-00

As counsel of record for Juan Guillermo Gutierrez, enclosed is a Statement of Claim in which your client is named as a defendant. The Statement of Claim is served upon you.

The Statement of Claim indicates that a Statement of Defence is required within 20 days. Please note that we are not asking that a Statement of Defence be delivered within that time period. We will advise you in writing once a Statement of Defence is requested.

Yours truly,



Derek Knoke

DK/tr

Enclosure

c. Monique Jilesen
Brian Greenspan and Michelle Biddulph
Bobby Kofman and Noah Goldstein

This is Exhibit "L" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

NOTICE OF MOTION

The Respondent Juan Guillermo Gutierrez (“**Mr. Gutierrez**”), will make a Motion to the Honourable Justice McEwen presiding over the Commercial List on _____ at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ In writing under subrule 37.12.1(1) because it is
 [insert on consent, unopposed or made without notice];

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

☐ In person;

☐ By telephone conference;

-2-

[X] By video conference.

at the following location: 330 University Avenue, Toronto, Ontario

THE MOTION IS FOR:

- a) An Order varying the appointment Order dated July 5, 2019 (the “**Appointment Order**”) to substitute Albert Gelman Inc. in place of KSV Restructuring Inc. (“**KSV**”) as receiver;
- b) An Order for costs in favor of Mr. Gutierrez, payable on a priority basis over the Applicant from funds collected by the receivership; and
- c) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- d) Pursuant to the Appointment Order, KSV was appointed receiver and manager over Xela Enterprises Ltd. (“**Xela**”) pursuant to the *Courts of Justice Act* to enforce a judgment dated October 28, 2015 (the “**Castillo Judgment**”), and a series of outstanding costs orders, in favour of the Applicant, Margarita Castillo (“**Ms. Castillo**”);
- e) Mr. Gutierrez is also a judgment debtor pursuant to the Castillo Judgment and the sole shareholder of Xela;
- f) At the time of the Appointment Order, approximately \$1.568 million had been paid against the Castillo Judgment – all from the liquidation of Mr. Gutierrez’s personal assets – and approximately \$4 million remained outstanding in respect of the Castillo Judgment;
- g) In its First Report to the Court dated October 17, 2019, KSV reported that Xela’s most

significant asset was its indirect one-third interest in certain businesses in Central America, referred to as the “Avicola Group,” and which was the subject of multi-year, multi-jurisdictional litigation relating to shareholder disputes (the “**Avicola Litigation**”);

h) KSV further reported that it was investigating certain transactions that it alleged had the effect of transferring the potential value of the Avicola Litigation to third parties (referred to as the “**EAI Transaction**” and the “**Assignment Transaction**”);

i) The EAI Transaction occurred in April 2016 and relates to the transfer by a Barbados corporation (EAI) of shares in two other Barbados corporations – BDT Investments Inc. (“**BDT**”) and Corporacion ARVEN Limited – to Mr. Gutierrez’ father, Juan Arturo Gutierrez (now deceased) (“**Arturo**”), and then subsequently to a Barbados trust, the ARTCARM Trust, as part of Arturo’s estate planning.

j) The Assignment Transaction occurred in January 2018 and describes a transaction between a Panamanian corporation, LISA S.A. (“**LISA**”), assigning its interest in the Avicola Litigation to BDT in consideration for BDT’s past and continued funding of the Avicola Litigation;

k) Xela was not a party to the EAI Transaction nor the Assignment Transaction, both of which involved foreign corporations;

l) A mutual lack of trust has developed between Mr. Gutierrez and KSV that has infected the proceedings. As a practical matter, it has become impossible under KSV’s authority to achieve the objective of the receivership, which is to satisfy the Castillo Judgment.

m) Mr. Gutierrez asserts that KSV has failed to act objectively and in good faith to seek satisfaction of the Castillo Judgment but has engaged in a fishing expedition in coordination

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with Mr. Gutierrez's cousins (the "**Cousins**") – with whom Mr. Gutierrez and his family have been embroiled in highly contentious multi-jurisdictional Avicola Litigation for more than twenty years – that has no nexus to the potential receipt of funds and instead appears designed solely to inflict financial injury on Mr. Gutierrez.

n) During meetings with Mr. Gutierrez in the early days of the receivership, KSV's Bobby Kofman explicitly refused to discuss the only monies realistically available to satisfy the Castillo Judgment, which are the claims for an estimated US\$400 million in dividends improperly withheld by the Cousins from LISA, an indirect Panamanian subsidiary of Xela. After more than three years as receiver, KSV has yet to articulate a plan to address collection of the unpaid dividends but has rejected multiple requests by Mr. Gutierrez to discuss a coordinated, cooperative approach.

o) KSV has engaged in numerous regular discussions with the Cousins throughout the course of the receivership without disclosing the nature of those communications. Mr. Gutierrez became aware of the coordination between KSV's lawyers and the Cousins' lawyers solely as a result of billing records submitted by KSV to this Court for approval. Despite inquiries from Mr. Gutierrez, KSV refuses to disclose the content of or reasoning behind those discussions.

p) Rather than pursue the dividends withheld by the Cousins from LISA, KSV has focused exclusively on certain "reviewable transactions" that, even if reversed, would have no bearing on the potential collection of funds. Although KSV has already incurred more than a million dollars in professional fees investigating those transactions, it has not collected a single dollar in the receivership.

q) Conversely, KSV has taken no steps to collect an unpaid \$400,000 promissory note in favor

of Xela from a company owned by Ms. Castillo's husband. Neither has KSV investigated the evidence supplied by Mr. Gutierrez suggesting that Ms. Castillo received the full benefit of a US\$4.35 million loan in 2010 that was repaid with LISA dividends wrongfully pledged as collateral by the Cousins, effectively satisfying the Castillo Judgment.

r) KSV's official reports are riddled with inaccurate and/or incomplete statements and omissions, unfairly casting Mr. Gutierrez as uncooperative and giving little if any consideration to Mr. Gutierrez's legal rights. Although Mr. Gutierrez has corrected the record repeatedly with both sworn testimony and documentary evidence, KSV has not amended its reports accordingly. Further, KSV has made of practice of making sensitive documents public, seemingly without reason. For example, KSV recently posted on its website a copy of a SWIFT electronic funds transfer confirmation that contained personal information belonging to a Russian third-party lender who was transferring funds to Mr. Gutierrez's counsel to satisfy the Castillo Judgment. Those funds were subsequently held up by the U.S.-based intermediary bank identified in the SWIFT, further preventing satisfaction of the Castillo Judgment.

s) KSV has abused its broad discovery powers in search of documents potentially useful to the Cousins. Most notably, under the premise that it required additional information to review the transactions, KSV continued to insist on access to all of Mr. Gutierrez's emails and his personal electronic devices in a manner not available to ordinary civil litigants. Yet without advising the Court or the stakeholders, KSV had already commenced a civil claim in Ontario against Mr. Gutierrez and his family relating to the same "reviewable transactions" under investigation by KSV in the receivership. Consequently, KSV has now exposed highly confidential and personal information belonging to Mr. Gutierrez – not to Xela – to the risk of security breach, knowing that Xela's entire electronic database had been stolen and delivered

to the Cousins at least once before.

t) KSV has articulated no potential nexus between information in Mr. Gutierrez's emails/personal devices and the collection of funds. KSV's efforts to obtain the information over the last three years has been grossly disproportionate to any potential relevance of the evidence expected to be contained therein. The data uploaded to an electronic database maintained by KSV's agent constitute more than 60 gigabytes and hundreds of thousands of separate emails spanning more than 20 years. Proper review calls for a massive outlay of time and resources in the days ahead – all of which will undoubtedly be charged to Mr. Gutierrez, who has already lost all his personal assets to Ms. Castillo, including his family home and his ability to support his aging mother in Toronto, who receives no financial assistance from her daughter Ms. Castillo.

u) KSV took possession of all of Xela's physical documents without cataloguing them, creating unnecessary chain-of-custody concerns. KSV subsequently refused to address tax issues of certain Xela subsidiaries whose documents were seized by KSV.

v) In 2019, LISA secured a third-party loan commitment that would have satisfied the Castillo Judgement and all receivership expenses (the "**LISA Loan**"). KSV objected to the Lisa Loan on the ground that it could not evaluate the impact of the loan on the remaining Xela creditors (*i.e.*, other than Ms. Castillo). KSV has never explained the logic of that reasoning considering Paragraph 25 of the Appointment Order, which places the onus on Ms. Castillo to argue that the Receiver should not be discharged even if the Castillo Judgment were satisfied.

w) More importantly, in response to LISA's disclosure of the LISA Loan and its request for a payoff amount, the Receiver intentionally interfered with the loan and prevented its funding.

Even while KSV's lawyers were in discussions with LISA's lawyers concerning the LISA Loan, KSV quietly hired the Hatstone law firm in Panama ("**Hatstone**") and instructed it to take over LISA without first going through the process of seeking recognition in Panama consistent with Paragraph 30 of the Appointment Order. In order to achieve that objective, Hatstone filed an official public writing with the Panamanian corporate registry falsely representing that Gabinvest, S.A. ("**Gabinvest**"), LISA's parent company, had properly notified and conducted a shareholder meeting in Panama during which the Gabinvest board of directors was ostensibly reconstituted to give Hatstone representatives control. The public writing filed by Hatstone made no reference: (1) to Xela; (2) to KSV; (3) to the fact that – at least in Ontario, Canada – KSV had replaced Mr. Gutierrez as the acting shareholder of Xela; or (4) to the fact that the Appointment Order had not been recognized in Panama, and that KSV's authority to act as Xela's sole shareholder therefore did not extend to Panama.

x) Thereafter, Hatstone sought to cause Gabinvest to reconstitute the LISA board of directors to give Hatstone control of LISA. The scheme was uncovered by LISA's and Gabinvest's Panamanian lawyers before the changes could take effect. Still, the public controversy over LISA's board caused the third-party funder to withdraw its loan commitment. Consequently, Mr. Gutierrez was prevented from satisfying the Castillo Judgment and bringing a motion to discharge the receivership, and KSV's onerous investigation into the "reviewable transactions" took on new life and continues to the present.

y) As the Court knows, Hatstone is now facing criminal charges in Panama stemming from the misconduct. In the process, Mr. Gutierrez – still the only Xela shareholder recognized in Panama – truthfully affirmed that he had not participated in the Gabinvest shareholder meeting alleged by Hatstone. In response, this Court ordered Mr. Gutierrez to withdraw his affirmation

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and to direct LISA to withdraw the criminal complaint in Panama, which he did. However, LISA declined on the ground that it was under a legal obligation in Panama to report criminal activity, and the prosecution against Hatstone continues.

z) KSV has never acknowledged its own misconduct in Panama. Instead, in apparent retaliation for the outcome in that country, KSV sought a finding of criminal contempt and incarceration against Mr. Gutierrez, which was heard before Justice Conway on May 30/31 and June 2, 2022. Although Justice Conway (erroneously) concluded that Mr. Gutierrez was liable in civil contempt, she found that he had not engaged in criminal conduct. However, sentencing is pending, and the potential injury to Mr. Gutierrez is still unknown.

aa) Although KSV failed to give Hatstone a power of attorney as required under Panama law, creating the appearance that Hatstone was acting alone, Mr. Kofman has admitted under oath that KSV instructed Hatstone. Consequently, KSV and/or Mr. Kofman may themselves be exposed to potential criminal prosecution in Panama, exacerbating the conflict between KSV and Mr. Gutierrez. KSV should not continue to act as an Officer of the Court in a receivership where KSV and/or its principal may be charged criminally in connection with the conduct of the same receivership.

bb) The foregoing developments have created serious tensions and a mutual lack of trust between KSV and Mr. Gutierrez. There is a conflict of interest – or, at the very least, an appearance of conflict – with respect to KSV’s mandate as receiver given the undisclosed relationship with the Cousins, the potential for criminal sanctions in Panama, and the singular focus on Mr. Gutierrez’s personal emails and data. Under these circumstances, Mr. Gutierrez has found it challenging to fulfill his responsibilities under the Appointment Order while

safeguarding his own legal rights. All parties would seemingly benefit from a new receiver.

cc) Albert Gelman Inc. is a licensed insolvency trustee with extensive experience under similar mandates and has agreed to act, subject to satisfactory payment terms.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

dd) Affidavit of Juan Guillermo Gutierrez to be sworn; and

ee) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 12, 2022

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Juan Guillermo Gutierrez

-10-

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Lawyers for the Receiver

-11-

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Lawyers for BDT Investments Inc. and
Arturo's Technical Services Inc.

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

NOTICE OF MOTION

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Lawyers for the Respondent
Juan Guillermo Gutierrez

This is Exhibit "M" referred to in the Affidavit of Nanda Singh sworn by Nanda Singh of the City of Brampton, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on November 22 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in blue ink, appearing to be 'N. Kasozi', with a stylized 'K' and a horizontal line extending to the right.

Commissioner for Taking Affidavits (or as may be)

N. JOAN KASOZI (LSO# 70332Q)



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP

COURT FILE NO.: CV-11-00009062-00CL DATE: September 27, 2022

NO. ON LIST: 3

TITLE OF PROCEEDING: CASTILLO V XELA

BEFORE JUSTICE: MCEWEN

PARTICIPANT INFORMATIONFor Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
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Derek Knoke	Receiver	dknoke@litigate.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Chris MacLeod, Joan Kasozi, Brian Greenspan Michelle Biddulph	Juan Guillermo Gutierrez	cmacleod@cambridgellp.com jkasoz@cambridgellp.com, BHG@15bedford.com & mmb@15bedford.com
Jason Woycheshyn	Margarita Castillo	jwoycheshyn@stewartmckelvey.com
Philip Cho and Michael Ly	Arturo's Technical Services	pcho@weirfoulds.com,

	Ltd.	mly@weirfoulds.com 816
Hesam Wafaei	Avicola Group	hwafaei@stikeman.com

ENDORSEMENT OF JUSTICE MCEWEN:

Motion for security for costs will be heard on Nov 24/22 @ 10 a.m. for one hour.

Motion to recuse Receiver will be heard on Jan 18/23 @ 10 am for 1/2 day.

In the interim counsel will discuss and attempt to resolve the dispute concerning Mr. Gutierrez's data storage security. If necessary, I will conduct another case conference in this regard.

McEwen

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

September 26, 2022

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Lawyers for the Respondent
Juan Guillermo Gutierrez

TO: THE SERVICE LIST

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Tab 3	<u>Notice of Motion dated September 12, 2022</u>

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

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

**CASE CONFERENCE BRIEF OF THE RESPONDENT, JUAN GUILLERMO
GUTIERREZ**

Introduction

1. The Receiver, KSV Restructuring Inc. (“KSV”), is engaged in a serious, ongoing breach of the Court’s Order dated October 27, 2020 (the “**Production Order**”), placing all of the data on Mr. Gutierrez’s personal devices at undue risk of duplication or other unauthorized access. As detailed below, KSV instructed Epiq, its IT consultant, to unlock the hard drive and upload Mr. Gutierrez’s personal data to the Relativity platform for Mr. Gutierrez’s preliminary review. Indeed, Epiq expressly told Brian Greenspan and David Burton (Mr. Gutierrez’s IT consultant) that those were its instructions before Mr. Greenspan transmitted the passcode to Epiq on August 30, and again after the passcode was supplied and the hard drive was unlocked. However, at some time unknown to Mr. Gutierrez, KSV had actually instructed Epiq *not* to upload the data to Relativity. Thus, the data is presumably now on Epiq’s servers where it might be duplicated or otherwise accessed without any of the Relativity auditing safeguards that would have identified any such malfeasance.

2. Not only has KSV's conduct stalled the review process completely, but it has also created the very circumstance Mr. Gutierrez has decried from the outset, which is that his personal, confidential information must not be exposed to risk, owing to the historical theft of Xela electronic documents by the Applicant's husband and delivery of same to Mr. Gutierrez's cousins in Guatemala.

3. KSV was aware of these circumstances at the Case Conference on September 13 but declined to inform the Court or to tell Mr. Gutierrez's counsel until after the Case Conference had concluded. Neither did KSV or its counsel alert the Court on September 13 that, as a consequence of KSV's instructions to Epiq, no progress whatsoever would be made toward compliance with the document review process in advance of the follow-up Case Conference on September 27.

4. The aforementioned conduct is a further indicator of KSV's lack of concern for Mr. Gutierrez's rights and provides additional support for scheduling Mr. Gutierrez's motion to recuse and replace KSV. Moreover, the Court should issue an Order requiring Epiq immediately to explain the status of the data and to permanently delete the data from its servers until such time as the Receiver decides whether to upload the data to Relativity, whereupon the hard drive can be unlocked again for treatment consistent with the Production Order.

Facts

5. At 9:15 a.m. on August 30, 2022, Mr. Greenspan and Mr. Burton held a Zoom conference call with Laura Clawley, the Epiq representative tasked with unlocking the hard drive and uploading the data to Relativity. During that call, Ms. Clawley confirmed that her instructions were indeed to upload the data to Relativity once the hard drive was unlocked, and that the entire process might take as long as 48 hours. Relying on that representation – along with everybody's collective understanding that KSV was demanding the passcode for the purpose of unlocking the hard drive and uploading the data to Relativity – Mr. Greenspan gave Ms. Clawley the passcode. She then confirmed that she had unlocked the hard drive and would proceed to upload the data to Relativity. The three participants agreed that once the upload was completed, Mr. Burton would be allowed to relock the hard drive, which would remain in Epiq's possession. They further agreed that Mr. Burton would go to Epiq's offices in two days' time to perform that

function, with the understanding that Ms. Clawley would alert Mr. Burton if the upload to Relativity was completed sooner.

6. Two days later, on September 1, 2022, Mr. Burton went to Epiq's offices as agreed, having not heard sooner from Ms. Clawley. There, Mr. Burton was given access to the hard drive, which he relocked with a new passcode and returned to Epiq, where it remains. Epiq did not tell Mr. Burton at that time (or at any other time) that the upload to Relativity had not actually been performed, nor did Epiq explain why Mr. Burton had not been called to come relock the hard drive sooner. After relocking the hard drive with a fresh passcode, Mr. Burton conveyed that passcode to Mr. Greenspan.

7. On September 13, 2022, the parties attended a Case Conference in this matter. There, Mr. Gutierrez's counsel asked the Court to schedule his motion to recuse and replace KSV as Receiver. KSV resisted that request and the Court agreed because (in part) His Honour wished to review the status of compliance with his prior orders, referring to the progress of Mr. Gutierrez's document review. Although the hard drive had been unlocked and a copy had presumably been transferred to Epiq's servers some two weeks earlier without uploading the data to Relativity, counsel for KSV declined to inform the Court of those facts. Neither did KSV's counsel inform the Court that Mr. Gutierrez would be unable to make *any* progress reviewing the data in the interim because the data had never been uploaded to Relativity. Within an hour after the September 13 Case Conference concluded, KSV's counsel alerted the parties to the actual circumstances.

8. Mr. Gutierrez has long expressed grave concerns about the sensitivity of the personal data on his electronic devices. Indeed, he has submitted evidence under oath detailing the role played by the Applicant's husband in the theft of all Xela electronic documents in 2010 and their subsequent delivery to Mr. Gutierrez's cousins by their wholesale attachment as an exhibit to an unrelated legal pleading in Toronto. Considering that background and the contentious, decades-old litigation involving hundreds of millions of dollars in dividends improperly withheld by Mr. Gutierrez's cousins, it was important that any access to the data by KSV or the Applicant be monitored electronically and auditable. The Relativity software contains safeguards that would

preclude or at least identify any improper duplication of or other unauthorized access to the data, while Epiq's servers do not.

9. KSV's counsel has asserted that the data was never uploaded to Relativity because KSV is no longer in funds. However, even if it were permissible for KSV to instruct Epiq to maintain the data on its servers without uploading it to Relativity, the Receiver's current financial posture stems in no small measure from KSV's own misconduct in Panama and its decision to pursue a contempt citation against Mr. Gutierrez, among other fruitless tasks.

10. Whether Mr. Greenspan was intentionally misled on August 30 so that Epiq could duplicate the data and/or maintain it on its servers without adequate safeguards, as Mr. Gutierrez believes, it was at least reckless on the part of KSV. This latest incident further confirms that the relationship between Mr. Gutierrez and KSV has soured to the point that it is impossible for KSV to accomplish the purpose of the receivership. The Court should promptly schedule Mr. Gutierrez's motion to replace KSV as Receiver, to facilitate a course that might actually lead to collection of the monies necessary to satisfy the Applicant's judgment.

Relief Requested

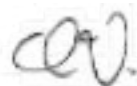
11. In the meantime, KSV must provide full transparency into the status of the data, and – although it may now be impossible to return to the *status quo ante* – the data must be made as secure as possible. In that regard, Mr. Gutierrez respectfully requests that the Court issue an Order requiring Epiq immediately to delete all of the data from its servers and to provide a detailed report certifying the complete destruction of the data. Should the Receiver subsequently elect to upload the data to Relativity, the locked hard drive remains in Epiq's possession, and Mr. Greenspan has the passcode.

12. Mr. Gutierrez further requests an Order requiring Epiq to supply a sworn statement by a knowledgeable Epiq representative, within five business days, containing at least the following information:

- a. The name of the person who instructed Epiq not to upload data to Relativity, and the date and time of those instructions;

- b. A fulsome explanation of precisely what functions were performed with the data, and when;
- c. A fulsome explanation of the precise location of the data;
- d. The names of all Epiq representatives who have had the ability to access the data since the hard drive was unlocked;
- e. Whether the data has been duplicated in any way, and if so, precisely how many duplicates and the whereabouts of said duplicate(s);
- f. Whether the data has been accessed in any way, and if so, precisely what access has been had, and by whom.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of September 2022.



September 26, 2022

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Lawyers for the Respondent
 Juan Guillermo Gutierrez

TO: **THE SERVICE LIST**

TAB 1

From: [Monique Jilesen](#)
To: [Chris Macleod](#); [Derek Knoke](#)
Cc: [Joan Kasozi](#); [Brian Greenspan](#)
Subject: RE: Epiq and document review
Date: September 13, 2022 10:08:52 AM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)

Chris,

Until this morning, we had not yet heard that all of the ATS data has yet been uploaded. We need to confirm that information with Epiq.

In any event, paragraph 8 of the October 27, 2020 Order provides that “at the request of the Receiver, [Epiq] will be authorized to load the data onto the Relativity document review platform.

In light of the funding issue, the Receiver has not requested that Epiq load the data onto Relativity. As a result, the timetable starting in paragraph 10 of the October 27, 2020 Order has not yet begun to run. We will provide with notice if and when the data is loaded onto relativity in accordance with the Order.

Thanks

Monique

From: Chris Macleod <cmacleod@cambridgellp.com>
Sent: Tuesday, September 13, 2022 8:38 AM
To: Monique Jilesen <mjilesen@litigate.com>; Derek Knoke <dknoke@litigate.com>
Cc: Joan Kasozi <jkasoz@cambridgellp.com>; Brian Greenspan <bhg@15bedford.com>
Subject: Epiq and document review

EXTERNAL MESSAGE

Monique and Derek-

Who do we coordinate with at Epiq to review the uploaded documents on relativity?

Thanks,

Chris

Chris Macleod

Partner, Cross-Border Litigation & Business Litigation Groups

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Toronto, ON, M5V 1R5

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Website: www.cambridgellp.com



CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

TAB 2

From: [Chris Macleod](#)
To: [Monique Jilesen](#); [Derek Knoke](#); [Joan Kasozi](#); [Brian Greenspan](#)
Cc: [Philip Cho](#)
Subject: Failure to Upload data to Relativity
Date: September 26, 2022 2:45:02 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Monique:

On August 30, Mr. Greenspan and Dave Burton, our IT consultant, participated in a Zoom conference call with the Epiq employee designated to unlock the hard drive and upload the data on Mr. Gutierrez's personal devices to Relativity. During that call, the Epiq representative confirmed that her task was indeed to upload the data to Relativity, and that the process might take as long as 48 hours. Relying on that representation – not to mention everyone's understanding that the Receiver was demanding the passcode for the purpose of uploading the data to Relativity – Mr. Greenspan gave Epiq the code. The Epiq representative then confirmed that she had unlocked the hard drive and would proceed to upload the data to Relativity within the following 48 hours, and that if the upload process took less time, she would notify Mr. Burton. Two days later, as agreed on the Zoom call, Mr. Burton travelled to Epiq's offices, relocked the hard drive with a fresh passcode (which he transmitted to Mr. Greenspan) and left the hard drive with Epiq.

Two weeks later, on September 13, we all participated in a case conference before Justice McEwen, where Mr. Greenspan informed him that we had provided the passcode to Epiq, which had successfully unlocked the hard drive. During the September 13 case conference, Justice McEwen declined to schedule a Motion to Recuse KSV because (in part) he wished to "review the status of compliance with my prior orders," which could only have referred to the progress of our anticipated document review. Although KSV knew that Epiq had unlocked the hard drive some two weeks earlier but – as we have now learned – had not uploaded the data to Relativity, you declined to inform Justice McEwen of that fact. You also decided not to alert Justice McEwen that we would be unable to make any progress during the interim precisely because the data is not uploaded to Relativity. Shortly after the September 13 case conference was concluded, you informed us by email that Epiq had not uploaded any data to Relativity.

We are deeply troubled by the KSV's cavalier attitude towards Mr. Gutierrez's rights. As you well know, we have long expressed grave concerns about the sensitivity of personal data on Mr. Gutierrez's electronic devices. We have also produced sworn evidence detailing the role played by Ms. Castillo's husband in the theft of all Xela electronic documents in 2010. Considering the circumstances, Relativity was accepted as a review platform in these proceedings primarily because of its security features, including its audit capabilities, which would preclude or at least identify any improper duplication or other unauthorized access.

These circumstances constitute a serious, ongoing breach of the Court's Order dated October 27, 2020, and we are raising the issue with Justice McEwen for discussion at the Case Conference on September 27. A copy of our Case Conference Brief will follow. Among other

things, we are demanding complete transparency regarding the status of the data. In that regard, we request that you provide us with a statement, under oath, by a knowledgeable Epiq representative containing the following information:

- a. The name of the person who instructed Epic not to upload any data to Relativity, and the date and time of those instructions;
- b. A fulsome explanation of precisely what functions were performed with the data, and when;
- c. A fulsome explanation of the precise location of the data;
- d. The names of all Epiq representatives who have had the ability to access the data since the hard drive was unlocked;
- e. Whether the data has been duplicated in any way, and if so, precisely how many duplicates and the whereabouts of said duplicate(s);
- f. Whether the data has been accessed in any way, and if so, precisely what access has been had, and by whom.

Regards,

Chris MacLeod

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TAB 3

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

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

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

NOTICE OF MOTION

The Respondent Juan Guillermo Gutierrez (“**Mr. Gutierrez**”), will make a Motion to the Honourable Justice McEwen presiding over the Commercial List on _____ at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

☐ In writing under subrule 37.12.1(1) because it is
 [insert on consent, unopposed or made without notice];

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

☐ In person;

☐ By telephone conference;

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[X] By video conference.

at the following location: 330 University Avenue, Toronto, Ontario

THE MOTION IS FOR:

- a) An Order varying the appointment Order dated July 5, 2019 (the “**Appointment Order**”) to substitute Albert Gelman Inc. in place of KSV Restructuring Inc. (“**KSV**”) as receiver;
- b) An Order for costs in favor of Mr. Gutierrez, payable on a priority basis over the Applicant from funds collected by the receivership; and
- c) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- d) Pursuant to the Appointment Order, KSV was appointed receiver and manager over Xela Enterprises Ltd. (“**Xela**”) pursuant to the *Courts of Justice Act* to enforce a judgment dated October 28, 2015 (the “**Castillo Judgment**”), and a series of outstanding costs orders, in favour of the Applicant, Margarita Castillo (“**Ms. Castillo**”);
- e) Mr. Gutierrez is also a judgment debtor pursuant to the Castillo Judgment and the sole shareholder of Xela;
- f) At the time of the Appointment Order, approximately \$1.568 million had been paid against the Castillo Judgment – all from the liquidation of Mr. Gutierrez’s personal assets – and approximately \$4 million remained outstanding in respect of the Castillo Judgment;
- g) In its First Report to the Court dated October 17, 2019, KSV reported that Xela’s most

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significant asset was its indirect one-third interest in certain businesses in Central America, referred to as the “Avicola Group,” and which was the subject of multi-year, multi-jurisdictional litigation relating to shareholder disputes (the “**Avicola Litigation**”);

h) KSV further reported that it was investigating certain transactions that it alleged had the effect of transferring the potential value of the Avicola Litigation to third parties (referred to as the “**EAI Transaction**” and the “**Assignment Transaction**”);

i) The EAI Transaction occurred in April 2016 and relates to the transfer by a Barbados corporation (EAI) of shares in two other Barbados corporations – BDT Investments Inc. (“**BDT**”) and Corporacion ARVEN Limited – to Mr. Gutierrez’ father, Juan Arturo Gutierrez (now deceased) (“**Arturo**”), and then subsequently to a Barbados trust, the ARTCARM Trust, as part of Arturo’s estate planning.

j) The Assignment Transaction occurred in January 2018 and describes a transaction between a Panamanian corporation, LISA S.A. (“**LISA**”), assigning its interest in the Avicola Litigation to BDT in consideration for BDT’s past and continued funding of the Avicola Litigation;

k) Xela was not a party to the EAI Transaction nor the Assignment Transaction, both of which involved foreign corporations;

l) A mutual lack of trust has developed between Mr. Gutierrez and KSV that has infected the proceedings. As a practical matter, it has become impossible under KSV’s authority to achieve the objective of the receivership, which is to satisfy the Castillo Judgment.

m) Mr. Gutierrez asserts that KSV has failed to act objectively and in good faith to seek satisfaction of the Castillo Judgment but has engaged in a fishing expedition in coordination

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with Mr. Gutierrez's cousins (the "**Cousins**") – with whom Mr. Gutierrez and his family have been embroiled in highly contentious multi-jurisdictional Avicola Litigation for more than twenty years – that has no nexus to the potential receipt of funds and instead appears designed solely to inflict financial injury on Mr. Gutierrez.

n) During meetings with Mr. Gutierrez in the early days of the receivership, KSV's Bobby Kofman explicitly refused to discuss the only monies realistically available to satisfy the Castillo Judgment, which are the claims for an estimated US\$400 million in dividends improperly withheld by the Cousins from LISA, an indirect Panamanian subsidiary of Xela. After more than three years as receiver, KSV has yet to articulate a plan to address collection of the unpaid dividends but has rejected multiple requests by Mr. Gutierrez to discuss a coordinated, cooperative approach.

o) KSV has engaged in numerous regular discussions with the Cousins throughout the course of the receivership without disclosing the nature of those communications. Mr. Gutierrez became aware of the coordination between KSV's lawyers and the Cousins' lawyers solely as a result of billing records submitted by KSV to this Court for approval. Despite inquiries from Mr. Gutierrez, KSV refuses to disclose the content of or reasoning behind those discussions.

p) Rather than pursue the dividends withheld by the Cousins from LISA, KSV has focused exclusively on certain "reviewable transactions" that, even if reversed, would have no bearing on the potential collection of funds. Although KSV has already incurred more than a million dollars in professional fees investigating those transactions, it has not collected a single dollar in the receivership.

q) Conversely, KSV has taken no steps to collect an unpaid \$400,000 promissory note in favor

of Xela from a company owned by Ms. Castillo's husband. Neither has KSV investigated the evidence supplied by Mr. Gutierrez suggesting that Ms. Castillo received the full benefit of a US\$4.35 million loan in 2010 that was repaid with LISA dividends wrongfully pledged as collateral by the Cousins, effectively satisfying the Castillo Judgment.

r) KSV's official reports are riddled with inaccurate and/or incomplete statements and omissions, unfairly casting Mr. Gutierrez as uncooperative and giving little if any consideration to Mr. Gutierrez's legal rights. Although Mr. Gutierrez has corrected the record repeatedly with both sworn testimony and documentary evidence, KSV has not amended its reports accordingly. Further, KSV has made of practice of making sensitive documents public, seemingly without reason. For example, KSV recently posted on its website a copy of a SWIFT electronic funds transfer confirmation that contained personal information belonging to a Russian third-party lender who was transferring funds to Mr. Gutierrez's counsel to satisfy the Castillo Judgment. Those funds were subsequently held up by the U.S.-based intermediary bank identified in the SWIFT, further preventing satisfaction of the Castillo Judgment.

s) KSV has abused its broad discovery powers in search of documents potentially useful to the Cousins. Most notably, under the premise that it required additional information to review the transactions, KSV continued to insist on access to all of Mr. Gutierrez's emails and his personal electronic devices in a manner not available to ordinary civil litigants. Yet without advising the Court or the stakeholders, KSV had already commenced a civil claim in Ontario against Mr. Gutierrez and his family relating to the same "reviewable transactions" under investigation by KSV in the receivership. Consequently, KSV has now exposed highly confidential and personal information belonging to Mr. Gutierrez – not to Xela – to the risk of security breach, knowing that Xela's entire electronic database had been stolen and delivered

to the Cousins at least once before.

t) KSV has articulated no potential nexus between information in Mr. Gutierrez's emails/personal devices and the collection of funds. KSV's efforts to obtain the information over the last three years has been grossly disproportionate to any potential relevance of the evidence expected to be contained therein. The data uploaded to an electronic database maintained by KSV's agent constitute more than 60 gigabytes and hundreds of thousands of separate emails spanning more than 20 years. Proper review calls for a massive outlay of time and resources in the days ahead – all of which will undoubtedly be charged to Mr. Gutierrez, who has already lost all his personal assets to Ms. Castillo, including his family home and his ability to support his aging mother in Toronto, who receives no financial assistance from her daughter Ms. Castillo.

u) KSV took possession of all of Xela's physical documents without cataloguing them, creating unnecessary chain-of-custody concerns. KSV subsequently refused to address tax issues of certain Xela subsidiaries whose documents were seized by KSV.

v) In 2019, LISA secured a third-party loan commitment that would have satisfied the Castillo Judgement and all receivership expenses (the "**LISA Loan**"). KSV objected to the Lisa Loan on the ground that it could not evaluate the impact of the loan on the remaining Xela creditors (*i.e.*, other than Ms. Castillo). KSV has never explained the logic of that reasoning considering Paragraph 25 of the Appointment Order, which places the onus on Ms. Castillo to argue that the Receiver should not be discharged even if the Castillo Judgment were satisfied.

w) More importantly, in response to LISA's disclosure of the LISA Loan and its request for a payoff amount, the Receiver intentionally interfered with the loan and prevented its funding.

Even while KSV's lawyers were in discussions with LISA's lawyers concerning the LISA Loan, KSV quietly hired the Hatstone law firm in Panama ("**Hatstone**") and instructed it to take over LISA without first going through the process of seeking recognition in Panama consistent with Paragraph 30 of the Appointment Order. In order to achieve that objective, Hatstone filed an official public writing with the Panamanian corporate registry falsely representing that Gabinvest, S.A. ("**Gabinvest**"), LISA's parent company, had properly notified and conducted a shareholder meeting in Panama during which the Gabinvest board of directors was ostensibly reconstituted to give Hatstone representatives control. The public writing filed by Hatstone made no reference: (1) to Xela; (2) to KSV; (3) to the fact that – at least in Ontario, Canada – KSV had replaced Mr. Gutierrez as the acting shareholder of Xela; or (4) to the fact that the Appointment Order had not been recognized in Panama, and that KSV's authority to act as Xela's sole shareholder therefore did not extend to Panama.

x) Thereafter, Hatstone sought to cause Gabinvest to reconstitute the LISA board of directors to give Hatstone control of LISA. The scheme was uncovered by LISA's and Gabinvest's Panamanian lawyers before the changes could take effect. Still, the public controversy over LISA's board caused the third-party funder to withdraw its loan commitment. Consequently, Mr. Gutierrez was prevented from satisfying the Castillo Judgment and bringing a motion to discharge the receivership, and KSV's onerous investigation into the "reviewable transactions" took on new life and continues to the present.

y) As the Court knows, Hatstone is now facing criminal charges in Panama stemming from the misconduct. In the process, Mr. Gutierrez – still the only Xela shareholder recognized in Panama – truthfully affirmed that he had not participated in the Gabinvest shareholder meeting alleged by Hatstone. In response, this Court ordered Mr. Gutierrez to withdraw his affirmation

and to direct LISA to withdraw the criminal complaint in Panama, which he did. However, LISA declined on the ground that it was under a legal obligation in Panama to report criminal activity, and the prosecution against Hatstone continues.

z) KSV has never acknowledged its own misconduct in Panama. Instead, in apparent retaliation for the outcome in that country, KSV sought a finding of criminal contempt and incarceration against Mr. Gutierrez, which was heard before Justice Conway on May 30/31 and June 2, 2022. Although Justice Conway (erroneously) concluded that Mr. Gutierrez was liable in civil contempt, she found that he had not engaged in criminal conduct. However, sentencing is pending, and the potential injury to Mr. Gutierrez is still unknown.

aa) Although KSV failed to give Hatstone a power of attorney as required under Panama law, creating the appearance that Hatstone was acting alone, Mr. Kofman has admitted under oath that KSV instructed Hatstone. Consequently, KSV and/or Mr. Kofman may themselves be exposed to potential criminal prosecution in Panama, exacerbating the conflict between KSV and Mr. Gutierrez. KSV should not continue to act as an Officer of the Court in a receivership where KSV and/or its principal may be charged criminally in connection with the conduct of the same receivership.

bb) The foregoing developments have created serious tensions and a mutual lack of trust between KSV and Mr. Gutierrez. There is a conflict of interest – or, at the very least, an appearance of conflict – with respect to KSV's mandate as receiver given the undisclosed relationship with the Cousins, the potential for criminal sanctions in Panama, and the singular focus on Mr. Gutierrez's personal emails and data. Under these circumstances, Mr. Gutierrez has found it challenging to fulfill his responsibilities under the Appointment Order while

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safeguarding his own legal rights. All parties would seemingly benefit from a new receiver.

cc) Albert Gelman Inc. is a licensed insolvency trustee with extensive experience under similar mandates and has agreed to act, subject to satisfactory payment terms.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

dd) Affidavit of Juan Guillermo Gutierrez to be sworn; and

ee) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

September 12, 2022

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XELA ENTERPRISES LTD. et al.
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF NANDA SINGH
SWORN NOVEMBER 22, 2022**

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

PROCEEDING COMMENCED AT
TORONTO

**MOTION RECORD ON BEHALF OF
THE RESPONDENT JUAN GUILLERMO
GUTIERREZ**
(Motion for leave to appeal)

VOLUME 1 OF 2

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