



**Second Supplement to the Fifth Report of  
KSV Restructuring Inc.,  
as Receiver and Manager of  
Xela Enterprises Ltd.**

**April 4, 2022**

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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**

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

**SECOND SUPPLEMENT TO THE FIFTH REPORT OF  
KSV RESTRUCTURING INC.**

**APRIL 4, 2022**

## **1.0 Introduction and Purpose**

1. This report (the “Second Supplemental Report”) supplements the Fifth Report of the Receiver dated February 28, 2022 (the “Fifth Report”) and the Supplement to the Fifth Report of the Receiver dated March 7, 2022 (the “Supplemental Report”).
2. Capitalized terms used but not defined in this Second Supplemental Report have the meaning provided to them in the Fifth Report and the Supplemental Report.
3. The purposes of the Second Supplemental Report are to provide the Court and the Divisional Court with an update since the Supplemental Report, particularly:
  - a) the continuing non-compliance by Juan Guillermo and ATS of the orders issued in these proceedings dated October 27, 2020 and March 25, 2021 (the “March 25, 2021 Compliance Order”), as well as subsequent related orders and endorsements;

- b) Juan Guillermo's various allegations against the Receiver made in support of a motion for injunctive relief to the Court (served on March 25, 2022) and a motion for a stay pending a motion for leave to appeal to the Divisional Court (served on March 28, 2022), as well as the motion for leave to appeal (served on March 31, 2022); and
- c) the status of funding from Mr. Volgemut.

## 1.1 Restrictions

1. This Second Supplemental Report is subject to the restrictions provided in the Fifth Report.

## 2.0 Background

1. As set out in the Fifth Report and the Supplemental Report, the March 25, 2021 Compliance Order required, among other things:
  - a) Juan Guillermo to immediately provide the Receiver with all encryption codes, keys, passwords, or any other such information or knowledge necessary to unlock and access the data on the JG Hard-Drive; and
  - b) ATS to, within 14 days, provide the Receiver with an electronic copy of all emails sent or received by Juan Guillermo at any email address maintained on the ATS servers to the date of the Order, along with any encryption codes, keys, or passwords used to secure the emails.
2. Juan Guillermo and ATS sought leave to appeal the March 25, 2021 Compliance Order from the Divisional Court. One of the grounds for seeking leave to appeal was a claim of privilege by Juan Guillermo over his emails on ATS's servers. The Divisional Court dismissed the motion for leave to appeal on July 9, 2021 with costs in the amount of \$5,000.
3. Thereafter, the Receiver sought compliance with the March 25, 2021 Compliance Order. When compliance was not forthcoming, the Receiver requested a case conference which was scheduled for September 17, 2021.
4. On September 16, 2021, the day prior to the case conference, Juan Guillermo and ATS advised that funding from Mr. Volgemut sufficient to discharge the Receiver was imminent.
5. For months, compliance with the Orders was placed on the "backseat" (as described by McEwen J. in his March 25, 2022 endorsement) pending the receipt of the funding which was said to be imminent. However, nearly six months and five court attendances later, the funding had not arrived.<sup>1</sup>

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<sup>1</sup> The Receiver attended case conferences on September 17, 2021; December 2, 2021; January 21, 2022; February 7 and 17, 2022.

## 3.0 Non-Compliance with the March 25, 2021 Compliance Order

### 3.1 March 2, 2022 Case Conference

1. On March 2, 2022, the Court directed Juan Guillermo and ATS to comply “immediately” with the March 25, 2021 Compliance Order. The Court also rescheduled a contempt motion against Juan Guillermo related to Juan Guillermo’s involvement in criminal proceedings against the Receiver’s legal representatives in Panama (“Hatstone”) for May 30-31, 2022. The contempt motion was and is unrelated to the production of passwords and emails that are to be produced pursuant to the March 25, 2021 Compliance Order.<sup>2</sup>
2. Following the March 2, 2022 endorsement, Juan Guillermo did not provide the passwords, and ATS did not provide the emails. The Receiver requested another case conference.

### 3.2 March 9, 2022 Case Conference

1. On March 9, 2022, the parties attended for a case conference. Juan Guillermo again asserted privilege over his emails on ATS’s servers. The Court directed Juan Guillermo and ATS to begin the “smooth flow of documents” to the Receiver.<sup>3</sup>
2. Later that day, on March 9, 2022, the Receiver wrote to Juan Guillermo’s counsel (“Cambridge”) to request the passwords and to ATS’s counsel (“WeirFoulds”) to request the emails.
3. Cambridge responded that evening. Cambridge asked for a copy of the image of the Devices on the JG Hard-Drive.<sup>4</sup>
4. WeirFoulds responded that evening. WeirFoulds advised that they intended to provide Juan Guillermo’s emails on ATS’s servers to Juan Guillermo rather than to the Receiver.<sup>5</sup>
5. On March 11, 2022, the Receiver wrote to Cambridge and WeirFoulds:
  - a. the Receiver advised Juan Guillermo that he made the same request for a copy of the image of his Devices a year earlier, which request was expressly rejected by the Court when it issued the March 25, 2021 Compliance Order;

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<sup>2</sup> The issues at stake in the contempt motion are set out in the Receiver’s notice of motion for contempt dated February 9, 2021 and the endorsement and order of McEwen J. dated February 10, 2021. Brief of Documents to the Second Supplemental Report (“Brief of Documents”), Tabs 1, 2, and 3. March 2, 2022 endorsement, Brief of Documents, Tab 4”

<sup>3</sup> March 9, 2022 endorsement, Brief of Documents, Tab 5

<sup>4</sup> Letter from Cambridge to the Receiver dated March 9, 2022, Brief of Documents, Tab 6

<sup>5</sup> Email from WeirFoulds to the Receiver dated March 9, 2022, Brief of Documents, Tab 7

- b. the Receiver advised ATS that it took no position on whether ATS chose to provide Juan Guillermo's emails to Juan Guillermo. The obligation to produce Juan Guillermo's emails to the Receiver was ATS's obligation, with which it was obligated to comply. The Receiver offered to meet with ATS to discuss the best way to transfer Juan Guillermo's documents from ATS to the Receiver; and
  - c. the Receiver advised both parties that the issue of privilege was being improperly conflated with the contempt motion. The review of emails and documents was intended to assist the Receiver in its investigation of the Reviewable Transactions. The Receiver did not rely (and did not intend to rely) on any evidence contained on the JG Hard-Drive or the emails that ATS was to produce in support of the contempt motion.<sup>6</sup>
6. Later, on March 11, 2022, WeirFoulds responded. They insisted on providing Juan Guillermo's emails to Juan Guillermo rather than the Receiver. They declined a meeting with the Receiver.<sup>7</sup>
  7. On March 13, 2022, the Receiver responded. The Receiver noted that non-privileged documents were to be produced immediately in accordance with the direction of the Court. "How ATS goes about ensuring there is a smooth flow of documents to the Receiver is up to ATS". The Receiver reiterated its willingness to discuss this with ATS.<sup>8</sup> A further case conference was scheduled for March 17, 2022.
  8. On March 14, 2022, Cambridge responded. They said that the emails on the JG Hard-Drive were duplicative of the emails on ATS's servers. They wanted to compare the emails on the JG Hard-Drive to the emails on ATS's servers and to conduct their own de-duplication process. They reiterated their request for a copy of the image of the Devices on the JG Hard-Drive.<sup>9</sup>
  9. Later, on March 14, 2022, the Receiver noted that, even if Juan Guillermo's request was accepted (which it was not), the Receiver could not provide Juan Guillermo with a copy without the passwords to the JG Hard-Drive.<sup>10</sup>
  10. On March 16, 2022, Cambridge responded. They advised that they wanted Juan Guillermo (and Juan Guillermo's own IT consultant) to attend at the office of the Receiver's IT expert (Epiq) where Juan Guillermo could unlock the JG Hard-Drive and make a copy, after which Juan Guillermo would re-lock the JG Hard-Drive. Juan Guillermo could then compare the data on the JG Hard-Drive to the data on ATS's servers and perform his own de-duplication without any oversight by Epiq.<sup>11</sup>

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<sup>6</sup> Letter from the Receiver to Cambridge and WeirFoulds dated March 11, 2022, Brief of Documents, Tab 8

<sup>7</sup> Email from WeirFoulds to the Receiver dated March 11, 2022, Brief of Documents, Tab 9

<sup>8</sup> Email from the Receiver to WeirFoulds dated March 13, 2022, Brief of Documents, Tab 10

<sup>9</sup> Email from Cambridge to the Receiver dated March 14, 2022, Brief of Documents, Tab 11

<sup>10</sup> Email from the Receiver to Cambridge dated March 14, 2022, Brief of Documents, Tab 12

<sup>11</sup> Email from Cambridge to the Receiver dated March 16, 2022, Brief of Documents, Tab 13

11. The Receiver responded that day, querying why the protocol for Juan Guillermo's privilege review (contained in the October 27, 2020 Order) could not be followed.<sup>12</sup>
12. Later, on March 16, 2022, Juan Guillermo delivered a Case Conference Brief in advance of the March 17, 2022 case conference. Among other things, Juan Guillermo claimed that compliance with the March 25, 2021 Compliance Order "would represent an inordinate amount of additional expense and should be rejected" because the money (from Mr. Volgemut, which Mr. Guillermo had for six months promised), was "already in transit". In the Case Conference Brief, Cambridge reiterated their request for a copy of the image of the Devices on the JG Hard-Drive.

### 3.3 March 17, 2022 Case Conference

1. On March 17, 2022, the parties attended for a case conference. In an effort to move the matter forward, the Receiver consented to the application of the October 27, 2020 protocol (which already applied to the images on the JG Hard-Drive) to Juan Guillermo's emails on ATS's servers—thereby preventing the Receiver from reviewing any of Juan Guillermo's emails until Juan Guillermo had the opportunity to review and object to production to the Receiver. At the conclusion of the case conference, McEwen J. asked that he be updated in the coming days about compliance. His Honour said that he would make himself available the following week for an urgent case conference, if necessary. Later that day, McEwen J. issued an endorsement, which said, among other things:

*Forthwith, [Juan Guillermo] will provide the passwords to his devices to Epiq so the images can be fully accessed...;*

*ATS emails, contained on their servers, will also be provided to Epiq forthwith; [and]*

*Subsequently, the protocol contained in my [October 27, 2020] Order will be followed ....<sup>13</sup>*

2. Later that day, on March 17, 2022, the Receiver wrote to Cambridge to request the passwords, and the Receiver wrote to WeirFoulds to request a meeting to discuss the best way for ATS to send Juan Guillermo's emails to Epiq.
3. On March 18, 2022, Cambridge asked for Epiq's direct contact information, which the Receiver provided. The Receiver noted that Epiq was ready to speak as soon as possible.<sup>14</sup>

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<sup>12</sup> Email from the Receiver to Cambridge dated March 16, 2022, Brief of Documents, Tab 14

<sup>13</sup> March 17, 2022 Endorsement, Brief of Documents, Tab 15

<sup>14</sup> Email exchange between Cambridge and the Receiver dated March 18, 2022, Brief of Documents, Tab 16

4. On March 18, 2022, WeirFoulds advised that the earliest date by which it would be available for a meeting with Epiq was likely Tuesday, March 22, 2022. However, the Receiver was not available that day. The Receiver offered Wednesday, March 23, 2022, which was subsequently accepted.<sup>15</sup>
5. On March 21, 2022, Cambridge responded to the Receiver's March 18, 2022 email. Through that email, Cambridge connected Epiq with Juan Guillermo's IT consultant (Teel Tech). Later that day, Epiq contacted Teel Tech. Epiq asked Teel Tech to send the passwords to the JG Hard-Drive. In the alternative, Epiq offered to speak via a Teams' videoconference to allow them to give Epiq the passwords to avoid creating an email of the passwords.<sup>16</sup>
6. Later, on March 21, 2022, Teel Tech's representative responded to Epiq (copying counsel). He noted that Teel Tech did not have the passwords to the JG Hard-Drive. He said that only Juan Guillermo had the passwords. The Receiver reminded Cambridge and Juan Guillermo's co-counsel, Mr. Brian Greenspan, that Mr. Greenspan was also in possession of Juan Guillermo's passwords (which counsel had confirmed by email on April 30, 2021). The Receiver noted that physical access to the JG Hard-Drive was unnecessary. The passwords could be provided to Epiq alone via videoconference to assuage Juan Guillermo's privacy concerns.<sup>17</sup>
7. On March 22, 2022, Cambridge sent an email and attached a letter signed by Teel Tech about "how best to upload" the data and begin the protocol in the October 27, 2020 Order. The Teel Tech letter recommended that Juan Guillermo attend at Epiq's office (along with Teel Tech), where Juan Guillermo "will privately unlock" the JG Hard-Drive. After the data was uploaded, Juan Guillermo would re-lock the JG Hard-Drive or take it with him.<sup>18</sup>
8. On March 23, 2022 at 11 am, WeirFoulds, Julio Fabrini (Xela's former IT director and ATS's current Chief Information Officer), Andres and Thomas Gutierrez (Juan Guillermo's sons), the Receiver, and Epiq attended at a videoconference call. Epiq confirmed that it had a secure file transfer protocol ("FTP") and that this was the best, most secure, and most efficient way to receive the emails. ATS and its representatives advised that:
  - a. Juan Guillermo had three email accounts on ATS's servers. The emails for one of those accounts had already been collected. ATS had not started to collect the other two email accounts;

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<sup>15</sup> Email exchange between WeirFoulds and the Receiver dated March 18, 2022, Brief of Documents, Tab 17

<sup>16</sup> Email exchange among Cambridge, Teel Tech, the Receiver, and Epiq dated March 21, 2022, Brief of Documents, Tab 18

<sup>17</sup> Email exchange among Cambridge, Mr. Greenspan, Teel Tech, the Receiver, and Epiq dated March 21, 2022, Brief of Documents, Tab 19

<sup>18</sup> Letter and cover email from Cambridge to the Receiver dated March 22, 2022, Brief of Documents, Tab 20



- b. ATS could immediately transfer the one email account via Epiq's secure FTP, and it could begin collecting the other two email accounts; but
  - c. ATS wanted to consult with Juan Guillermo first to see whether Juan Guillermo had any objections to ATS transferring the emails via Epiq's secure FTP.
9. The Receiver advised ATS that there was no basis for it to wait to consult with Juan Guillermo prior to sending the emails. The Receiver asked ATS to send the emails or to advise of its position by 5 pm because it intended to update McEwen J. by the end of the day in accordance with His Honour's request.
10. At 5:01 pm on March 23, 2022, WeirFoulds emailed the Receiver. WeirFoulds said that it was in receipt of the FTP login information from Epiq. However, WeirFoulds was not prepared to send the emails until Juan Guillermo had received legal advice.<sup>19</sup>
11. At 5:21 pm on March 23, 2022, the Receiver updated the Court:
  - a. the Receiver noted Juan Guillermo's desire to "privately unlock" the JG Hard-Drive and communicated Epiq's concerns with this approach. The Receiver recommended that Juan Guillermo attend via a videoconference call with Epiq (but with the Receiver absent) to provide the passwords to Epiq. In an effort to assuage Juan Guillermo's concerns, the Receiver agreed to have Epiq re-lock the JG Hard-Drive after the data was uploaded; and
  - b. the Receiver noted that it had a call with ATS and its representatives, wherein ATS confirmed that it could begin to immediately comply with the March 25, 2021 Compliance Order. However, ATS wanted to consult with Juan Guillermo before sending emails through the secure FTP. The Receiver recommended that ATS provide Juan Guillermo's emails to Epiq using the secure FTP.<sup>20</sup>
12. At 5:40 pm on March 23, 2022, McEwen J. directed the parties and the Receiver to attend before His Honour the next day at 1:30 pm.<sup>21</sup>
13. On March 24, 2022 at 9:22 am, Cambridge advised that they were not available to attend that day. Mr. MacLeod advised that he was waiting to hear from Mr. Greenspan about his availability the next day.<sup>22</sup>
14. A case conference was subsequently scheduled for the following day, March 25, 2022, at 10:30 am.

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<sup>19</sup> Email from WeirFoulds to the Receiver dated March 23, 2022, Brief of Documents, Tab 21

<sup>20</sup> Email from the Receiver to the Court dated March 23, 2022, Brief of Documents, Tab 22

<sup>21</sup> Email from McEwen J. to the Receiver and parties dated March 23, 2022, Brief of Documents, Tab 23

<sup>22</sup> Email from Cambridge to McEwen J. dated March 24, 2022, Brief of Documents, Tab 24

## 4.0 Allegations against the Receiver

### 4.1 March 25, 2022 Case Conference

1. On March 25, 2022 at 9:47 am, Cambridge circulated a Case Conference Brief and a notice of motion for injunctive relief. Cambridge made accusations against the Receiver (without evidence). In the Case Conference Brief, Cambridge alleged that:
  - a. the Receiver was “refusing to permit the hard drive to be secured after the data are uploaded to Relativity” (para. 2);
  - b. Juan Guillermo’s only new request (which the Receiver had denied) was to allow him to re-lock the JG Hard-Drive (para. 3);
  - c. the Receiver’s March 23, 2022 email to the Court was a “now-familiar pattern of complaining to the Court” (para. 4);
  - d. the third-party loan from Mr. Volgemut was in the process of clearing “the international banking system” (para. 7);
  - e. the Receiver was complicit in using Juan Guillermo’s data for “illicit purposes” by posting a copy of a purported SWIFT confirmation (from March 2, 2022) that contained “detailed banking information” on the Receiver’s website (para. 8);
  - f. the Receiver’s motion for contempt contains misrepresentations (para. 9); and
  - g. the Receiver is engaged in “ongoing strategic discussions” with the Cousins (para. 10).
2. The Receiver responds to each of these allegations as follows:
  - a. although there was no requirement for the Receiver “to permit the hard drive to be secured after the data was uploaded to Relativity,” the Receiver did offer to re-lock the JG Hard-Drive, as noted in the Receiver’s March 23, 2022 email to the Court, which was an accommodation to try to find a resolution to this issue and alleviate Juan Guillermo’s concerns;
  - b. although the Case Conference Brief stated that Juan Guillermo’s only new request was to allow him to re-lock the JG Hard-Drive, Juan Guillermo had insisted that he attend at Epiq’s office and privately unlock the JG Hard-Drive, and that he perform his own de-duplication as against his emails on ATS’s servers before delivering data to the Receiver. This was inconsistent with any protocol in place and with ensuring the security of the data. Epiq’s concerns about the risks associated with Juan Guillermo’s approach were described to the Court in the Receiver’s March 23, 2022 email;

- c. although Juan Guillermo describes the Receiver's March 23, 2022 email to the Court as a "now-familiar pattern of complaining to the Court" (para. 4), McEwen J. asked for an update within a few days regarding his endorsement issued on March 17, 2022. Following the March, 17 2022 endorsement, the Receiver waited nearly a week before reporting and did not request an attendance. The March 25, 2022 case conference was convened at the request of His Honour;
  - d. there is no direct evidence, sworn or otherwise, that the third-party loan from Mr. Volgemut is in the process of clearing "the international banking system" (para. 7). The Receiver is in possession of a redacted SWIFT confirmation from March 2, 2022. Whether the funding exists or is clearing the international banking system is unknown to the Receiver. No evidence has been provided by Mr. Volgemut as to the reasons for the delay in funding, despite requests by the Receiver to Cambridge for an explanation;
  - e. Juan Guillermo alleges that the Receiver was complicit in using Juan Guillermo's data for "illicit purposes" by posting on the Receiver's website a copy of what Juan Guillermo and his representative say is a SWIFT confirmation that contained "detailed banking information" (para. 8). The Receiver, as an officer of the Court, posts all of its reports and court materials on its website and has done so throughout these proceedings to the knowledge of the parties. The SWIFT confirmation in question was redacted by Juan Guillermo of any detailed banking information;
  - f. the Receiver's motion for contempt contains no misrepresentations to the knowledge of the Receiver. The allegations made here by Juan Guillermo are the same ones made in Juan Guillermo's December 3, 2020 sworn declaration, which the Court ordered him to withdraw (on February 10, 2021) and for which a contempt motion is scheduled for May 30-31, 2022; and
  - g. the Receiver is not engaged in "ongoing strategic discussions" with the Cousins (para. 10). Juan Guillermo has also previously made these allegations. The Receiver addressed this accusation at s. 2.0 of its Third Supplement to the Fourth Report dated March 1, 2021. The Receiver is an officer of the Court, and its duties and obligations in such capacity are well known to it.
3. In addition to the Case Conference Brief, Cambridge sent a notice of motion for injunctive relief, in which Juan Guillermo asked the Court to stay the October 27, 2020 Order, the March 25, 2021 Compliance Order, and "any endorsements made in respect thereof". In addition to the allegations above, Cambridge made further accusations against the Receiver in support of the prayer for relief, including:
- a. there was a "high risk that the [Cousins] will engage in new malfeasance and corporate espionage to try to obtain copies of" the data in Epiq's possession (para. 3(f));
  - b. the Receiver is being funded by the Cousins (para. 3(g)(1));

- c. the Receiver is trying to “prejudice the recovery” of Xela’s assets (in particular, dividends owed to Xela’s wholly-owned, indirect subsidiary, LISA) (para. 3(g)(2)); and
    - d. Mr. Volgemut has “transferred the full amount” necessary to satisfy the Judgment Debt (para. 3(h)).
4. The Receiver responds as follows to these allegations:
  - a. Epiq’s network is secure and not accessible to the Receiver, Cousins, or any other person;
  - b. the Receiver is being funded by the Applicant. The details of that funding have been addressed in the Receiver’s prior Reports;
  - c. the Receiver is conducting an investigation and seeking recovery of assets for the benefits of Xela’s stakeholders;
  - d. no funding has been received from Mr. Volgemut. As reported in the Receiver’s Fifth Report, the promised funding from Mr. Volgemut appears to be insufficient to satisfy the Judgment Debt, related costs, and the payment of other creditors who rank *pari passu* with the Judgment Debt, and accordingly, even if received, appears to be insufficient to discharge the Receiver pursuant to the provisions of the Appointment Order.
5. On March 25, 2022, the Receiver and the parties attended at the case conference. Justice McEwen issued an endorsement in which he stated:
  - a. the case conference was convened by His Honour;
  - b. he considered Juan Guillermo’s notice of motion for injunctive relief. His Honour noted that it “generally speaking, repeats historical complaints” that Juan Guillermo has “raised against the Receiver”;
  - c. Justice McEwen was “not prepared to defer the access/productions any further”. He ordered Juan Guillermo and ATS to follow the recommended method of production as set out in the Receiver’s March 23, 2022 email to the Court; and
  - d. In issuing this endorsement, McEwen J. noted, among other things, that:
    - i. Epiq is accountable to the Court and its proposal is a “sensible and secure manner to secure the passwords and ATS’s documents”;
    - ii. there is “no reasonable basis to suggest that the Receiver has in some way colluded with” the Cousins or that the Cousins “can somehow engage in ‘corporate espionage’ to secure the data that Epiq will secure. [Juan Guillermo], in some fashion or another, for some time has made these allegations without proof”;

- iii. the protocol contained in the October 27, 2020 Order allows Juan Guillermo alone to review the documents and assert any objections to disclosure;
  - iv. His Honour had allowed compliance with His Orders to take a “backseat” to see if funding might materialize. However, several months had passed. Further promises of funding were no basis to grant a stay of Orders made over a year ago. Moreover, a similar argument (of a proposed settlement offer) was made by Juan Guillermo at the March 2021 motion as a basis to avoid production, which His Honour rejected because the offer “was no offer at all”; and
  - v. His Honour had “made no findings of any misconduct against the Receiver” but expressed concerns about Juan Guillermo’s involvement in the criminal complaint against Hatstone (which is the subject of the upcoming contempt motion).
- e. Juan Guillermo was directed to attend a videoconference with Epiq by March 28, 2022 at 5 pm to provide Epiq with the passwords to the JG Hard-Drive. ATS was directed to provide Epiq with Juan Guillermo’s emails using Epiq’s secure FTP by March 28, 2022 at 5 pm.<sup>23</sup>

#### 4.2 Motion for a Stay and Motion for Leave to Appeal to the Divisional Court

1. On March 28, 2022 at 4:08 pm, Cambridge served a notice of motion for a stay pending a motion for leave to appeal (the “Stay Motion”). The Stay Motion repeated a number of Juan Guillermo’s allegations in his March 25, 2022 Case Conference Brief and notice of motion for injunctive relief. The notice of motion for the Stay Motion stated that Juan Guillermo would “seek leave to appeal the [March 25, 2022] Endorsement on the question of whether [McEwen J.] erred in ordering compliance” with His Honour’s past Orders by a “particular date and time”.
2. On March 28, 2022 at 4:57 pm, Cambridge advised the Receiver that they had asked the Divisional Court for a date to hear their Stay Motion. They said, “We will not be proceeding with Epiq until this is decided” and asked for the Receiver’s consent to a stay. The Receiver declined to consent to the stay.<sup>24</sup>
3. On March 29, 2022, Corbett J., of the Divisional Court, advised the parties and the Receiver that McEwen J.’s Orders “**are not stayed pending decision on the stay motion or pending a motion for leave to appeal**”.<sup>25</sup>
4. Later that morning, on March 29, 2022, Cambridge delivered an affidavit sworn (the day prior) by Juan Guillermo in support of the Stay Motion. In it, Juan Guillermo repeats the accusations noted above.

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<sup>23</sup> March 25, 2022 Endorsement, Brief of Documents, Tab 25

<sup>24</sup> Email exchange between Cambridge and the Receiver dated March 28, 2022, Brief of Documents, Tab 26

<sup>25</sup> Email from the Divisional Court to the Receiver and parties, Brief of Documents, Tab 27

5. On March 31, 2022, Cambridge delivered a notice of motion for leave to appeal to the Divisional Court (the “Leave Motion”). The notice of motion on the Leave Motion seeks leave to appeal the March 25, 2022 endorsement. It is, in essence, identical to the notice of motion on the Stay Motion. The Leave Motion is supported by a new affidavit sworn by Juan Guillermo on March 30, 2022. However, the new affidavit simply adopts his March 28, 2022 affidavit (filed in support of the Stay Motion).

## 5.0 Funding

1. On March 17, 2022, the Receiver emailed Cambridge to request an update on the status of Mr. Volgemut’s transfer of funds. The Receiver noted that Cambridge, during the case conference that day, had indicated that the funds were being held by an intermediary bank. The Receiver asked for an explanation of the process, as well as any documents to evidence the assertion that funds were being held by an intermediary bank.<sup>26</sup>
2. As of the date of this Second Supplemental Report, the Receiver has not received a response to this email.
3. Despite this, in his March 28, 2022 affidavit, Juan Guillermo states that the transfer of funds from Mr. Volgemut (which appears to be insufficient to satisfy the Judgment Debt and related costs, as set out in the Receiver’s Fifth Report) “has been significantly delayed [due] to additional compliance and due diligence measures being undertaken by the intermediary bank in the U.S.”. However, despite previously filing two affidavits, Mr. Volgemut has tendered no affidavit since December 1, 2021. Moreover, no evidence was tendered by Juan Guillermo (as an exhibit or otherwise) to corroborate the alleged due diligence efforts by the intermediary bank.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF  
XELA ENTERPRISES LTD. AND  
NOT IN PERSONAL OR CORPORATE CAPACITY**

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<sup>26</sup> Email from the Receiver to Cambridge dated March 17, 2022, Brief of Documents, Tab 28