

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

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**MOTION RECORD
(Motion Returnable: January 18, 2021)**

January 15, 2021

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Tab 1

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

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**NOTICE OF MOTION
(Extending Time for Service of the Statement of Claim and
Removing Thornton Grout Finnigan as Class Counsel)**

ALEX KAN and STUART RATH, are the plaintiffs (“**Plaintiffs**”) in a securities class proceeding against Kew Media Group Inc. (“**Kew Media**”) and certain of its former officers and directors (the “**Action**”) issued pursuant to a Lift Stay Order of this Court dated July 14, 2020 (the “**Lift Stay Order**”). The Plaintiffs will bring this motion before a judge presiding over the Commercial List in Toronto, Ontario on Monday, January 18, 2021, by judicial video conference.

PROPOSED METHOD OF HEARING: The motion will be heard orally by video conference via Zoom.

THIS MOTION IS FOR:

1. An Order:
 - a. extending the time for service of the Statement of Claim in the Action on Kew Media for a further 120 days to July 13, 2021;

- b. revoking the appointment of Thornton Grout Finnigan ^{LLP} (“TGF”) as Class Counsel pursuant to paragraph 10 of the Lift Stay Order; and,
- c. such further and other relief as counsel may advise and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

Order Extending the Time for Service

1. A Receivership Order was granted against Kew Media on February 28, 2020 (the “**Receivership Order**”). FTI Consulting Canada Inc. (the “**Receiver**”) was appointed as receiver of all of the assets, undertakings and properties of Kew Media and certain related entities;
2. On July 14, 2020, the Plaintiffs sought and obtained the Lift Stay Order from this Court to permit the issuance and service of the Statement of Claim. The Lift Stay Order also expressly permitted motions to be brought if necessary in respect of service of the Statement of Claim;
3. Pursuant to the Lift Stay Order, the Action was commenced by way of a Statement of Claim issued on July 20, 2020 as against Kew Media and seven of the company’s former officers and directors;
4. The Statement of Claim has been successfully served on all seven individual defendants to the Action;
5. Pursuant to the Receivership Order, the Receiver is authorized and empowered, but not required, to defend all proceedings now pending or hereafter instituted with respect to the company, its property and/or the Receiver, and to settle or compromise any such proceedings;
6. The Receiver has reported to this Court that it has terminated the business operations of Kew Media and that it no longer maintains any physical office premises;

7. The Receiver has also reported that all of the employees, directors and officers of Kew Media have been terminated;
8. Class Counsel hired a process server to attempt to serve the Statement of Claim at the physical address of Kew Media. The process server was advised that the company went bankrupt and had moved out of the premise;
9. As a result of the Receivership, none of the traditional methods of achieving service on a corporation remain available to the Plaintiffs;
10. A copy of the Statement of Claim was served on the Receiver in draft in conjunction with the motion to obtain the Lift Stay Order. Thereafter, a copy of the issued Statement of Claim was provided to the Receiver. The Receiver has acknowledged receipt of the Statement of Claim;
11. On December 21, 2020, the Plaintiffs wrote to the Receiver and requested confirmation that it had accepted service of the issued Statement of Claim;
12. The Receiver declined to accept service of the Statement of Claim on behalf of Kew Media;
13. As a result of the COVID-19 pandemic, the deadline to serve the Statement of Claim is March 14, 2021 pursuant to Rule 14.08(1) of the *Rules of Civil Procedure* and sections 2 and 6 of O. Reg. 73/20;
14. All reasonable steps have been taken to effect service within the six month service deadline by regular and alternative channels. In light of the Receiver's position, it is anticipated that a motion to validate service or alternatively a motion for substituted service may be necessary in order to effect service against Kew Media. At this time the expectation is that that motion will be heard in conjunction with the next lift stay motion;

15. Extending the time for service will not result in any prejudice to any defendant as all other parties to the Action have been served with the Statement of Claim;

Order Removing TGF from the Class Counsel Team:

16. At paragraph 10 of the Lift Stay Order, Justice Koehnen ordered that Thornton Grout Finnigan ^{LLP} (“TGF”), Kalloghlian Myers ^{LLP} and Foreman & Company be appointed as Class Counsel to prosecute the Action. Paul Guy was the partner at TGF with carriage of the file;
17. As of January 1, 2021, Paul Guy, withdrew from the partnership of TGF and joined Kalloghlian Myers ^{LLP};
18. Given Mr. Guy’s departure, TGF is no longer involved in the litigation and has consented to its removal as counsel of record;
19. Individual counsel to the Plaintiffs in the Class Counsel group remains unchanged;
20. No prejudice or unfairness will result to any of the parties to the Action;

Statutory Provisions Relied Upon

21. Rules 3.02, 14.08, and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194;
22. Sections 2 and 6 of O. Reg. 73/20: *Limitation Periods*; and,
23. Such further and other grounds as counsel may advise and this Honourable Court may accept.

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

1. The pleadings in the Action;
2. The Affidavit of Sarah Bowden, sworn January 15, 2021; and
3. Such further and other evidence as counsel may advise and this Honourable Court may permit.

January 15, 2021

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<p>TRUIST BANK, AS AGENT</p> <p>-and-</p> <p>KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC. Respondents</p>	<p>Applicant</p>
<p>Court File No: CV-20-00637081-00CL</p>	
<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p>	
<p>NOTICE OF MOTION (Extending Time for Service of the Statement of Claim and Removing Thornton Grouit Finnigan as Class Counsel)</p>	
<p>KALLOGLHLIAN MYERS LLP 250 University Avenue, Suite 200 Toronto, ON M5H 3E5</p> <p>Paul D. Guy (LSO# 49794K) Serge Kalloghlian (LSO#: 55557F) Garth Myers (LSO#: 62307G) Tel: (647) 969-4472 Fax: (647) 243-6620 paul@kalloghlianmyers.com serge@kalloghlianmyers.com garth@kalloghlianmyers.com</p>	<p>FOREMAN & COMPANY 4 Covent Market Place London, ON N6A 1E2</p> <p>Jonathan J. Foreman (LSO #45087H) Sarah A. Bowden (LSO #56835D) Anne E. Legate-Wolfe (LSO #76832J) Tel: (519) 914-1175 Fax: (226) 884-5340 jforeman@foremancompany.com sbowden@foremancompany.com alegatewolfe@foremancompany.com</p>
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Tab 2

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

TRUIST BANK, AS AGENT

Applicant

- and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.

Respondents

**APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND
INSOLVENCY ACT*, R.S.C. 1985 C. B-3, AS AMENDED, AND SECTION 101 OF THE
COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED**

**Affidavit of Sarah A. Bowden
(Sworn January 15th, 2021)**

**I, SARAH A. BOWDEN, of the City of London, in the County of Middlesex, MAKE OATH AND SAY
AS FOLLOWS:**

1. I am a lawyer with the law firm of Foreman & Company Professional Corporation, counsel for the plaintiffs in the action *Kan et al. v. Kew Media Group Inc. et al.*, Court File No. CV-20-00644200-00CP (the “**Action**”). As such, I have personal knowledge of the matters to which I hereinafter depose except for the statements I have indicated are based on information and belief. To the extent that my knowledge is based on information and belief, I identify the source of such information and verily believe the information to be true.

The Receivership Proceedings

2. A Receivership Order was granted against Kew Media Group Inc. (“**Kew Media**”) on February 28, 2020 (the “**Receivership Order**”). FTI Consulting Canada Inc. (the “**Receiver**”) was appointed

as receiver of all of the assets, undertakings and properties of Kew Media and certain related entities (the “**Receivership Order**”). Attached hereto as **Exhibit “A”** is a copy of the Receivership Order.

The Proposed Class Action

3. Alex Kan and Stuart Rath, the plaintiffs in the Action (the “**Plaintiffs**”), retained Thornton Grout Finnigan ^{LLP}, Kalloghlian Myers ^{LLP} and Foreman & Company Professional Corporation (collectively, “Class Counsel”) to commence a class proceeding against Kew Media in relation to damages they and other security holders suffered arising from alleged misrepresentations in Kew Media’s public disclosure.
4. On July 14, 2020, the Plaintiffs sought and obtained an Order from this Court permitting the issuance and service of the Statement of Claim (the “**Lift Stay Order**”). The Lift Stay Order also expressly permitted motions to be brought if necessary in respect of service of the Statement of Claim. Attached hereto as **Exhibit “B”** is a copy of the July 14, 2020 Lift Stay Order, with the schedules omitted for brevity.
5. Pursuant to the Lift Stay Order, the Action was commenced by way of a Statement of Claim issued on July 20, 2020 as against Kew Media and seven of the company’s former officers and directors. Attached hereto as **Exhibit “C”** is a copy of the issued Statement of Claim.
6. To date, service upon the seven individual defendants has been completed with each of their respective counsel agreeing to accept service of the Statement of Claim on their behalf. Attached hereto and marked collectively as **Exhibit “D”** are true copies of the acceptance *Jurats* of the individual defendants.
7. Pursuant to the Receivership Order, the Receiver is authorized and empowered, but not required, to defend all proceedings now pending or hereafter instituted with respect to Kew Media or its property and to settle or compromise any such proceedings.

Service of the Statement of Claim on Kew Media

8. On February 28, 2020, concurrent with the appointment of the Receiver, all directors of Kew Media resigned from their role with the corporation. Attached hereto as **Exhibit “E”** is a copy of the Press Release dated February 28, 2020.
9. I have reviewed the initial and interim reports of the Receiver as they are relevant to effecting service on Kew Media.
10. On April 4, 2020, the Receiver reported the termination of the employment of nine individuals of Kew Media on February 28, 2020, and the resignation of four others between February 28 and April 4, 2020.¹ The Receiver further reported immediately taking steps to secure possession and control over Kew Media’s physical office space (the “**Office**”) by changing the locks and security codes therein.²
11. On August 25, 2020, the Receiver reported the termination of the remaining six employees of Kew Media given that their services were no longer required by the Receiver.³ The Receiver further reported the sale of all remaining furniture and equipment at the Office.⁴
12. On November 23, 2020, the Receiver reported that the leases pertaining to the Office had been terminated effective April and June, 2020.⁵
13. On December 30, 2020 and January 4, 2021, Derek Lanctot, a process server retained by the Plaintiffs attended the former premises of Kew Media at 672 Dupont St., Suite 400, Toronto, Ontario. I am advised by Mr. Lanctot that he was unsuccessful on both attempts. Mr. Lanctot deposed in his Affidavit of Attempted Service that the current tenants of the

¹ Pages 6-7 of the First Report of the Receiver.

² Page 6 of the First Report of the Receiver.

³ Page 3 of the First Interim Report of the Receiver.

⁴ Page 5 of the First Interim Report of the Receiver.

⁵ Page 7 of the Third Report of the Receiver.

premises are Sphere Media and that Kew Media had gone bankrupt and no longer resides at the Office. Attached hereto as **Exhibit “F”** is a copy of the Affidavit of Attempted Service of Derek Lanctot dated January 11, 2021.

14. A copy of the Statement of Claim was served on the Receiver in conjunction with the motion to obtain the Lift Stay Order. Thereafter, a copy of the issued Statement of Claim was provided to the Receiver. The Receiver has acknowledged receipt of the Statement of Claim.
15. On December 21, 2020, the Plaintiffs wrote to the Receiver and requested confirmation that it had accepted service of the issued Statement of Claim on behalf of Kew Media. Attached hereto as **Exhibit “G”** is a copy of my e-mail to the Receiver and its counsel dated December 21, 2020.
16. The Receiver declined to accept service of the Statement of Claim on behalf of Kew Media. Attached hereto as **Exhibit “H”** is a copy of an email dated December 22, 2020 from counsel for the Receiver.

Extension of the Time for Service

17. As a result of the COVID-19 pandemic, the time for taking any step in a proceeding was suspended retroactive to March 16, 2020 by Ontario Regulation 73/20 made under the *Emergency Management and Civil Protection Act*, R.S.O. 1990, c. E.9 (the **“Regulation”**). The Regulation was repealed on September 14, 2020 and the timeline for taking a step in the proceedings resumed on September 14, 2020.
18. As a result, the deadline to serve the Statement of Claim, which was issued on July 20, 2020 during the suspension period under the Regulation, is March 14, 2021.
19. I verily believe that Class Counsel has taken all reasonable steps to date to swiftly effect service on Kew Media by regular and alternative channels. In light of the Receiver’s position, it is anticipated

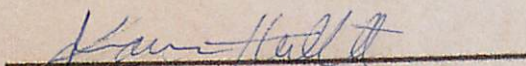
that a motion to validate service or alternatively, a motion for substituted service may be necessary in order to effect service against Kew Media. It is currently anticipated that this motion will be heard with the next lift stay motion.

20. To prevent the potential for any prejudice to the Plaintiffs and members of the putative Class in the Action, the Plaintiffs have requested that the deadline for effecting service be extended for a further 120 days to July 13, 2021.
21. Extending the time for service will advance the just resolution of allegations in the Statement of Claim and will not result in any prejudice to any defendant as all other parties to the Action have been served with the Statement of Claim.

Order Removing Thornton Grout Finnigan from the Class Counsel Team

22. At paragraph 10 of the Lift Stay Order, Justice Koehnen ordered that Thornton Grout Finnigan ^{LLP} ("TGF"), Kalloghlian Myers ^{LLP} and Foreman & Company be appointed as Class Counsel to prosecute the Action. Paul Guy was the partner at TGF with carriage of the file. As of January 1, 2021, Paul Guy withdrew from the partnership of TGF and joined Kalloghlian Myers ^{LLP}.
23. Given Mr. Guy's departure, TGF is no longer involved in the litigation and has consented to its removal as counsel. Individual counsel to the Plaintiffs in the Class Counsel group remains unchanged.
24. I make this affidavit in support of a motion for an order extending the time for service and removing TGF as counsel of record and for no other or improper purpose.

SWORN BEFORE ME by *video conference*)
in the City of London, in the County of)
Middlesex, in the Province of Ontario, this)
15th day of January, 2021.)


Commissioner for Taking Affidavits

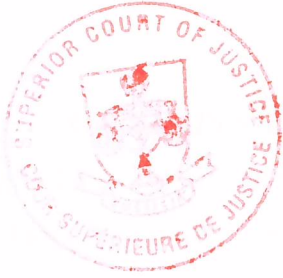

SARAH A. BOWDEN

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.

**This is EXHIBIT “A” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.



Court File No. CV-20-00637081-00CL

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

THE HONOURABLE
JUSTICE KOEHNEN

)
)
)

FRIDAY, THE 28TH
DAY OF FEBRUARY, 2020

TRUIST BANK, AS AGENT

Applicant

- and -

**KEW MEDIA GROUP INC., KEW MEDIA INTERNATIONAL (CANADA) INC., AND
ARCHITECT FILMS INC.**

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43 AS AMENDED

**ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant, Truist Bank (“**Truist**”), in its capacity as agent for a syndicate of lenders consisting of Truist, Bank of Montreal and The Toronto-Dominion Bank, for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing FTI Consulting Canada Inc. (“**FTI**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of Kew Media Group Inc. (“**Kew**”), and Kew Media International (Canada) Inc. (“**KMICI**”), acquired for, or used in relation to a business carried on by Kew and KMICI (together, Kew and KMICI are the “**Debtors**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Juan De Jesus-Caballero sworn February 27, 2020, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, counsel for the Debtors, counsel for the Receiver, [and counsel for Bank of Montreal as financier to certain production subsidiaries of the Debtors] no one else appearing although duly served as appears from the affidavit of service of Amanda Campbell sworn February 27, 2020, and on reading the consent of FTI to act as the Receiver,

SERVICE

1 **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application 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 243(1) of the BIA and section 101 of the CJA, FTI is hereby appointed Receiver, without security of all of the assets, undertakings and properties of the Debtors Kew and KMICI acquired for, or used in relation to a business carried on by Kew and KMICI, including all proceeds thereof (the "**Property**").

RECEIVER'S POWERS

3 **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent

security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

- (c) to manage, operate, and carry on the business of the Debtors Kew and KMICI, 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 Debtors Kew and KMICI;
- (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 Debtors Kew and KMICI or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 Debtors, 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 Debtors, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby

conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$2,500,000, provided that the aggregate consideration for all such transactions does not exceed \$10,000,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;

- (l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors Kew and KMICI;
- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors Kew and KMICI;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have;
- (r) with the consent of the Applicant, to make such payments as the Receiver may deem necessary or appropriate to or for the benefit of employees, contractors, suppliers, counterparties, joint venture partners, consultants, advisors, and creditors of any direct or indirect subsidiary of the Debtors; and
- (s) 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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4 **THIS COURT ORDERS** that (i) the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant

immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5 **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6 **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information. *See para 6A attached vllk*

7 **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least

6A. THIS COURT ORDERS that the Receiver shall not destroy during its appointment any Records of the Debtors or any books, documents, contracts, orders, accounting and corporate records or any other papers, records or information of any kind related to the business or affairs of the Debtors' affiliates in the possession, custody or control of the Receiver, whether in hard copy or electronic form (the "Affiliate Records"). The Receiver shall, subject to applicable privacy law, provide the current and former directors and officers of the Debtors and their affiliates with reasonable access at their expense (excluding the costs of the Receiver or its counsel) to the Records and the Affiliate Records, and such directors and officers shall have the right to make and retain copies of such records at their expense (excluding the costs of the Receiver or its counsel). This paragraph may only be amended by Court order following reasonable notice to the directors and officers of the Debtor and its affiliates as of the date of this Order.

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. If the Receiver occupies and has the use and enjoyment of any premises that are subject to a real property lease entered into by the Debtors Kew and KMICI, the Receiver shall pay all amounts constituting rent or payable as rent under the real property lease (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Receiver and the landlord from time to time ("**Rent**"), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

NO PROCEEDINGS AGAINST THE RECEIVER

8 **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

9 **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

10 **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Property, 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 BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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 Debtors, 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 Debtors 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 Debtors 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 Debtors' 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 Debtors 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 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 Debtors shall remain the employees of the Debtors until such time as the Receiver, on the Debtors' behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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 Debtors, 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 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 of 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 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, provided that the outstanding principal amount does not exceed US\$2,200,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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.

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 Certificates**") 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.

SERVICE AND NOTICE

25 **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://cfcanda.fticonsulting.com/kmg>.

26 **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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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

27 **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.

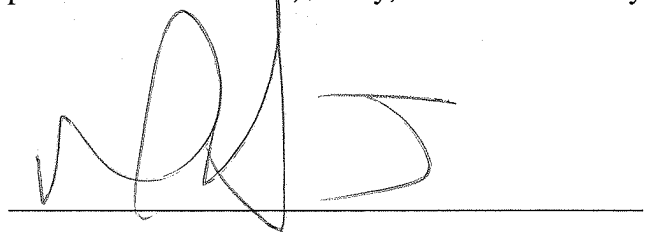
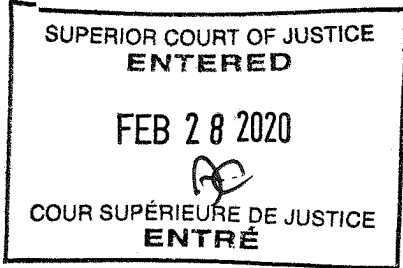
28 **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtors.

29 **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30 **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.

31 **THIS COURT ORDERS** that the Plaintiff shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Plaintiff's security or, if not so provided by the Plaintiff's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtors' estate with such priority and at such time as this Court may determine.

32 **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.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end, positioned above a horizontal line.

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

33 THIS IS TO CERTIFY that FTI Consulting Canada Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties Kew Media Group Inc. ("**Kew**") and Kew Media International (Canada) Inc. ("**KMICI**") acquired for, or used in relation to a business carried on by Kew and KMICI, 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 February, 2020 (the "**Order**") made in an action having Court file number __-CL-_____, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of US\$_____, being part of the total principal sum of US\$_____ which the Receiver is authorized to borrow under and pursuant to the Order.

34 The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon. Interest is to be calculated at a rate equal to the Base Rate as defined in the Credit Agreement, plus 4.75%. Interest shall be calculated on the basis of a year of 365 days and paid for the actual number of days elapsed by capitalizing such interest to the principal balance of the advances made hereunder on the last day of each month.

35 Credit Agreement means the Amended and Restated Revolving Credit and Term Loan Agreement dated as of July 23, 2018 (as amended, supplemented or otherwise modified from time to time) among Truist Bank ("**Truist**"), as the Agent for syndicate of lenders comprising Truist, Bank of Montreal, and The Toronto Dominion Bank, as lenders, and Kew and Kew Media International Limited, as co-borrowers.

36 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.

37 All sums payable in respect of principal and interest under this certificate are payable at the office of the Agent in Charlotte, North Carolina.

38 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.

39 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.

40 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 _____, 2020.

FTI Consulting Canada Inc., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

TRUIST BANK, AS AGENT

- and -

KEW MEDIA GROUP INC., et al.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**ORDER
(appointing Receiver)**

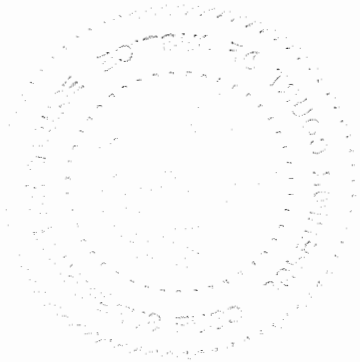
DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Kenneth Kraft (LSO # 31919P)
Tel: (416) 863-4374
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Robert Kennedy (LSO # 474070)
Tel: (416) 367-6756
robert.kennedy@dentons.com

Mark A. Freake (LSO #63656H)
Tel: (416) 863-4456
mark.freake@dentons.com

Lawyers for the Applicant, Truist Bank, as Agent



**This is EXHIBIT “B” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc..
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.

(iv) serving (as necessary), filing and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement;

(2) appointing Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company as counsel to prosecute the Action and declaring that no other proceeding may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court; and

(3) directing that FTI Consulting Canada Inc., in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the undertaking, property and assets of, *inter alia*, Kew Media, disclose and produce to the Plaintiffs all potentially responsive insurance policies under which an insurer may be liable to satisfy all or part of any judgment against Kew Media or any of its Directors, Officers or advisors in the Action and ancillary information (the “**Insurance Policy Disclosure Relief**”), was heard this day in Toronto by way of judicial video conference via Zoom, with the Insurance Policy Disclosure Relief being adjourned on consent to July 21, 2020 at 2:15 pm.

ON READING the Plaintiffs’ Motion Record (dated July 8, 2020), Supplemental Motion Record (dated July 10, 2020) and Factum (dated July 13, 2020), all filed;

AND UPON hearing the submissions of counsel for the Plaintiffs and the Receiver, no one else appearing for any other person on the Service List, although duly served as appears from the affidavits of service of Rose Bozzelli sworn July 8, 2020, July 10 and July 13, all filed:

TIME FOR SERVICE

1. **THIS COURT ORDERS** that the time for service of the Plaintiffs’ Motion Record and Supplemental Motion Record be and is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with any further service thereof.

LIFT STAY

2. **THIS COURT ORDERS** that the stay of proceedings (the “**Stay of Proceedings**”) provided for in the Order of this Court appointing the Receiver in the within proceedings dated

February 28, 2020 (the “**Appointment Order**”), be and is hereby lifted for the sole and limited purpose of: (i) granting the Plaintiffs leave to issue and file with the court and serve the Statement of Claim in substantially the form attached hereto as **Schedule “A”** (the “**Statement of Claim**”); (ii) granting the Plaintiffs leave to file with the court the Plaintiffs’ Motion for Certification and for Leave under Part XXIII.1 of the Ontario *Securities Act*; (iii) serving (as necessary), filing with the court and hearing any motion(s) related to the service of the Statement of Claim and/or the Plaintiffs’ Motion for Certification and Leave under Part XXIII.1 of the Ontario *Securities Act*; and (iv) serving (as necessary), filing with the court and hearing any motions related to the court approval of a third-party adverse costs indemnity and disbursement funding agreement, provided that no further steps shall be taken in the Action in respect of Kew Media or the Receiver without further Order of this Court.

3. **THIS COURT ORDERS** that, subject to further Order of this Court, the Receiver shall not be required to participate in or defend the Action or any hearing authorized in paragraph 2 above, or to incur any costs in respect of the Action or such hearings. Subject to: (i) an agreement between the Plaintiffs and the Receiver; or (ii) further Order of this Court, the Plaintiffs and defendants in the Action shall not:

- (a) seek, make, or obtain, whether directly or indirectly, as the case may be, any further claim, counterclaim or recovery from, against, or in respect of the Receiver, Kew Media or any other entity that is, or has assets, subject to the Appointment Order (collectively, the “**Receiver and Debtor Entities**”);
- (b) add any of the Receiver and Debtor Entities, other than Kew Media, to the Action;
- (c) seek, or obtain, any costs awards, judgments or any relief of any kind against, or in respect of the Receiver and Debtor Entities in the Action; or
- (d) seek, or obtain, any discovery from, or examination or participation of, the Receiver and Debtor Entities in the Action.

4. **THIS COURT ORDERS** that except as expressly provided for in this Order: (i) all other stays of proceedings provided for in the Appointment Order; and (ii) all rights and protections in favour of the Receiver, remain in full force and effect in accordance with the terms of the Appointment Order.

5. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action to submit proofs of claim in the within proceedings or any other restructuring, insolvency, receivership, bankruptcy or other similar proceedings in respect of the subject matter of the Statement of Claim or otherwise, and to share in any distribution made in such proceedings to creditors in accordance with their respective entitlements, if any.

6. **THIS COURT ORDERS** that nothing herein shall affect the rights of the Plaintiffs or the putative class members in the Action as against the current and/or future defendants, named in or later added to the Statement of Claim, who are not subject to the Appointment Order.

7. **THIS COURT ORDERS** that to the extent that any statute of limitations or other notice or limitation period (or any other time period of similar effect) under Canadian law or any other applicable law, or any rule of civil procedure (a “**Limitation Period**”) in connection with any of the claims against Kew Media that are the subject of the Statement of Claim (the “**Tolled Claims**”) expires on or after the date hereof (the “**Effective Date**”), such Limitation Period shall be and is hereby tolled such that it ceases to continue running as of the Effective Date and, for greater certainty, that all time elapsing on or after the Effective Date shall not be counted in determining any such Limitation Period. Kew Media may not raise the expiration of any Limitation Period as a defence, estoppel, limitation or bar to any Tolled Claims as against them unless such Limitation Period had already expired prior to the Effective Date.

8. **THIS COURT ORDERS AND DECLARES** that this Order is not, and shall not be deemed to be, an acknowledgement of any merits or substance of the Action, and no party to the Action shall be deemed by virtue of this Order to have made any admission, acknowledgment or acquiescence of or to any liability in the Action. All rights, remedies and defences of the parties, including regarding whether the Stay of Proceedings should be lifted to permit the continuation of the Action, are expressly reserved.

9. **THIS COURT ORDERS AND DECLARES** that, subject to further Order of this Court, it retains exclusive jurisdiction with respect to the within proceedings, the Receiver, the assets, property and undertaking of Kew Media, and the other matters that are set out in or the subject of the Appointment Order (including, without limitation, the Stay of Proceedings).

CARRIAGE

10. **THIS COURT ORDERS** that Thornton Grout Finnigan LLP, Kalloghlian Myers LLP and Foreman & Company are hereby appointed to prosecute the Action.

11. **THIS COURT ORDERS** that no other action may be commenced in Ontario on behalf of Kew Media shareholders in respect of the subject matter of the Action without leave of this Court granted on notice to the Receiver and the Plaintiffs.

GENERAL

12. **THIS COURT MAKES NO ORDER** as to costs of this Motion.

13. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

14. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 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.

15. **THIS COURT ORDERS** that this order is effective from today's date and is not required to be entered.

RAJ

Court File No.: CV-20-00637081-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

LIFT STAY ORDER

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**This is EXHIBIT “C” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.



Electronically issued : 20-Jul-2020
Délivré par voie électronique : 20-Jul-2020
Toronto

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N :

ALEX KAN and STUART RATH

Plaintiffs

- and -

**KEW MEDIA GROUP INC., STEVEN SILVER,
GEOFFREY WEBB, DAVID FLECK, MAURICE KAGAN,
PATRICE MERRIN, PETER SUSSMAN and ERICK KWAK**

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992, S.O. 1992, c.6*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer 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.

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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 PLAINTIFF’S CLAIM, and costs, within the time for serving 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 plaintiff’s claim and costs and have the costs assessed by the court.

Date: July __, 2020

Issued by _____
Local Registrar

Address of court office Superior Court of Justice
330 University Ave.
Toronto, ON M5G 1R7

TO: **KEW Media Group Inc.**
672 Dupont Street, Suite 400
Toronto, Ontario M6G 1Z6

c/o FTI Consulting Canada Inc. in its capacity as receiver of certain assets of KEW Media Group Inc.

AND TO: **Steven Silver**, c/o KEW Media Group Inc.

AND TO: **Geoffrey Webb**, c/o KEW Media Group Inc.

AND TO: **David Fleck**, c/o KEW Media Group Inc.

AND TO: **Maurice Kagan**, c/o KEW Media Group Inc.

AND TO: **Patrice Merrin**, c/o KEW Media Group Inc

AND TO: **Peter Sussman**, c/o KEW Media Group Inc

AND TO: **Erick Kwak**, c/o KEW Media Group Inc.

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I. RELIEF SOUGHT

1. The Plaintiffs claim:

- (a) an order granting leave to proceed with the statutory claim for misrepresentation under Part XXIII.1 of the *OSA* and, if necessary, the corresponding provisions of the Other Securities Legislation;
- (b) an order pursuant to the *CPA* certifying this action as a class proceeding and appointing the Plaintiffs as the representative plaintiffs for the Class;
- (c) a declaration that the Impugned Documents contained one or more misrepresentations within the meaning of the *OSA* and the Other Securities Legislation, and at common law;
- (d) a declaration that the Individual Defendants authorized, permitted or acquiesced in the making of the misrepresentations while knowing them to be misrepresentations;
- (e) a declaration that KEW is vicariously liable for the acts and omissions of the Individual Defendants;
- (f) damages, including punitive damages, in an amount to be proven at trial;
- (g) an order directing a reference or giving such other directions as may be necessary to determine any issues not determined in the trial of the common issues;
- (h) an equitable rate of interest on all sums found due and owing to the plaintiff and the class members or, in the alternative, prejudgment interest and post judgment interest, pursuant to sections 128 and 129 of the *CJA*;
- (i) costs of this action, plus the costs of notices and of administering the plan of distribution of the recovery in this action pursuant to s. 26(9) of the *CPA*; and
- (j) such further and other relief as this Honourable Court deems just.

II. DEFINED TERMS

2. The capitalized terms used in this claim have the following meanings:

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- (a) “**AIF**” means Annual Information Form;
- (b) “**CEO**” means Chief Executive Officer;
- (c) “**CFO**” means Chief Financial Officer;
- (d) “**CJA**” means the *Courts of Justice Act*, R.S.O 1990, c. C.43;
- (e) “**Class**” or “**Class Members**” means all persons or entities who acquired **KEW**’s securities in the secondary market during the **Class Period**, other than the **Excluded Persons**;
- (f) “**Class Period**” means the period from March 28, 2017 to January 16, 2020;
- (g) “**CPA**” means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6;
- (h) “**Credit Facility**” means the agreement between **KEW** and its **Lenders**, as originally entered into and as amended;
- (i) “**CSA**” means the Canadian Securities Administrators;
- (j) “**DC&P**” means disclosure controls and procedures, as defined in section 1(1) of NI 52-109;
- (k) “**Defendants**” means **KEW** and the **Individual Defendants**;
- (l) “**Excluded Persons**” means **KEW** or any of its directors and the **Individual Defendants**;
- (m) “**Fleck**” means the defendant, David Fleck, who was a director of **KEW** and a Chair of its Audit Committee during the **Class Period**;
- (n) “**GAAP**” means generally accepted accounting principles;
- (o) “**IAS**” means International Accounting Standard;
- (p) “**ICFR**” means internal controls over financial reporting, as defined in section 1(1) of NI 52-109;
- (q) “**IFRS**” means International Financial Reporting Standards;
- (r) “**Impugned Documents**” means **KEW**’s:
 - (i) Audited Annual Financial Statements for the year ended December 31, 2016 filed on **SEDAR** on March 28, 2017;
 - (ii) **MD&A** for the year ended December 31, 2016 filed on **SEDAR** on March 28, 2017;

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- (iii) **AIF** for the year ended December 31, 2016 filed on **SEDAR** on March 28, 2017;
- (iv) Form 52-109FA Certification of Annual Filings (CEO), filed on **SEDAR** on March 28, 2017;
- (v) Form 52-109FA Certification of Annual Filings (CFO), filed on **SEDAR** on March 28, 2017;
- (vi) Interim Financial Statements for the three months ended March 31, 2017, filed on **SEDAR** on May 15, 2017;
- (vii) **MD&A** for the three months ended March 31, 2017, filed on **SEDAR** on May 15, 2017;
- (viii) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on May 15, 2017;
- (ix) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on May 15, 2017;
- (x) Interim Financial Statements for the three month period ended June 30, 2017, filed on **SEDAR** on August 10, 2017;
- (xi) **MD&A** for the three month period ended June 30, 2017, filed on **SEDAR** on August 10, 2017;
- (xii) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on August 10, 2017;
- (xiii) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on August 10, 2017;
- (xiv) Interim Financial Statements for the three months ended September 30, 2017, filed on **SEDAR** on November 9, 2017;
- (xv) **MD&A** for the three months ended September 30, 2017, filed on **SEDAR** on November 9, 2017;
- (xvi) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on November 9, 2017;
- (xvii) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on November 9, 2017;
- (xviii) Audited Annual Financial Statements for the year ended December 31, 2017 filed on **SEDAR** on April 3, 2018;

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- (xix) **MD&A** for the year ended December 31, 2017 filed on **SEDAR** on April 3, 2018;
- (xx) **AIF** for the year ended December 31, 2017 filed on **SEDAR** on April 3, 2018;
- (xxi) Form 52-109FA Certification of Annual Filings (CEO), filed on **SEDAR** on April 3, 2018;
- (xxii) Form 52-109FA Certification of Annual Filings (CFO), filed on **SEDAR** on April 3, 2018;
- (xxiii) Interim Financial Statements for the three months ended March 31, 2018, filed on **SEDAR** on May 15, 2018;
- (xxiv) **MD&A** for the three months ended March 31, 2018, filed on **SEDAR** on May 15, 2018;
- (xxv) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on May 15, 2018;
- (xxvi) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on May 15, 2018;
- (xxvii) Management Information Circular dated May 11, 2018, filed on **SEDAR** on May 16, 2018;
- (xxviii) Interim Financial Statements for the three months ended June 30, 2018, filed on **SEDAR** on August 14, 2018;
- (xxix) **MD&A** for the three months ended June 30, 2018, filed on **SEDAR** on August 14, 2018;
- (xxx) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on August 14, 2018;
- (xxxi) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on August 14, 2018;
- (xxxii) Interim Financial Statements for the three months ended September 30, 2018, filed on **SEDAR** on November 13, 2018;
- (xxxiii) **MD&A** for the three months ended September 30, 2018, filed on **SEDAR** on November 13, 2018;
- (xxxiv) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on November 13, 2018;

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- (xxxv) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on November 13, 2018;
- (xxxvi) Audited Annual Financial Statements for the year ended December 31, 2018, filed on **SEDAR** on April 1, 2019;
- (xxxvii) **MD&A** for the year ended December 31, 2018, filed on **SEDAR** on April 1, 2019;
- (xxxviii) **AIF** for the year ended December 31, 2018 filed on **SEDAR** on April 1, 2019;
- (xxxix) Form 52-109FA Certification of Annual Filings (CEO), filed on **SEDAR** on April 1, 2019;
- (xl) Form 52-109FA Certification of Annual Filings (CFO), filed on **SEDAR** on April 1, 2019;
- (xli) Management Information Circular dated April 4, 2019, filed on **SEDAR** on April 11, 2019;
- (xlii) Interim Financial Statements for the three months ended March 31, 2019, filed on **SEDAR** on May 14, 2019;
- (xliii) **MD&A** for the three months ended March 31, 2019, filed on **SEDAR** on May 14, 2019;
- (xliv) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on May 14, 2019;
- (xlv) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on May 14, 2019;
- (xlvi) Interim Financial Statements for the three months ended June 30, 2019, filed on **SEDAR** on August 13, 2019;
- (xlvii) **MD&A** for the three months ended June 30, 2019, filed on **SEDAR** on August 13, 2019;
- (xlviii) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on August 13, 2019;
- (xlix) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on August 13, 2019;
- (l) Form 52-109F2R Certification of Refiled Interim Filings (CEO), filed on **SEDAR** on August 16, 2019;

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- (li) Form 52-109F2R Certification of Refiled Interim Filings (CFO), filed on **SEDAR** on August 16, 2019;
- (lii) Interim Financial Statements for the three months ended September 3, 2019, filed on **SEDAR** on November 14, 2019;
- (liii) **MD&A** for the three months ended September 3, 2019, filed on **SEDAR** on November 14, 2019;
- (liv) Form 52-109F2 Certification of Interim Filings (CEO), filed on **SEDAR** on November 14, 2019;
- (lv) Form 52-109F2 Certification of Interim Filings (CFO), filed on **SEDAR** on November 14, 2019;

in each case, where applicable, including all documents incorporated by reference therein;

- (s) “**Independent Auditor’s Reports**” means the two audit opinions in respect of **KEW**’s consolidated financials statements provided by Grant Thornton LLP for the fiscal years ended December 31, 2017 and December 31, 2018;
- (t) “**Individual Defendants**” means **Silver, Webb, Fleck, Kagan, Merrin, Sussman** and **Kwak**, collectively;
- (u) “**Kagan**” means the defendant, Maurice Kagan, who was a director of **KEW** and a member of its Audit Committee during the **Class Period**;
- (v) “**KEW**” means the defendant, KEW Media Group Inc.;
- (w) “**Kwak**” means the defendant, Erick Kwak, who was the Executive Vice President, Head of Legal & Business Affairs and Chief Legal Officer during the **Class Period**;
- (x) “**Lenders**” means a syndicate of SunTrust Bank (now Truist Bank), SunTrust Robinson Humphrey, Inc., The Toronto-Dominion Bank and Bank of Montreal;
- (y) “**MD&A**” means Management’s Discussion and Analysis;
- (z) “**Merrin**” means the defendant, Patrice Merrin, who was a director of **KEW** and a member of its Audit Committee during the **Class Period**;
- (aa) “**NI 52-109**” means CSA National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*;
- (bb) “**OSA**” means the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended;

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- (cc) “**Other Securities Legislation**” means, collectively, the *Securities Act*, RSA 2000, c S-4, as amended; the *Securities Act*, RSBC 1996, c 418, as amended; the *Securities Act*, CCSM c S50, as amended; the *Securities Act*, SNB 2004, c S-5.5, as amended; the *Securities Act*, RSNL 1990, c S-13, as amended; the *Securities Act*, SNWT 2008, c 10, as amended; the *Securities Act*, RSNS 1989, c 418, as amended; the *Securities Act*, S Nu 2008, c 12, as amended; the *Securities Act*, RSPEI 1988, c S-3.1, as amended; the *Securities Act*, RSQ c V-1.1, as amended; the *Securities Act*, 1988, SS 1988-89, c S-42.2, as amended; and the *Securities Act*, SY 2007, c 16, as amended;
- (dd) “**SEDAR**” means the System for Electronic Document Analysis and Retrieval, which is a filing system developed for the CSA;
- (ee) “**Silver**” means the defendant, Steven Silver, who was **KEW**’s **CEO** and a director of **KEW** during the **Class Period**;
- (ff) “**Sussman**” means the defendant, Peter Sussman, who was the Executive Chairman of **KEW**’s Board of Directors during the **Class Period**.
- (gg) “**TSX**” means the Toronto Stock Exchange; and
- (hh) “**Webb**” means the defendant, Geoffrey Webb, who was **KEW**’s **CFO** until his departure from the company on December 10, 2019.

III. OVERVIEW

3. This action concerns a failure to properly manage and disclose fundamentally material information at the level of the C-Suite, the board of directors and the company’s audit committee. The Defendants were, at all material times, high level executives, officers, directors and members of the company’s audit committee with proximity to the information that was misrepresented and/or which they failed to disclose.

4. **KEW** was formed in 2015 as a special purpose acquisition company to acquire businesses in the media production and distribution sectors. It listed on the **TSX**. By 2017, **KEW** had already acquired stakes in 11 companies. **KEW**’s acquisitions continued over the following two years, and by 2019 it had a library boasting some of the biggest TV

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shows in the world and appeared to be well on its way to becoming a major player in the global TV production and distribution industry.

5. All of this growth made KEW appear to be an attractive investment, but all of these acquisitions put significant pressure on KEW's cash flow and working capital. Unbeknownst to investors at the time, KEW masked its working capital deficiencies by accessing funds from the bank accounts of its affiliates and supplying false information to its Lenders.

6. Commencing on December 11, 2019, KEW initiated a cascade of sequential information releases which revealed for the first time that there were enormous and fundamental problems within the company. KEW had materially misstated integral economic metrics pertaining to its working capital. Furthermore, a senior financial officer in the company had provided materially inaccurate information to KEW's Lenders. The results for the company were catastrophic and included but were not limited to:

- (a) KEW announcing on December 11, 2019 that its CFO, Webb had provided inaccurate information regarding working capital to the company and to KEW's Lenders;
- (b) KEW announcing on December 11, 2019 the departure of its CFO Webb from the company;
- (c) the formation of a special committee to investigate strategic transactions on December 11, 2019;
- (d) the Lenders for the company's senior secured Credit Facility issuing a Notice of an Event of Default on December 12, 2019;
- (e) the company issuing an amended borrowing base certificate showing a collateral deficiency of approximately \$56 million on December 16, 2020;

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- (f) KEW's auditors withdrawing and disclaiming the Independent Auditor's Reports and its interim review reports to the audit committee for each interim period within the 2017, 2018 and 2019 fiscal years on January 15, 2020;
- (g) the company forming a second special committee to investigate misrepresentations in the financial statements on January 15, 2020;
- (h) the Ontario Securities Commission issuing a temporary cease-trade order on January 16, 2020;
- (i) the Ontario Securities Commission issuing a permanent cease-trade order on January 29, 2020;
- (j) the company being placed into Court-Ordered receivership on February 28, 2020; and,
- (k) the TSX delisting all KEW securities effective April 9, 2020.

7. As a result of material misrepresentations made by the Defendants, KEW's share price plummeted and the market value of KEW's shares owned by Class Members was decimated.

8. This claim seeks to recover the significant damages that were suffered by KEW's shareholders who were left holding shares that are now worthless on account of the misconduct of KEW, its senior management and the audit committee.

IV. THE PARTIES

A. The Plaintiffs

9. The Plaintiff, Alex Kan, resides in Toronto, Ontario. Mr. Kan purchased 1,600 KEW shares on the TSX during the Class Period and continued to own these shares at the end of the Class Period.

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10. The Plaintiff, Stuart Rath, resides in Truro, Nova Scotia. Mr. Rath purchased 30,000 KEW shares on the TSX during the Class Period and continued to own these shares at the end of the Class Period.

B. The Defendants

11. The Defendant KEW is incorporated under the *Business Corporations Act* (Ontario). Its registered office is in Toronto, Ontario. At all material times, KEW was a publicly traded company with its shares listed on the TSX under the symbol “KEW”.

12. The Defendant Silver was KEW’s CEO and a member of the board of directors from November 3, 2015 until his resignation from the company on February 28, 2020.

13. The Defendant Webb was KEW’s CFO during the Class Period until his departure from the company on December 10, 2019.

14. As CEO and CFO, Silver and Webb were both responsible for ensuring that KEW established and maintained DC&P and ICFR. Silver and Webb both certified, pursuant to NI 52-109, KEW’s Impugned Documents that were interim and annual financial statements and MD&As, and in doing so, adopted as their own the false statements in them. As CEO and CFO, Silver and Webb caused KEW to make the misrepresentations set out below.

15. The Defendant Sussman was the Executive Chairman of KEW’s Board of Directors during the Class Period. During the Class Period, Sussman, on behalf of the Board of Directors, signed each of the company’s interim and annual financial statements issued between April 3, 2018 and November 14, 2019, and in doing so, he adopted as his own the false and misleading statements made in them.

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16. The Defendants, Fleck, Kagan and Merrin were all directors of KEW and were financially literate members of its audit committee at various times during the Class Period, as set out in the chart below:

	2017	2018	2019
Fleck	✓ (Chair)	✓ (Chair)	✓ (Chair)
Kagan		✓	✓
Merrin	✓	✓	✓

17. KEW's Board of Directors carried out its responsibility for the company's financial reporting principally through its audit committee. The audit committee reviewed KEW's continuous financial disclosure at issue in this claim. The audit committee also met regularly with KEW's management and external auditors (Grant Thornton LLP) to discuss DC&P, ICFR, auditing matters and other financial reporting issues and made recommendations to the board of directors as required.

18. Fleck, on behalf of the board of directors, signed all annual audited financial statements issued during the Class Period and all interim statements between April 3, 2018 and November 14, 2019, and in doing so, he adopted as his own the false and misleading statements made in those documents.

19. As a board member, Kagan adopted, as his own, the false and misleading statements made in each of KEW's consolidated interim and audited annual financial statements released while he was a board member, when such statements were signed on his behalf.

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20. As a board member, Merrin adopted, as her own, the false and misleading statements made in each of KEW's consolidated interim and audited annual financial statements released while she was a board member, when such statements were signed on her behalf.

21. The defendant Kwak was appointed as the Executive Vice President, Head of Legal & Business Affairs, and Chief Legal Officer of KEW on March 20, 2017 and continues at the present time to hold that position. As an officer, he authorized, permitted, or acquiesced in KEW making the misrepresentations and/or omissions particularized below.

22. All of the Individual Defendants caused KEW to make the misrepresentations particularized below and adopted as their own those false statements when they approved them and when they were signed on their behalf.

V. FACTUAL BACKGROUND

23. KEW's primary business is the acquisition and management of film and television development, production and distribution companies.

24. KEW commenced trading on the TSX as a special purpose acquisition company in July of 2016, under the symbols KEW.A and KEW.WT.

25. On March 20, 2017, KEW closed the special purpose acquisition by acquiring all of the issued and outstanding shares of each of Content Media Corporation plc, Architect Films Inc., Bristow Global Media Inc., Frantic Films Corporation, Media Headquarters Film & Television Inc. and Our House Media Inc., for total consideration of approximately

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\$120.3 million, including the assumption of \$56 million of borrowings. Following the close of the special purpose acquisition, KEW's common stock qualified to trade on the TSX.

26. On March 23, 2017, the company's shares began trading under the symbol KEW.

27. On May 15, 2017, KEW released its first quarter interim financial statements and MD&A, for the 11 days following the Qualifying Acquisition. The company stated:

On May 4, 2017, Content Media Corporation International Limited, part of CMC, signed a commitment letter with SunTrust Robinson Humphrey, Inc. to establish a new US\$75 million senior secured revolving credit facility. The facility will be originally secured against all the assets of CMC (excluding Spirit Digital Media LLC, Collins Avenue LLC, Jigsaw Productions LLC, Preferred Film & Television LLC and Aito Media OY and all of the subsidiaries of the above listed companies) and it will also be guaranteed by Kew.

28. Subsequently, on June 29, 2017, KEW announced in a press release the signing of a second commitment letter that increased the facility to USD \$100 million and provided for a syndicate of lenders.

29. In the second quarter MD&A released on August 2, 2017, KEW announced that SunTrust Bank, SunTrust Robinson Humphrey, Inc., The Toronto-Dominion Bank and Bank of Montreal finalized the terms of a USD \$100 million credit facility with an additional USD \$25 million accordion feature.

30. On August 13, 2019, KEW reported in its second quarter MD&A and interim financial statements. Further, KEW announced that the Lenders commitment under the Credit Facility had increased by USD \$10 million.

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31. On November 14, 2019, KEW reported its third quarter financial results. KEW stated in its third quarter MD&A and interim consolidated financial statements that the leverage coverage ratio under the lending facility would not have been met upon filing of the September 2019 compliance certificate with the Syndicate. KEW announced a further amendment to the lending facility that removed the leverage coverage ratio provision, amended the library and unsold credits in the borrowing base, reclassified a portion of the debt as a term loan, and increased the interest rate.

32. On December 11, 2019, without any prior public announcements, KEW announced that Webb had provided inaccurate information regarding working capital to KEW's Lenders and the company. KEW further announced Webb's departure from the company, and the formation of a special committee to consider strategic alternative transactions for the company.

33. In its press release of December 11, 2019, KEW stated:

KEW has also learned that certain reports provided by Geoff Webb, the Company's Chief Financial Officer, to the Company and its senior lenders contained inaccurate information regarding working capital. Mr. Webb has now left the Company. The Company is conducting a detailed review of these matters with the support of its financial and legal advisors and is currently in discussions with its senior lenders regarding this and its short-term liquidity requirements. ...

VI. KEW'S MISREPRESENTATIONS TO THE MARKET

34. As a reporting issuer in Ontario, KEW was required throughout the Class Period to issue and file on SEDAR:

- (a) annual and interim financial statements within 45 days of the end of each fiscal quarter;

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- (b) annual financial statements within 90 days of the end of the fiscal year;
- (c) MD&A contemporaneously with each of the above (MD&As being a narrative explanation of how the company performed during the period covered by the financial statements, as well the company's financial condition and future prospects); and
- (d) an AIF within 90 days of the end of the fiscal year (AIFs being an annual disclosure document intended to provide material information about the company and its business at a point in time in the context of its historical and future development.

35. As set out below, the Impugned Documents, all of which were public disclosures made by KEW as required under the *OSA*, each contained one or more misrepresentations as defined by section 1 of the *OSA* and the Other Securities Legislation.

A. Misrepresentation Relating to Working Capital

36. During the Class Period, the Defendants reported inaccurate financial results and figures relating to KEW's working capital. Working capital is a measure of a company's liquidity. It is calculated by subtracting current liabilities from current assets.

37. The Impugned Documents that were quarterly and annual financial statements, MD&As and AIFs each contained misrepresentations regarding KEW's current assets and current liabilities and/or other financial information impacting the calculation of KEW's working capital. Such incorrect figures, directly and indirectly, resulted in a material overstatement in the calculation of KEW's working capital.

B. Misrepresentation Relating to Meeting Credit Facility Loan Covenants

38. During the Class Period, the Defendants falsely represented that KEW complied with the covenants in its Credit Facility.

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39. The Credit Facility contained standard covenants, including in relation to KEW's liquidity and leverage coverage ratios.

40. The Credit Facility also required KEW to provide accurate information to its Lenders in the form of a compliance certificate within 60 days of the end of each fiscal quarter in relation to KEW's cash flow and working capital, among other things.

41. Each of KEW's quarterly or annual financial statements and MD&A issued between Q3 2017 and the end of the Class Period stated that KEW met all the lending covenants in its Credit Facility with the Lenders.

42. These representations were false. KEW did not meet all applicable covenants under the Credit Facility with the Lenders during the Class Period, including in relation to KEW's cash flow and working capital.

43. In its interim financial statements for the period ending September 30, 2019, KEW disclosed that it would not have met the terms of the leverage coverage ratio under the Credit Facility. As a result, KEW renegotiated the terms of the Credit Facility on November 12, 2019 to delete the leverage coverage ratio in its entirety.

44. Crucially, KEW failed to disclose at that time that in the process, it had utilized inaccurate information, including in respect of KEW's cash flow and working capital, in the information that it had provided to its Lenders.

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C. Misrepresentation Relating to Availability of Sufficient Financial Resources

45. During the Class Period, the Defendants represented that KEW had sufficient financial resources at its disposal to fund ongoing operations, both through cash flows from operations and through the funds available under the company's Credit Facility. The Defendants failed and omitted to disclose the deficiency underlying the base borrowing certificates and/or that funds to support the company's ongoing operations were being accessed from KEW's subsidiaries.

46. Each of KEW's interim or annual financial statements and MD&A's issued between Q3 2017 and the end of the Class Period contained misrepresentations regarding KEW's financial resources and the company's ability to fund its ongoing operations. Such misrepresentations materially overstated the financial position of the company and the availability of access to sufficient financial resources to maintain the company as a going concern.

D. Misrepresentation About IFRS and IAS Compliance

47. During the Class Period, the Defendants falsely stated that KEW's financial results were reported in accordance with IFRS and IAS.

48. Each of the Impugned Documents that were quarterly and annual financial statements, MD&As, and AIFs stated that KEW's annual financial statements were prepared in accordance with IFRS, and that its interim financial statements were prepared in accordance with IAS 34.

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49. These statements were false because, among other things, KEW's current assets and current liabilities were not reported in accordance with IFRS or IAS 34.

50. Further, IFRS and IAS 34 both require disclosure of all material uncertainties that could affect a company's ability to continue as a going concern.

51. KEW's failure to maintain working capital and cash flow in compliance with its Credit Facility created a material risk that KEW's Lenders would issue a default notice under the Credit Facility or otherwise terminate the lending relationship with KEW. This, in turn, would create a material uncertainty as to KEW's ability to continue as a going concern.

52. The Defendants' failure to disclose these material uncertainties in KEW's financial disclosure during the Class Period in relation to its ability to continue as a going concern was a breach of IFRS and IAS 34 and constituted misrepresentations under the *OSA* and the Other Securities Legislation.

E. Misrepresentations About DC&P and ICFR

53. During the Class Period, the Defendants made misrepresentations regarding the design, evaluation, and effectiveness of KEW's internal controls, including DC&P and ICFR.

54. DC&P are intended to provide reasonable assurance that material information relating to the company is made known to senior management, including the CEO and CFO, and that information required to be disclosed by the company is recorded, processed, summarized and reported as required by legislation.

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55. ICFR is intended to provide reasonable assurance regarding the reliability of the company's financial reporting and preparation of financial statements in accordance with IFRS.

56. Each of KEW's quarterly and annual MD&As that were issued during the Class Period represented that KEW's DC&P and ICFR were effective and/or did not suffer from any material weaknesses (except as disclosed therein). For example, the Q2 2019 MD&A stated that KEW's CEO and CFO:

- (a) concluded that the design of the DC&P were effective and have established processes to ensure that they are provided with sufficient knowledge to support the representations made in the annual certificates required to be filed under NI 52-109; and
- (b) have assessed the design effectiveness of KEW's ICFR using the Internal Control-Integrated Framework ("COSO Framework") and have not identified any material weaknesses relating to such design.

57. During the Class Period, Silver and Webb each filed certifications under NI 52-109 certifying that they had reviewed KEW's financial statements and MD&A for the relevant period, and that based on their knowledge, having exercised reasonable diligence, the filings did not contain any misrepresentation as defined in the *OSA*.

58. Specifically, Silver and Webb certified that:

- (a) the interim and annual filings do not contain any untrue statement of material factor omit to state a material fact required to be stated or that is necessary to make a statement not misleading in light of the circumstances under which it was made;
- (b) the interim and annual filings fairly present in all material respects the financial condition, financial performance and cash flows of KEW;

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- (c) they have designed or caused to be designed under their supervision DC&P to provide reasonable assurance that:
 - (i) material information relating to KEW is made known to them by others; and
 - (ii) information required to be disclosed by KEW in its interim and annual filings and other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation;
- (d) they have designed or caused to be designed under their supervision ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the KEW's GAAP;
- (e) the control framework used to design the KEW's ICFR is the Internal Control – Integrated Framework (COSO Framework) published by the Committee of Sponsoring Organizations of the Treadway Commission (COSO); and
- (f) they have evaluated or caused to be evaluated under their supervision the effectiveness of KEW's DC&P and ICFR, and KEW has disclosed in its quarterly and annual MD&A their conclusions about the effectiveness of DC&P and ICFR.

59. These representations in the MD&As and the certifications by Silver and Webb were false because:

- (a) KEW's DC&P and ICFR were ineffective and suffered from material weaknesses;
- (b) Silver and Webb did not design nor cause to be designed DC&P to provide reasonable assurance that:
 - (i) material information relating to KEW is made known to them by others; and
 - (ii) information required to be disclosed by KEW in its interim and annual filings and other reports filed or submitted by it under securities legislation is recorded, processed, summarized and reported within the time periods specified in securities legislation;

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- (c) Silver and Webb did not design nor cause to be designed ICFR to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with the KEW's GAAP;
- (d) KEW's ICFR did not meet the criteria set forth in the COSO Framework published by COSO;
- (e) Silver and Webb did not properly evaluate or cause to be evaluated the effectiveness of KEW's DC&P and ICFR; and
- (f) because of these control deficiencies, KEW made misrepresentations in its interim and annual financial statements and MD&A and gave inaccurate information to the Lenders concerning cash flow and working capital.

60. Silver and Webb made these misrepresentations with knowledge at the time the certifications were filed that they contained misrepresentations.

61. In the alternative, at or before the time the certifications were filed, Silver and Webb deliberately avoided acquiring knowledge that the certifications contained misrepresentations or through their actions or failure to act they were guilty of gross misconduct in connection with the release of the certifications.

F. Misrepresentations About Compliance with the Code of Conduct

62. During the Class Period, the Defendants made misrepresentations that they complied with KEW's Code of Business Conduct and Ethics. The Code stated, among other things, that KEW requires "honest and accurate recording and reporting of information of the Corporation" and that "all of the Corporation's financial statements and the books, records and accounts on which they are based must appropriately reflect the Corporation's activities and confirm to applicable legal, accounting and auditing requirements."

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63. The Impugned Documents released by KEW during the Class Period contained statements affirming KEW's compliance with its Code of Ethics. For example, KEW's Management Information Circular dated May 11, 2018 stated that as of as of the date of the Circular, there had been no material violations of the Code of Business Conduct and Ethics.

64. The representations made by KEW in the Impugned Documents in relation to KEW's compliance with its Code of Ethics were false.

65. As set out above, the Defendants failed to ensure that KEW's financial reporting during the Class Period was accurate and confirmed to all applicable legal, accounting and audit requirements.

G. KEW's Omissions During the Class Period

66. KEW failed to disclose in the Impugned Disclosure that KEW had:

- (a) provided reports to its Lenders containing inaccurate information about working capital;
- (b) provided inaccurate information to its auditor Grant Thornton;
- (c) improperly used cash from its subsidiaries to remedy KEW's cash flow and working capital deficiencies; and
- (d) there was a material risk that the revelation of these omissions would lead to regulatory action, including the cease trading of KEW's shares.

67. These were omissions of material facts that were required to be stated by KEW pursuant to the *OSA* and the Other Securities Legislation.

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VII. THE TRUTH IS DISCLOSED

68. The truth about KEW was disclosed through press releases in late December 2019 and January 2020, as well as an online story published by Deadline (an entertainment industry publication). All of these, as set out below, were public corrections within the meaning of the *OSA* and the Other Securities Legislation.

69. On December 11, 2019, KEW issued a press release announcing that:

- (a) it had learned that certain reports provided by Webb to KEW and its Lenders contained inaccurate information about working capital;
- (b) Webb had left KEW; and
- (c) KEW was conducting a review of these matters with the support of its financial and legal advisors.

70. On this news, the price of KEW's shares decreased on heavy volume from \$3.88 on December 10, 2019, the day before the press release, to \$2.50 on December 11, 2019.

71. On December 16, 2019, KEW issued another press release announcing that its Lenders had provided notice of an event of default under KEW's Credit Facility due to the inaccurate information provided to the Lenders by Webb.

72. On this news, the price of KEW's shares decreased on heavy volume from \$2.46 on December 13, 2019, the day before the press release, to \$1.92 on December 16, 2019.

73. On January 15, 2020, KEW issued another press release announcing that Grant Thornton had notified KEW that it had withdrawn the following reports:

- (a) its audit report dated April 2, 2018 on KEW's consolidated financial statements as at and for the years ended December 31, 2017 and 2016;

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- (b) its audit report dated April 1, 2019 on KEW's consolidated financial statements as at and for the years ended December 31, 2018 and 2017; and
- (c) its interim review reports to the audit committee of KEW for each interim period within the 2017, 2018 and 2019 fiscal years.

74. KEW further announced that:

- (a) these reports should no longer be relied upon;
- (b) Grant Thornton informed KEW that the withdrawal was a result of the actions of Webb and its inability to rely on representations he made to Grant Thornton in the course of its audits and review of KEW's financial statements;
- (c) KEW's board of directors formed a second special committee of independent directors to investigate Webb actions, whose mandated included an investigation of:
 - (i) the extent to which working capital and the other financial information of KEW was misreported to KEW and its Lenders; and
 - (ii) whether KEW's historical financial statements were impacted by such inaccurate information and require any amendment or restatement; and
- (d) as a result of the withdrawal of these reports and the time expected to complete the investigation, KEW expected that it would not be able to meet the filing deadline for its financial statements for the year ended December 31, 2019.

75. On this news, the price of KEW's shares decreased on heavy volume from \$0.80 on January 14, 2020, the day before the press release, to \$0.69 on January 15, 2020.

76. On January 16, 2020, KEW issued another press release announcing that the OSC had issued a temporary cease trade order preventing trading of KEW's shares for 15 days. The temporary cease trade order was as a result of KEW's announcement of the withdrawal of Grant Thornton audit reports.

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77. On January 29, 2020, the OSC issued a permanent cease trade order pursuant to which all trading in the securities of KEW was ceased by order of the Ontario Securities Commission until the order was revoked.

78. On March 3, 2020, Deadline published an article entitled “Kew Media: How The Production Group Behind ‘The Inventor’ & ‘Dance Moms’ Collapsed After One Acquisition Too Many” written by Jake Kanter. The article reported that:

- (a) KEW “made the mistake of dipping into the accounts of its distributors KMD and TCB to cash flow the business when things turned sour”;
- (b) following the acquisition of Essential Media Group in July 2018, cash flow issues emerged, and KEW “started dipping into the bank accounts – or “treasuries” as they are known internally – of distribution arms KMD and TCB”;
- (c) one source reported that “between \$14M and \$17M was taken out of the KMD treasury and not returned”; and
- (d) these funds were used to help producers within the group when they had cash-flow issues, such as delays to productions, and was put towards corporate overhead.

79. On March 9, 2020, the TSX announced the delisting of KEW’s securities from the exchange effective April 9, 2020 for failure to meet continued listing requirements.

VIII. RIGHTS OF ACTION

A. Statutory Claim: Part XXIII.1 of the OSA

80. The Plaintiffs plead on behalf of themselves and the Class the right of action in Part XXIII.1 of the OSA and, if necessary, the equivalent provisions of the Other Securities Legislation against the Defendants.

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81. KEW was a responsible issuer within the meaning of the *OSA* and the Other Securities Legislation for the entirety of the Class Period.

82. Each of the Impugned Documents is a document under section 138.1 of the *OSA* and the corresponding provisions of the Other Securities Legislation.

83. The Impugned Documents that are financial statements, MD&As, AIFs, and Management Information Circulars are core documents under section 138.1 of the *OSA* and corresponding provisions of the Other Securities Legislation.

84. KEW was a responsible issuer at the time that each of the Impugned Documents was released by it.

85. The Individual Defendants were officers and/or directors of KEW at the time that each of the Impugned Documents were released, and each of them authorized, permitted and/or acquiesced in the release of such documents.

86. The Individual Defendants knew, at the time the Impugned Documents were released, that the documents contained misrepresentations.

87. In the alternative, the Individual Defendants deliberately avoided acquiring such knowledge or, in the alternative, were guilty of gross misconduct in connection with the making of the misrepresentations.

88. Accordingly, the Defendants are liable in respect of the misrepresentations made by them that are contained in the Impugned Documents, as particularized above, pursuant to *OSA* section 138.3(1).

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B. Common Law Claim: Negligent Misrepresentation

89. The Plaintiffs plead on behalf of themselves and the Class negligent misrepresentations at common law in respect of all of the misrepresentations particularized above contained in the Impugned Documents as against the Defendants.

90. Each of the misrepresentations set out above were untrue for the reasons particularized above.

91. The Impugned Documents were prepared for the purpose of attracting investment and inducing members of the investing public to purchase KEW securities. The Defendants undertook to provide the Impugned Documents to those current and prospective securities holders (i.e., the Class Members) for the purpose of allowing them to make informed decisions as to whether to acquire KEW's securities.

92. The Defendants knew and intended at all material times that those documents had been prepared for that purpose, and that the Class Members would reasonably rely to their detriment upon such documents in making their decision to purchase KEW's securities.

93. The Defendants had a duty at common law to exercise care and diligence to ensure that the Impugned Documents were free from material misstatement. The Defendants breached that duty by making the misrepresentations particularized above.

94. The Plaintiffs and other Class Members directly or indirectly relied upon the misrepresentations in making decisions to purchase KEW's securities and suffered damages when the falsity of the information was revealed.

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95. In the alternative, the Plaintiffs and other Class Members relied upon the misrepresentations by the act of acquiring KEW's securities in an efficient market that promptly incorporated into the price of those securities all publicly available information regarding KEW, including the misrepresentations, which were false. As a result, the repeated publication of these misrepresentations caused the price of KEW's securities to trade at inflated prices during the Class Period, thus directly resulting in damages to the Plaintiffs and Class Members.

IX. RELATIONSHIP BETWEEN THE MISREPRESENTATIONS AND THE PRICE OF KEW'S SECURITIES

96. The price of KEW's securities was directly affected during the Class Period by the release of the Impugned Documents containing the misrepresentations as particularized above.

97. The Defendants were aware at all material times of the effect of KEW's disclosure documents upon the price of KEW's securities.

98. The Impugned Documents were filed, among other places, with SEDAR, and thereby became immediately available to the Class Members other members of the investing public, financial analysts and the financial press.

99. KEW routinely transmitted the Impugned Documents to the financial press, financial analysts and certain prospective and actual holders of KEW's securities. KEW provided either copies of the Impugned Documents or links to the documents on its website.

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100. KEW regularly communicated with investors and financial analysts via established market communication mechanisms, including through regular disseminations of their disclosure documents, including on newswire services in Canada, the United States and elsewhere. When KEW communicated that new material information about KEW's business, and operations and its financial results to the public, the price of KEW's securities was directly affected.

101. KEW was the subject of analysts' reports that incorporated certain of the information contained in the Impugned Documents, with the effect that any recommendations to buy, hold or sell KEW's securities in such reports during the Class Period were based, in whole or in part, upon that information.

102. KEW's securities were traded on the TSX, which is an efficient and automated market. The price at which KEW's securities traded promptly incorporated material information from KEW's disclosure documents about KEW's business and affairs, including the misrepresentations alleged herein, which were disseminated to the public through the Impugned Documents distributed by KEW, as well as by other means.

X. DAMAGES

103. The Class Members suffered damages as a result of the Defendants' misrepresentations. The Plaintiffs and the other Class Members suffered damages equivalent to the inflation in the price of the KEW securities they acquired during the Class Period which was related to the misrepresentations set out above.

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104. If the Defendants had not made the misrepresentations described above, KEW's securities would not have traded or been sold at artificially high levels that Class Members paid for them, and the Class Members would not have suffered losses.

105. The Defendants' conduct was outrageous and renders the Defendants liable to pay punitive damages.

XI. VICARIOUS LIABILITY

106. KEW is vicariously liable for the acts and omissions of the Individual Defendants.

107. The acts or omissions alleged herein to have been done by KEW were authorized, ordered and done by the Individual Defendants and other agents, employees and representatives of KEW, while engaged in the management, direction, control and transaction of the business and affairs of KEW. Such acts and omissions are, therefore, not only the acts and omissions of the Individual Defendants, but are also the acts and omissions of KEW.

108. At all material times, the Individual Defendants were officers and/or directors of KEW. As their acts and omissions are independently tortious, they are personally liable to the Plaintiffs and the other Class Members.

XII. LEGISLATION

109. The Plaintiffs plead and rely upon the *Courts of Justice Act*, RSO 1990, c C43, the *Class Proceedings Act, 1992*, *The Negligence Act*, R.S.O. 1990, c.N.1, the *OSA*, and the *Other Securities Legislation*, all as amended.

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XIII. REAL AND SUBSTANTIAL CONNECTION WITH ONTARIO

110. The Plaintiffs plead that this action has a real and substantial connection with Ontario because, among other things:

- (a) KEW was a reporting issuer in Ontario at all material times;
- (b) KEW is an Ontario Corporation;
- (c) KEW carries on business in Ontario;
- (d) KEW's registered head office is in Toronto, Ontario;
- (e) securities of KEW traded publicly on the securities market in Ontario during the class period;
- (f) a substantial proportion of the Class Members reside in Ontario;
- (g) the misrepresentations alleged herein were disseminated in Ontario;
and
- (h) a substantial portion of the damages sustained by the class were sustained by persons and entities domiciled in Ontario.

XIV. SERVICE OUTSIDE ONTARIO AND PLACE OF TRIAL

111. If necessary, the Plaintiffs rely on Rules 17.02(a), (g), (n), and (p) of the *Rules of Civil Procedure* to serve this Statement of Claim outside Ontario without leave.

112. The Plaintiffs propose that this action be tried in the City of Toronto.

July __, 2020

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Lawyers for the Plaintiffs

ALEX KAN and STUART RATH
Plaintiffs

and
KEW MEDIA GROUP INC. ET AL.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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**This is EXHIBIT “D” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.

ALEX KAN and STUART RATH
Plaintiffs

and **KEW MEDIA GROUP INC. ET AL.**
Defendants

I, David D. Conklin, hereby accept service of this Statement of Claim on behalf of the Defendants David Fleck, Maurice Kagan, Patrice Merrin Erick Kwak, Steven Silver and Peter Sussman this 31 day of December, 2020


Goodmans ^{LLP}
Per: David Conklin

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

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ALEX KAN and STUART RATH
Plaintiffs

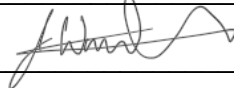
and **KEW MEDIA GROUP INC. ET AL.**
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

STATEMENT OF CLAIM

I, J. Wansbrough, hereby accept service of this Statement of Claim on behalf of the Defendant Geoffrey Webb this 13th day of ~~August, 2020~~ January, 2021

Fasken
Per: 

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**This is EXHIBIT “E” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.

KEW MEDIA GROUP Announces Appointment of Receiver, Appointment of Administrators for Kew Media Distribution and Resignation of Directors

TORONTO--(BUSINESS WIRE)--February 28, 2020--KEW MEDIA GROUP INC. (“KEW” or the “Company”) (TSX: KEW and KEW.WT) today announced that pursuant to an order of the Ontario Superior Court, FTI Consulting Canada Inc. (the “Receiver”) has been appointed as receiver of the assets, undertakings and properties of Kew Media Group Inc. and Kew Media International (Canada) Inc. The Receiver will manage the affairs of the Company and seek to sell all of the assets of KEW and distribute the proceeds thereof to KEW’s creditors. All of KEW’s directors resigned concurrently with the appointment of the Receiver.

In addition, KEW announced that its subsidiaries, Kew Media International Limited, Kew Media Group UK Limited and Kew Media Group UK Holdings Limited (together, the “Subsidiaries”), were each placed into administration in England and Wales. Simon Ian Kirkhope and Andrew Johnson of FTI Consulting LLP have been appointed as the joint administrators (“Joint Administrators”) of the Subsidiaries.

Administration is a formal insolvency proceeding pursuant to the laws of England and Wales, the objectives of which are to: (i) rescue the company as a going concern; (ii) achieve a better result for the company’s creditors as a whole than would be likely if the company were wound up without first being in administration; or (iii) realize property to make a distribution to one or more secured or preferential creditors. Each company in administration benefits from a statutory moratorium that prohibits a wide range of enforcement action without consent of the administrator or leave of the English court. The administrators are required to provide the creditors of the company in administration, its member(s) and the registrar of companies in England and Wales with their proposals for achieving the purpose of the administration, as soon as practicable, and in any event within eight weeks of the commencement of the administration.

None of Kew’s production companies are subject to the receivership or UK administration.

Contacts

Investor Relations Contact:

Peter Block

investors@kewmedia.com

**This is EXHIBIT “F” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc..
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors
Expires October 24, 2023.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ALEX KAN and STUART RATH

Plaintiffs

-and-

KEW MEDIA GROUP INC., STEVEN SILVER,
GEOFFREY WEBB, DAVID FLECK, MAURICE KAGAN,
PATRICE MERRIN, PETER SUSSMAN and ERICK KWAK

Defendants

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*, S.O. 1992, c.6

AFFIDAVIT OF ATTEMPTED SERVICE

I, DEREK LANCTOT, of the City of Toronto,
MAKE OATH AND SAY:

1. On December 29, 2020 I was instructed by the law firm Foreman & Company to serve KEW Media Group Inc. with a Statement of Claim at 400 – 672 Dupont Street, Toronto, Ontario.
2. On December 30, 2020 at 1:35 p.m. I attempted to serve KEW Media Group Inc. with a Statement of Claim at 400 – 672 Dupont Street, Toronto, Ontario but was unable to as this location was closed for the holidays.
3. On January 4, 2021 at 1:58 p.m. I attempted to serve KEW Media Group Inc. with a Statement of Claim at 400 – 672 Dupont Street, Toronto, Ontario but was unable to as I was advised that this company went bankrupt and moved out last month. The current company occupying this space is Sphere Media. The names listed below were Sienna, BGM and Wazabi Films.
4. To this day, I have been unsuccessful in serving KEW Media Group Inc. with a Statement of Claim at 400 – 672 Dupont Street, Toronto, Ontario.

SWORN BEFORE ME at the
City of Toronto, in the Province of
Ontario, this 11 day of January, 2021.


DEREK LANCTOT

A Commissioner for taking affidavits, etc.

Christine Laura McRoberts,
a Commissioner, etc., Province of
Ontario for McRoberts Legal Services
Inc., and for process serving only.
Expires January 6, 2023.

**This is EXHIBIT “G” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors
Expires October 24, 2023.

Sarah Bowden

From: Sarah Bowden
Sent: Monday, December 21, 2020 10:17 AM
To: 'nigel.meakin@fticonsulting.com'; 'Bish, David'
Cc: Jonathan Foreman; Kassandra Hallett
Subject: Kan et al v. Kew Media Group Inc. et al.
Attachments: Statement of Claim with Service Acceptance Jurat -Kew Media Group.pdf

Hi Nigel and David,

As you are aware, the plaintiffs were granted leave to issue, file and serve their statement of claim pursuant to Justice Koehnen's Lift Stay Order of July 14th, 2020. The statement of claim is attached as Schedule "A" to the order.

As a house keeping matter, we would appreciate if you could sign the attached statement of claim to evidence your acceptance of service of the claim. We've added a service jurat to the last page of the document for your execution.

Thanks in advance,
Sarah

Sarah Bowden

Counsel

Foreman & Company

telephone: 519.914.1175 x 103

toll-free: 1.855.814.4575

FOREMAN & COMPANY

**This is EXHIBIT “H” referred to in the
Affidavit of SARAH A. BOWDEN
sworn before me, this 15th day of January, 2021**


A Commissioner, etc.

Kassandra Lisé Hallett, a Commissioner, etc.,
Province of Ontario, for Foreman & Company
Professional Corporation, Barristers and Solicitors.
Expires October 24, 2023.

Sarah Bowden

From: Bish, David <dbish@torys.com>
Sent: Tuesday, December 22, 2020 1:39 PM
To: Sarah Bowden
Cc: Jonathan Foreman; Cassandra Hallett; 'nigel.meakin@fticonsulting.com'
Subject: RE: Kan et al v. Kew Media Group Inc. et al.

Exercise caution: This is an **EXTERNAL** email. **DO NOT** open attachments or click links from unknown senders or unexpected email. If unsure, please contact support@businessstech.ca.

Good afternoon, Sarah.

We acknowledge the Receiver's receipt of your email enclosing your statement of claim. The Receiver does not believe it is necessary or appropriate to accept service of behalf of Kew Media. As has been discussed, the Receiver does not presently intend to defend these claims on behalf of Kew Media through a civil court process and believes that the resolution of the claim – as with all other claims against Kew Media – can and should be resolved if and when appropriate in the course of the receivership proceedings and not in separate civil proceedings. There is, of course, a court-ordered stay in respect of any further step or action in the class proceedings, and that stay remains both necessary and appropriate. As we have previously indicated, there are presently no funds available for distribution to unsecured creditors of Kew Media, nor are any such funds expected given the size of the shortfall likely to be suffered by Kew Media's secured lenders. That is all the more true for equity claims of shareholders, such as those of your clients and the proposed class. To the extent there may be insurance proceeds available to creditors of Kew Media, the Receiver remains of the view that it is not consistent with the Receiver's duties to facilitate a recovery of insurance proceeds by current or former shareholders of Kew Media in the face of outstanding secured and unsecured debt claims.

Regards.

David Bish

P. 416.865.7353 | F. 416.865.7380 | 1.800.505.8679
79 Wellington St. W., 30th Floor, Box 270, TD South Tower
Toronto, Ontario M5K 1N2 Canada | www.torys.com



From: Sarah Bowden <sbowden@foremancompany.com>
Sent: Monday, December 21, 2020 10:17 AM
To: 'nigel.meakin@fticonsulting.com' <nigel.meakin@fticonsulting.com>; Bish, David <dbish@torys.com>
Cc: Jonathan Foreman <jforeman@foremancompany.com>; Cassandra Hallett <khallett@foremancompany.com>
Subject: Kan et al v. Kew Media Group Inc. et al.

Hi Nigel and David,

As you are aware, the plaintiffs were granted leave to issue, file and serve their statement of claim pursuant to Justice Koehnen's Lift Stay Order of July 14th, 2020. The statement of claim is attached as Schedule "A" to the order.

As a house keeping matter, we would appreciate if you could sign the attached statement of claim to evidence your acceptance of service of the claim. We've added a service jurat to the last page of the document for your execution.

Thanks in advance,

Sarah

Sarah Bowden

Counsel

Foreman & Company

telephone: 519.914.1175 x 103

toll-free: 1.855.814.4575

FOREMAN & COMPANY

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TRUIST BANK, AS AGENT

-and-

KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.
Respondents

Applicant

Court File No: CV-20-00637081-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding Commenced at TORONTO**

**AFFIDAVIT OF SARAH A. BOWDEN
(Extending Time for Service of the Statement of Claim
and Removing Thornton Grout Finnigan as Class
Counsel)**

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Lawyers for the Plaintiffs

<p>TRUIST BANK, AS AGENT -and- KEW MEDIA GROUP INC. and KEW MEDIA INTERNATIONAL (CANADA) INC.</p> <p style="text-align: right;">Applicant Respondents</p>	<p style="text-align: right;">Court File No: CV-20-00637081-00CL</p>		
	<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding Commenced at TORONTO</p> <p style="text-align: center;">MOTION RECORD (Extending Time for Service of the Statement of Claim and Removing Thornton Grout Finnigan as Class Counsel)</p> <table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <p>KALLOGHLIAN MYERS ^{LLP} 250 University Avenue, Suite 200 Toronto, ON M5H 3E5</p> <p>Paul D. Guy (LSO# 49794K) Serge Kalloghlian (LSO#: 55557F) Garth Myers (LSO#: 62307G) Tel: (647) 969-4472 Fax: (647) 243-6620 paul@kalloghlianmyers.com serge@kalloghlianmyers.com garth@kalloghlianmyers.com</p> <p>Lawyers for the Plaintiffs</p> </td> <td style="vertical-align: top; width: 50%;"> <p>FOREMAN & COMPANY 4 Covent Market Place London, ON N6A 1E2</p> <p>Jonathan J. Foreman (LSO #45087H) Sarah A. Bowden (LSO #56835D) Anne E. Legate-Wolfe (LSO #76832J) Tel: (519) 914-1175 Fax: (226) 884-5340 jforeman@foremancompany.com sbowden@foremancompany.com alegatewolfe@foremancompany.com</p> </td> </tr> </table>	<p>KALLOGHLIAN MYERS ^{LLP} 250 University Avenue, Suite 200 Toronto, ON M5H 3E5</p> <p>Paul D. Guy (LSO# 49794K) Serge Kalloghlian (LSO#: 55557F) Garth Myers (LSO#: 62307G) Tel: (647) 969-4472 Fax: (647) 243-6620 paul@kalloghlianmyers.com serge@kalloghlianmyers.com garth@kalloghlianmyers.com</p> <p>Lawyers for the Plaintiffs</p>	<p>FOREMAN & COMPANY 4 Covent Market Place London, ON N6A 1E2</p> <p>Jonathan J. Foreman (LSO #45087H) Sarah A. Bowden (LSO #56835D) Anne E. Legate-Wolfe (LSO #76832J) Tel: (519) 914-1175 Fax: (226) 884-5340 jforeman@foremancompany.com sbowden@foremancompany.com alegatewolfe@foremancompany.com</p>
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